Parameter and Practice of Development Control in Zimbabwe: An Evaluation of the System of Development Control with Emphasis on the Determination of Planning Permission Applications and Appeals 1976 to 1996.

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A C R O N Y M S

Allied Acts	Acts of Parliament in Zimbabwe that Complement the RTCP Act. (See Appendix I)
DPP	Department of Physical Planning
EPZ	Export Processing Zone
ESAP	Economic Structural Adjustment Programme
GOR	Government of Rhodesia
GOSR	Government of Southern Rhodesia
GOZ	Government of Zimbabwe
GTPO	Government Town Planning Office
LA	Local Authorities
LPA	Local Planning Authority
NGO	Non Governmental Organisation
RDC	Rural District Council
RTCP Act	The Regional Town and Country Planning Act Chapter 29:12. This act governs spatial planning in Zimbabwe. (See Appendix 10)
TPD 1	Form on which an application for Planning Permission is made (Town Planning Development Form 1 and 2)
ZIC	Zimbabwe Investment Centre
ZIMPREST	Zimbabwe Programme for Economic and Social Transformation
ZIRUP	Zimbabwe Institute of Rural and Urban Planners

A B S T R A C T

The concern of the study is to document and evaluate the development control process in Zimbabwe. Development control is an interventionist tool used by government to regulate development. This regulatory mechanism has been criticised mostly by developers.

The planning environment in Zimbabwe has been and is changing. It is time to take stock and there may be need to improve on it. This study is a step towards critically understanding our planning system through analysing planning appeals. This has been achieved through documenting a brief history of development control. This history gives a background to an analytical view of applications for planning permission that were brought before the Administrative Court. Historical developments are traced to bring out the institutions involved; the reasons why some of the planning standards in use today are as they are. Changes that have taken place over the time are revealed.

Planning appeals often go unnoticed and receive very little coverage in any form of the media. The control of development, controversial as it is, worries the users mostly. For many citizens in Zimbabwe control of development is not a major issue because they seem to take physical development as given by government. This thesis looks at the handling of planning permission applications by the LPA and the Administrative Court to check whether government laws and regulations are followed. The process is evaluated through analysing applications that went through the LPA and turned into appeals at the Administrative Court.

The findings under the history of development control and the planning appeals chapters lead to conclusions about development control and planning appeals. It is hoped that specific studies on planning appeals reveal useful information that might be used in improving upon development control. The recommendations advanced relate to both the procedure and substance of development control.

The study found out that there is substantial delay in the process of development control for application for planning permission and at planning appeals stage. There is delay of varying degree at various stages in the process. It starts from lodging an application for planning permission as demonstrated with the case study on the City of Harare to lodging of Notice of Appeal and the Appellant's Case by the Applicant/Appellant. Worse still there is further delay by the Respondent and to some extent by the Administrative Court. This delay problem is accompanied by lack of adequate framework for planning. This inadequacy in policy framework and the resultant delay in processing applications raise the cost of development or leads to loss of revenue by investors.

C H A P T E R O N E

1.0 INTRODUCTION

1.1 Preamble

The development control system in land use planning has been portrayed as a means to rationalise land use to the benefit of all (the developer, the neighbourhood and government). Procedures and rules in the development control practice have been framed and some put into law. In Zimbabwe the field of planning law is still developing. A list of Acts of Parliament and Statutory Instruments is provided in Appendix 1. It is on the basis of these statutory documents, mainly the Regional Town and Country Planning Act (RTCP Act) of 1996 that development takes place. This is referred to as the framework for development control. The design of the legal framework and manner of practice is expected to assist in the smooth application of development control. However, it appears the development control system in place is complicated to an extent where the applicant, the development industry, Local Planning Authority (LPA) and the supposed beneficiaries of the project more often than not fail to agree.

For development to take place the Zimbabwe government has set in place a development control system that has been followed since 1924. (A Health Committee was established in 1924 to oversee land use. It had the mandate to approve or disapprove proposed development). The resultant process demands that one determine whether the development s/he wants to embark on needs planning permission or not. If it needs planning permission, an application should be made to the Local Planning Authority (LPA). The LPA follows legally defined procedures to arrive at a decision to grant or refuse planning permission. Whatever decision the LPA takes it may be liable to planning appeal by an interested party.

The policies, processes and procedures which the LPA consider or follow in arriving at a decision on planning permission applications have been consistently questioned by the

development industry, which thinks it is getting a raw deal from the development control system. The development control process is described as cumbersome by the development industry (Ratcliffe, 1981 p373). The aim of this thesis is to outline and comment on the historical development of policies, processes and procedures utilised in development control and evaluate them by focusing on planning appeal cases.

The main object of this chapter is to detail the purpose and scope of the study, which is centred on planning law and planning appeals in development control. It is also concerned with introducing the various facets of town planning law and development control. It covers definitions, subhead outlines and explanatory notes about the subject area for information purposes. It partly clarifies terms and phrases that appear in the history of development control in Zimbabwe and the analysis chapters.

1.2 The Research Problem

The study, using planning appeal cases, seeks to investigate and explain development control policies, processes and procedures formulated over the years in Zimbabwe.

1.2.1 Sub-problems

How has the body of planning law that governs development control in Zimbabwe evolved?

To what extent can issues highlighted by the processing of planning appeals, based on planning permission applications from 1976 to 1996 in Zimbabwe, be explained by policies and procedures in development control practice?

The thesis recognises the existence of studies (discussed in Chapter Two) that have been carried out on development control in Zimbabwe. However, there is need to explore further Ratcliffe's (1981 p373-385) observation in the British planning system that the processing

of planning appeals is generally slow, expensive and inconsistent. In Zimbabwe there is need, therefore, to document and analyse the number of planning appeal cases and how they were determined within the context of the issues that went for determination. The documentation will show the trend and categories of planning appeals from which conclusions can be arrived at through interpretation. The study will focus on problems and issues raised in the processing and handling of Administrative Court appeals on planning permission applications. The study will seek to find out if what has been said of planning appeals, in other countries (See Chapter Two), also obtain in Zimbabwe. Emphasis will be placed on evaluating the system in the light of the policy objectives of development control and the outcomes achieved from the implementation of the various instruments (outlined in Chapter Three) of development control.

Aims and objectives of the Study

1.2.2 Aim

To improve the understanding of the laws pertaining to development control policies and procedures and the manner in which decisions are arrived at through an analysis of planning appeals based on planning permission applications in Zimbabwe.

1.2.3 Objectives

a) To explain and comment on the evolution of the development control processes and procedures in Zimbabwe with emphasis on planning appeals.

b) To explain planning appeal cases population statistics in Zimbabwe from 1976 to 1996.

c) To ascertain whether delays occur in the exercise of development control with regards to Sections 26(1), 26(3), 40 and 49 of the RTCP Act.

d) To investigate the implications of "time delays" for project viability arising from the time taken to determine an appeal.

e) To identify shortcomings in the planning appeals system and recommend corrective action.

The study of planning appeals is expected to better the understanding of current practices and procedures in development control and to suggest ways of improving the system. The main purpose of the study is to critically analyse planning appeals and reduce them to statistics where possible. The statistics will enable informed interpretation of development control activities and provide quantitative facts about planning appeals. The subsidiary purpose is twofold:

- to highlight issues of development control that led to planning appeals and
- to contextualise the development control issues by giving a brief history of development control in Zimbabwe.

1.2.4 Hypotheses

There is an increase in the number of planning appeal cases in Zimbabwe from 1976 to 1996.

There is delay in the processing of planning permission applications to change land use and develop land both at the Local Planning Authority level and at the Administrative Court.

The delay in finalising planning permission applications burdens the applicant with increased-development-costs, the system is slow and expensive.

New thinking on development control and planning appeals is being taken on board. (See sub-problem on History of Development Control above and Chapter Five)

1.2.5 What the study will not look at

The study will not deal with appeals on enforcement orders, demolition notices, building and tree preservation orders, called in applications or master and local plan publicity issues within the sample. Wherever these are referred to, it will be to clarify certain issues, or they will be used to explain circumstances.

1.2.6 Abbreviations

These are contained on the page titled ACRONYMS placed just after the CONTENTS page.

1.2.7 Assumptions

The assumptions are laid out to indicate the angle from which the study was approached and that the development control system is affected by politicians and is related to public administration. In this situation the politicians and the administrators are not likely to abandon development control abruptly but seek its improvement.

Development control will continue to be practised and planning appeals will continue to be lodged.

Planning appeals will continue to be a way out for dissatisfied applicants seeking planning permission.

Brief case study surveys will be made on Harare City Council registers for planning permission applications. These are representative of development control practices in local authorities and the surveys will be done in addition to the nation wide sample to provide explanations.

The history of development control forms the basis for the development of future regulatory framework for processing planning permission applications.

1.3 The Need for the Study

After 20 years since the promulgation of the RTCP Act of 1976, there is need to evaluate how its sections on development control have been applied in practice. The thesis seeks to analyse and evaluate the processing of planning applications for permission to develop. These include Sections 26(1) & (3), 40 and 49 of the Regional Town and Country Planning Act, Chapter 29:12 and the corresponding determined planning appeals. The planning appeals are determined in terms of Sections 38 and 44 and 49 of the RTCP Act. The proposed study will add to past studies by focusing on and detailing planning appeals in the context of Zimbabwe's development control system. The study period is from 1976 to 1996. There is scope for improving the procedures for planning appeals. An understanding of how the applications are handled in practice may expedite resolving differences that are the subject of planning appeals.

The development control practice has raised a lot of debate the world over including Zimbabwe. Investors view development control policy and procedures as unnecessary and cumbersome. It is something they would rather do without. They criticise the development control system for being slow, having an inadequate framework and not being flexible towards non-conforming development. Generally, the system is said to hamper development (Butcher, 1995 on land delivery and permit approvals; Ratcliffe, 1981 p376-79). Developers further complain that the decision making process is difficult to understand and non-transparent, and argue that development control officers clumsily apply procedure. Developers are irked by the implementation of various instruments of development control. Studies worldwide (Ratcliffe p373-95, 1981; Davies et al, 1986 and Butcher, 1995) have been carried out to understand more about development control issues. In Zimbabwe we have studies by Dube, 1992; Gondo, 1991; Manyere, 1989 and Sithole, 1993. These studies are critically explored below in Chapter Two, Review of Literature. Note is taken of McAuslan and Kanyeihamba's (1978 p14 & 148-153) observation that the

nature of development that takes place, like society, is dynamic. Views on the form of development change with time. Likewise, applications of rules and regulations vary with time. In this context, policies, regulations and practices should be evaluated regularly.

Generally, all studies concerning development control view the practice as necessary. However, many are critical of the implementation of development control. As a result there has been a lot of debate on whether development control should be maintained, if so what has to be improved and how? It is generally agreed that the process and procedures must improve but on the question of how, there are substantial differences. Although there is room for the aggrieved to go to the Administrative Court in Zimbabwe and if unsatisfied to go further to the Supreme Court for redress, the impact of such practices and procedures on development control has not been evaluated. The challenge is to make recommendations applicable to the Zimbabwean situation.

To round off this passage on why focusing on planning appeals, the underlying premise of this study is to evaluate the application of laws, rules and regulations governing development control. Therefore, sample cases, in the form of planning appeals, provide an opportunity for analysing a planning permission application from the time it is submitted to its conclusion when a court decision is made. It will attempt to qualify and quantify the observation that planning appeals are slow and expensive, comment on procedures and processes followed and use the history of development control to explain current positions and probable change. Because development control is a broad area, the study is based on cases that went as far as the Administrative Court for determination. It is believed they can give a comprehensive picture of issues of development control.

1.4 Importance of Planning Law and Development Control

The importance of planning law is in managing settlement development and, in particular, the control of development to minimise conflicts between individuals and developers and between the state and private interests (Wekwete 1989 p2). The importance of development control in general is that it is the basis of physical planning including the

allocation of land uses. It is backed by a set of planning standards that are used in deciding settlement structure. It is an implementation tool for master, local, subject and layout plans and development policies. It operationalises planning documents, laws, rules and regulations. Laws are created to maintain values and ensure that through title, zoning and different use-class orders, only permitted development occurs. Development control partly sets the parameters for levies (taxation) seen in its categorisation of land uses and land value assumed therefrom (Wekwete 1989 p3-5). The Local Authorities (LAs) have a strong interest in the creation of such values, which results in better tax yields (rates) and encourages investment in the built environment.

Dealing with planning appeals in development control is one way of trying to understand a facet of development control and hopefully improve our application and interpretation of planning law. Appeals test the soundness of the planning system. The impact of development control is reflected on the quality of the settlement environment as it gives guidance to the arrangement of development. If procedure and time frame are not adhered to, this impacts adversely on government, for being lax, when the case is taken to court by the developer. As such the process has cost implications.

This important process of development control has been implemented since 1924 in Zimbabwe (See page 1 for importance of 1924). It has shaped the landscape of Zimbabwe in terms of land tenure i.e. Communal, Small Scale Commercial Farms, Large Scale Commercial Farms and Urban. It has impacted on urban morphology and social-economic-cultural patterns of urban Zimbabwe. This is seen through the spatial location of urban functions e.g. Commercial: such as food, banking and clothing; residential: such as low, medium and high density housing; industrial: such as service, light and heavy; social infrastructure: such as clinics and schools; economic infrastructure: such as roads and electricity; and recreation such as parks and amusement centres.

Development control, as part of planning law, is complementary to Administrative Law – that is, it is closely related to administrative law. The historical development of planning law is linked to that of administrative law. Its further refinement is linked to public health,

living conditions, i.e. provision of infrastructure and general interaction within a defined settlement (Yardley, 1986 p4 & 15-17).

It is also pertinent to note that the historical development of planning law and development control is closely linked to the evolution of local government structures and functions. Also the evolution of the layout (land use zoning) of the town is closely linked to the issue of public health and the development of local government. This is of great importance because the implementation of development control laws and regulations need strong and effective local authorities. The system of land use control is part of this general government process and as such affects and is affected by the administrative culture. It is in this scenario that urban and rural councils emerged to manage settlements and co-ordinate resources through the use of by-laws, (Telling and Duxbury, 1993 p35-40). Development control is made functional by a number of statutory and administrative tools that have been developed over time. These are, for example, compulsory purchase notices, compensation, advertising proposed developments, enforcement orders and planning guidelines.

Besides being closely linked to the evolution of local government and the layout of the city, improvements on the development control system are influenced by changes in economic infrastructure technology. The changes are related to the advent and perfection of road transport enabling the spread of settlement layout. Improved road transport also meant that the role of the rail-line as a major locational factor in industrial development was reduced. Another factor is the supply of cheap electricity over long distances using high-tension wire. Settlements could be sited far away from the coal or oil fields instead of being crammed close to energy sources. This development control process affects business (corporate), public (social) and private life. It curtails freedoms be it entrepreneurship, individual, social and property use (Yardely, 1986 p2-4). However, despite these changes in economic infrastructure technology and their effect on locational and development factors interested parties that are not happy with the LPA's decision continue to have the right to appeal to the Administrative Court in Zimbabwe.

Planning law being enforced by the LPAs amounts to some form of administrative law.

Planning law can be applied negatively or positively. Positively in that a LPA or the Minister can be compelled to carry out its legal duties. The courts at times bring into play natural justice to aid planning law statutes. This is why the courts are brought in to handle law cases to give judicial review, to bring in the common law dimension (Yardely 2nd Ed., 1986 p19 & 48). On the other hand it can have negative effects if applied too rigidly without accommodating the dynamism of society by updating policies and procedures or taking note of other material considerations.

Zimbabwean planners have continued to implement development control strictly between 1976 and 1996. They have not sat down to seriously reflect on how the process is faring especially where administrative decisions are subjected to court review to determine whether the law has been correctly applied. The reviews that have been done on some aspects of development control through the ZIRUP Annual School (1989-1996) or Department of Physical Planning's Planners Conferences between 1980 and 1996 have been generalised. Detailed analysis of the issues that came out of these deliberations should be delved into and quantify actions and decisions. Therefore, it is of interest to address the following questions. What are the chances of having our administrative decisions upheld? What are the implications of this?

1.5 Contents of Study

The first chapter is the introduction. It states the research problem and looks at the importance, origins and meaning of development control. This sets the justification for development control, which is expanded under the Rationale for Development Control later. An attempt is made to put development control in the scheme of planning history and the development of planning law in Zimbabwe. The second part of Chapter One gives the necessary background about development control in general.

Chapter Two deals with the review of literature. The review is biased towards planning appeals which are the main focus of the dissertation. Chapter Two identifies and discusses

some of the major theoretical aspects of development control and planning appeals. The English system of recording data on planning appeals was particularly taken note of.

Chapter Three briefly outlines the legal regime applicable in Zimbabwe and the procedures that are followed. It gives an overview of the area of study. Since the paper is concerned with planning appeals, the subsections on legal framework for and actors in development control brings to the fore people concerned with the system and on what basis. This is further supported by an outline on the forms of appeal and procedures for appealing. To this end the background information buttresses the analysis done in Chapter Five so that it is not just isolated and made to look out of context.

The methodology followed in carrying out the study is outlined in Chapter Four. Some of the standards referred to directly or indirectly under the subheading aim and objectives, above, are outlined here to create a platform for discussion in Chapters Five and Six.

Chapter Five focuses on the sub-problem on history of development control in Zimbabwe. It tries to outline and explain the development of various facets of planning law and development control. The outline is done to show whether the legislation on development control has been static or not. It also briefly looks at the planning law making process in Zimbabwe. It concerns itself with a qualitative archival data analysis to state policy, law, regulations, rules and standards at specific junctures in the evolution of planning law and development control.

Chapter Six is in three parts. The *first part* responds to the specific sub-problem, hypothesis and objective on providing a statistical analysis of planning appeals from 1976 to 1996. An attempt is made to describe and comment on the statistical outcomes through looking at general characteristics of planning appeals data, pattern of planning appeals and propensity to appeal. In concluding part one, the question "are planning appeals increasing or not?" is answered. *Part Two* of Chapter Six gives results of the quantitative digestion of the processing of planning appeals to determine the degree of time delay. It attempts to answer to the sub-problem, hypotheses and objectives relating to time periods and delay.

Part Two goes into detail about observations made from interrogating the planning appeals files, 1976 to 1996, at the Administrative Court and National Archives. What do they tell? *Part Three* of Chapter Six tackles the aspect of costs caused by delay in determining planning permission applications and appeals. This helps to show the impact of delays in planning.

Chapter Seven is a concluding summary of the most important aspects of Chapters Two to Six. The hypotheses formulated in Chapter One are tested. Issues and observations are outlined. The chapter goes further to make some recommendations for the improvement of development control in Zimbabwe.

1.6 Background Information

Comprehensive definitions of development and development control are made here. In addition there is a fourth subsection on the rationale for development control. This third subsection is an explanatory note linked to section 1.4 above on the importance of planning law.

1.6.1 *Definition of terms*

What is meant by **determination** or **determined planning appeals**? One form of determination is where the Local Planning Authority (LPA) decides on whether to issue a permit or not. This study will concern itself with the form of determination where cases are brought before the court. Determination means to decide the case on whose argument should be accepted - the appellant's or respondent's. It means the developer, the Local Planning Authority (LPA) and any interested parties have disagreed and the matter is taken before the court for a decision. It is not the one where a Board of Inquiry set up by the LPA to examine the issues at hand and recommend a ruling conducts an investigation.

Planning permission application as used in the paper generally refer to applications in

terms of Sections 26(1), 26(3), 40 and 49 of the Regional Town and Country Planning Act Chapter 29:12 of Zimbabwe.

Detailed definitions of **development** and **development control** are given immediately below

1.6.2 *Meaning of Development*

Development in terms of the RTCP Act (of Zimbabwe) Chapter 29:12, Revised Edition 1996, Sections 22 and 23, is defined as:

- the carrying out of building, engineering, mining or other operations, in, on, over or under land; or
- the making of any material change in the use of any building, or any land; or
- the disposal of waste materials on any land; or
- the use of any dwelling by a single family as two or more separate dwellings; or
- the display on any land or building of any advertisement in a manner other than that prescribed.

Furthermore, development is defined as the use of any land or any vehicle or similar object whether fixed, movable or collapsible, as a building for residential or other purposes for a period exceeding six months or such longer period as the LPA may authorise. Similarly, the demolition of a building or part of it or rebuilding is regarded as development depending on the scale (Telling and Duxbury, 1993 p78-86). Generally, development is the significant alteration of the character and use of land or building.

Development, then, can be simplified into two parts i.e. *operational development* and *change of use*. The understanding, as given by Telling and Duxbury (1993 p63-89), is that operations comprise activities which result in some physical alterations to the land which have some degree of permanence in relation to the land itself. Development activities that are classified as operations include building, engineering and mining. Building operations include rebuilding, additions to building, structural alterations of buildings and demolition of buildings. Engineering operations include the development of access to highways and

erecting greenhouses or fish tanks. Mining operations include extraction of minerals and removal of material from a minerals-working deposit (Heap, 1996 p121).

On the other hand change of use comprises activities which are done alongside or on the land but do not interfere with the actual physical characteristics of the land. In other words, change of use refers to the purpose to which land or buildings are devoted. Examples of activities classified as change of use are the display of advertisement on any external part of a building not previously used for that purpose, and the deposit of refuse on non designated sites. Complementary to the above is Alders' (1979 p51-60) explanation of material change of use. That change is material if it is physical, substantial and relevant in terms of planning considerations. If it does not raise planning considerations, it means it is not material. On material change of use there are two schools of thought both supported by the English High Court. One, that substantial change e.g. shops to offices, is intrinsic to the circumstances of the site, and two, relevance to planning, that there should be relevance to the external conditions around the site.

Development is also defined by outlining what permitted development is i.e. that which can be carried out without planning permission (Alders, 1979 p42-44). Permitted development includes (adapted from Heap, 1996 p138-143)

- Development covered by a development order,
- Reverting to a use that was in place before the activity being the subject of an enforcement order,
- Display of advertisement in line with regulations,
- Certain development by a local authority or by a statutory undertaker which has been authorised by a government department e.g. mining, road improvement, breaking open of streets to repair or renew sewer and cables,
- Development directed by the Minister of Local Government, Public Works and National Housing,
- Use of land for occasional purposes e.g. fleamarket and
- Using land for a purpose for which it is designated e.g. building agricultural storage units on agricultural land and as provided for in Zimbabwe’s Statutory Instrument 216

of 1994 (Use Groups).

Furthermore, in terms of the (RTCP Act Chapter 29:12) permitted development also includes:

- Development which is carried out on a mining location and is permitted in terms of the Mines and Minerals Act of 1996.
- Development as detailed in the RTCP (General Development) Order, 1982 (Statutory Instrument 380 of 1982) and RTCP (District Council Areas) Special Development Order 1982 (Statutory Instrument 378 of 1982).

Permitted development is linked to Use Groups, which give a broad outline of what can or cannot be done in specific areas. It is in this context also that permission for the use of land for a particular purpose does not confer the right to erect buildings for that purpose (Telling and Duxbury, 1993 p91-101). Permitted development is introduced as an attempt to rid the public and the planning authorities alike of the *mundane trivia* that might otherwise clog the planning machine. These include up to 10% enlargement of existing dwelling houses, construction of fences/walls up to 2 metres high, erection of selected temporary buildings, and specified material change of use. Zimbabwe has adopted this practice as well. It is put as 'changing of use of any land or building if the new use is in the same "Use Group" given in the RTCP Act Use Groups Regulations of 1994'.

Development is further defined by outlining what it is not. According to Ratcliffe (1981 p461), the following are not developments: works of improvement or repair including internal works within any building provided the building is not subject to a building preservation order, maintenance or improvement of sewers, pipes, railways, electric lines, cables and highways done by the LA or statutory body, and use of land for agriculture and forestry. Building work, which is to be used for agricultural purposes and is on a property which is a hundred hectares or more in area, provided that work is not to be carried out within two hundred metres of the centre line of a main or district road or the property is in a gazetted area of high scenic beauty, is not development (Taylor, 1985 p15). There are developments, which may not require planning permission, e.g. the resumption to a previous use on the expiration of limited planning permission or enforcement and certain

developments by LAs and statutory undertakers sanctioned by Central government under a development order. This also applies to Zimbabwe, although the finer details vary from country to country.

The demolition of a building can be deemed as development. For example, where the building is listed (in the UK) (Telling and Duxbury, 1993) or protected by the National and Museums and Monuments (RTCP Act 1996 in Zimbabwe), its demolition will be regarded as development. Similarly, where the demolition activity is massive so as to constitute an engineering operation, it is viewed as development. Where a building and use are permitted through existing use rights demolition and rebuilding, which include extension, is development.

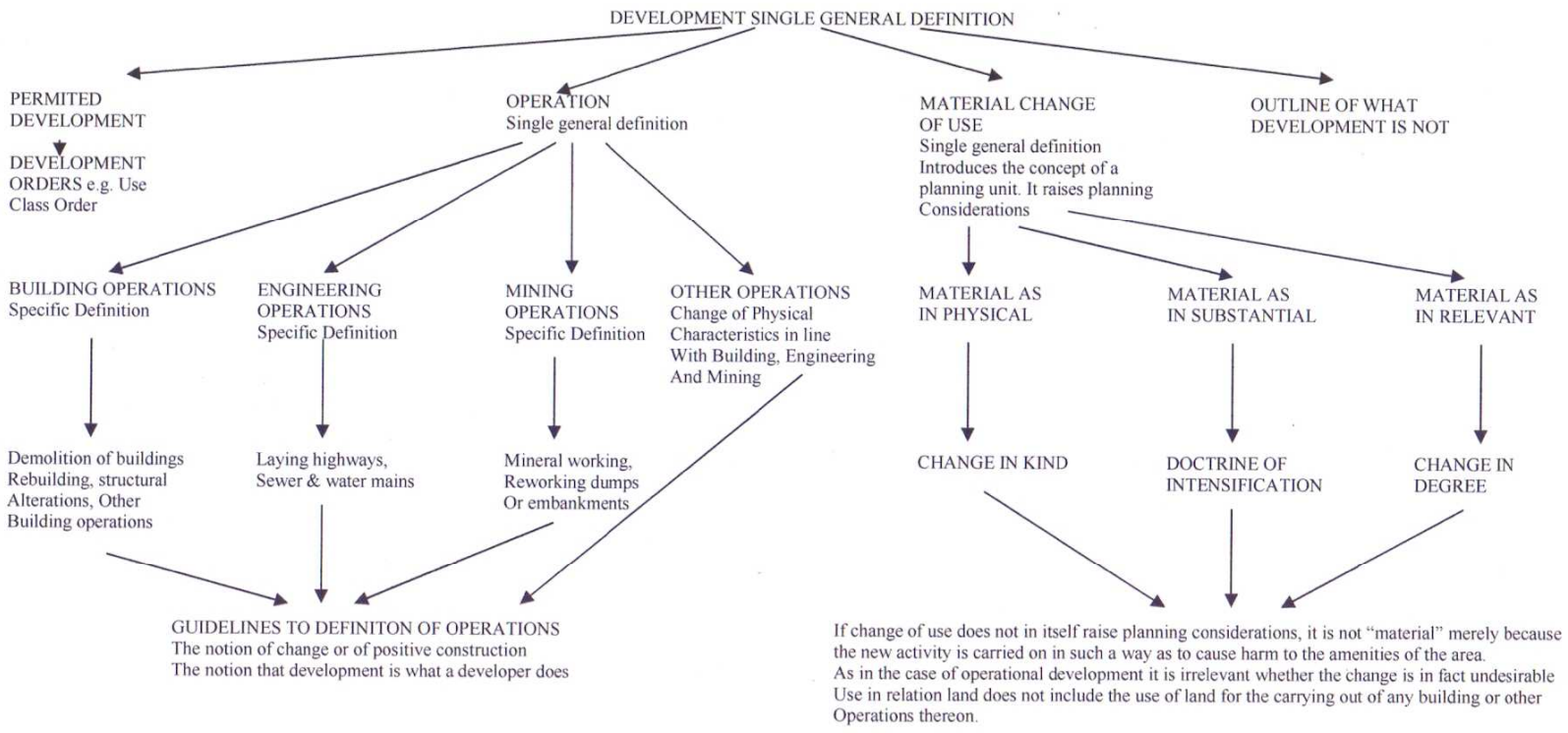
In conclusion the concept of development is a complex one. Town and country planning law is inevitably complex because it has to deal with all sorts of development in many different circumstances. A diagram is included below.

1.6.3 *What is Development Control?*

The implication of development as defined above is that for it to occur, some form of controls must be instituted. A brief outline of what development control incorporates is given below. Development control entails that development should take place as set out in various statutes that constitute the legal regime for planning in Zimbabwe, Section 24 of the RTCP Act. Control of development is practised in the context of macro-spatial planning instruments of statutory documents such as master plans and schemes and micro-spatial planning instruments such as layouts and building plans. Henceforth, no development is to take place without planning permission. Planning permission can be applied for as:

1) a full planning permission, or
2) outline planning permission, or

Fig. 8 SIMPLE CHART ON COMPONENTS OF DEFINITION FOR DEVELOPMENT



SOURCE: THESIS RESEARCH 2001

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3) planning permission for development already carried out.

Permission is either refused or granted with or without conditions. If permission is refused or conditions are imposed reasons must be given. The object is to improve health, safety, order, convenience, efficiency and economy in the process of development. And to ensure that development takes place according to the appropriate plans. Development control is a process through which ideas and policies of town and country planning are implemented. It is the process of controlling development. It represents a means of realising schemes/development plans which are judged to advance the goals of town and country planning at any particular time, whilst restricting those that do not (Pountney and Kingbury, 1983 p139).

Development control is characterised by the local planning authority's development plan which demands or encourages orderly development (an ideal environment) in its administrative area and the individual who wants to undertake development that will impact on the environment. The proposed activity and the plan are compared for their compatibility. Development by public bodies may not appear to be the subject of the same rigorous scrutiny as that undertaken by private developers. Development control is turning policy into practice (Morgan, 1988 p5-9). Forms of development control include subdivision and consolidation applications, development permits, enforcement orders and change of reservation or use applications.

With development control the cost of a proposed development is not normally a planning issue. Similarly, the costs to the developer of a refused planning permission and the cost of implementing a planning condition are not planning issues. Development control is purely a question of whether or not the proposed development is suitable for its specific location at that particular time. Admittedly, in exceptional cases direct costs may be

considered. Compensation has only indirect relevance for the development control process.

To wind up this paragraph a look at the legal outline of what *development control is in Zimbabwe* as given in the RTCP Act (1996) was made. Development should take place only in terms of a development order or subject to the provisions of the RTCP Act or any such development order. It can also be carried on if it:

- Was commenced before the appointed day and did not require any approval in terms of the repealed Act,
- Is carried out in accordance with an approval issued under the repealed Act,
- Is carried out on a mining location and is permitted in terms of the Mines and Minerals Act,
- Is carried out in accordance with the terms of a permit,
- The substitution of a new building erected in place of an existing building which has been destroyed or demolished provided the new building is for the same purpose, is put up within 18 months of demolition and does not exceed former size by 10 percent.

At a Department of Physical Planning Planners' Conference, held in Gweru in 1992, development control was seen as a means of maintaining "sanity, sense and harmony" in plan management.

1.6.4 *The Rationale Behind Development Control*

The general underlying rationale for planning laws and subsequently development control has been to provide a technical basis for managing the use of land and other problems associated with the built environment. Development control is seen as being part of a continuous policy to increase the powers of public authorities over the use of land in order to try and get on top of the increasing problems of the urban environment in particular and the environment in general. Laws have been geared towards establishing and creating the rationale and framework for both central government and LAs to manage and promote public interest in developing rural and urban land, (Wekwete, 1989 p3-7). From this, the objects of development control are in two parts basic and additional (Bryne, 1979 p36). The basic objects are the protection and enhancement of the built environment, and the co-ordination of both public and private investment in land to ensure its efficient use.

Additional objects concern conservation of natural resources and energy; the preservation and creation of employment opportunities; the control of pollution; the environmental, social and economic stress, and the social needs of the community. Below is a brief expansion of the reasons for practising development control.

Firstly, it is seen as a means to regulate development through some form of licensing (Alders, 1976). Development control is a way to determine what goes where and of what quality in terms of building material and design. The quality of building will include such detail as safety, height, durability, aesthetics and functionality. Functionality means it should fit in well with its surrounding. As such development control is considered as a management tool. Put in other words the laying of social and economic infrastructure such as sewer, electricity, schools and clinics is planned for in advance. It is the duty of those working in development control to see to it that development is balanced and meaningful in terms of current and projected needs. The managed orderly implementation of the infrastructure is related to the raising of capital to implement the same. Development control is also a management tool in that it, development control in conjunction with forward planning, gives the basis for setting property rates and other levies (Wekwete, 1989 p11-12). These levies are then channelled into the development and maintenance of the settlement. Development control is further related to traffic circulation and the mode of transport intra and inter settlement. Traffic management is partly done through development control, general car park location and building location. Waste disposal is also closely controlled. Some of the waste may be harmful such as industrial chemicals and the soil and water pollution aspects have to be dealt with. After disposal, be it ordinary residential, clinical or commercial waste, the disposal sites have to be managed to specification so as not to jeopardise life and heath.

Secondly, therefore, development control is a way to transform ideas and policies of town and country planning into an environmental reality (Morgan, 1988 p4-5). It enables the LPA to compare the proposed development with the existing for purposes of harmony. By using development plans development could be categorised and directed to achieve a “wholesome” environment. This is expected to result in increased benefits and reduced

costs to the community receiving the development. As such, the submission of a planning application provides the opportunity for a particular development to be considered against the background of the general interest of the locality. It is seen as a way of containing urban sprawl and creating a balanced urban settlement. In command economies or where central government indicative planning is strong, it is seen as part of the overall policy of bringing about a more equitable distribution of industrial, commercial and residential activities throughout the country. Development control is directly linked to sustainable settlement development.

The third reason is about the state, the planner and the general will. One may ask why planners pretend to know what is best for the developer and the consumer? The Philosopher Rousseau argues that there comes a point when someone has to make decisions in the interest of the community in the long run. Developers, through submitting a planning application, are afforded the chance to put across their views and participate. Similarly, the community, through its representatives or directly, is afforded the chance to participate too through written representation or attending meetings. At the end someone somewhere has to make a decision. Unfortunately, that decision may not necessarily accommodate the developer's or the community's views.

Fourthly, the rationale behind development control is that within the context of a free enterprise economy, the state and its agencies regulate activity in the public interest (Wekwete, 1989 p11-12). Development control has to take account of general economic needs and local economic requirements. The LPA has to decide whether or not need outweighs an objection to development. Development control should not be used to restrict competition. Haars (1964 p105-115) raises the fundamental question of justifying the intervention of the law in the free market of land transactions. It may be argued that it infringes on the liberty of the individual, thereby prompting the question "are the wishes of the consumers the be all and the end all of resource allocation?" This is supposed to be addressed by the extent to which forward planning takes cognisance of the multiple factors relevant in its bid to influence the formulation of policy and guide development in attempting to control things to come. The question that may arise is, is a planning appeal

the protection of a private right of property or an opportunity for public participation. However, it must be clear that development control should not be used merely to resist competition.

Fifthly, development control is there to preserve and where possible to improve the pleasant appearance of streets and buildings and of the countryside, (Telling and Duxbury, 1993). It is done to improve the environment and encourage equitable distribution. This is done through the harmonisation of new buildings and the existing environment. If the design of the new building will be unsuitable in its surroundings, it is refused. Development control has to be "neighbourly". It is expected to chop off the offensive and/or dangerous and serve the best in the right places, Haars (1964 p105-115). Furthermore there is need to preserve the countryside for its own sake and to protect it in the interest of food production. However, some important and needed developments e.g. mining may have to take place despite their harming of the environment through loss of amenity. The harm is minimised through conditions. One of the objects of town and country planning is to see to it that valuable deposits are not sterilised by premature building or other forms of development.

Lastly, it is there to increase the benefits and reduce the costs to the community receiving the development (Morgan, 1981 p3-6). It allows the state to intervene directly and protect society. Furthermore, it caters for negative externalities, which market forces do not cater for. It is seen as a way of protecting the public from unscrupulous landlords who may want to maximise returns before the lives of the people in terms of hygiene, disease and general amenity of the neighbourhood. It allows for basic infrastructure to be in place. Traffic congestion and access issues should be fully addressed.

Development control can arguably be premised on Pigouvian welfare economics, which use the concept of market failure to account for public intervention (Alexander, 2001). These failures in supposedly perfect markets include negative externalities e.g. environmental pollution, positive externalities demanding some public-private goods e.g. education and pure goods that the market cannot supply e.g. defence. This rational justifies

public intervention in what would otherwise be a spontaneous property market and unregulated land development process. These market failures include negative externalities demanding separation of incompatible land uses, positive externalities suggesting the integrated planning and development of compatible or synergetic land uses and public "goods aspect" of necessary public facilities, open spaces and infrastructure investments. Therefore, land use planning and development control can be defined as "government delineation or restrictions of rights over land within certain spatial confines" (Alexander, 2001).

One can make a comment as put across in this paragraph. Development control is a controversial subject in practice and a complex one theoretically. Controversial in that it affects everyone's living environment yet views on the quality of the environment are not congruous. Complex academically in that one has to try and come up with a blue print that works fine with the haves and have-nots, the different groups of the human race, groupings by religion, the sum total of the community, successive political tenets, the public officials and the developers. All this has to be reduced into guidelines, regulations and standards.

1.6.5 Conclusion

Development in planning law is not easily defined. The definition is made clearer by way of explanation. Despite these problems a working definition is arrived at abridged as "the carrying out of building, engineering, mining of other operations in, on, over or under land". These are activities which change permanently the appearance or use of an area. Proceeding from this simplified definition of development development control is outlined as a system by which development is allocated space. This leads to a need for a conceptual framework within which development can take place. The framework is in the form of the RTCP Act Chapter 29:12, master plans, government policy, general regulations and by-laws. In this scenario, there are users and consumers of the development control system as outlined in Chapter Three below, a situation that generates conflict of interests which if not resolved through the democratic process (consultations and discourse) it is resolved through legal means in Zimbabwe. It is this legal process and issues emanating from it

through planning appeals that are the subjects of this study. It is necessary to evaluate a system once in a while.

C H A P T E R T W O

2.0 REVIEW OF THE RELATED LITERATURE

Planning appeals are made within the realm of set planning standards, tested planning concepts and practices, legal interpretations that have withstood time and guiding case law. The main objective of this paper is to improve the understanding of the laws pertaining to development control policies and procedures and the manner in which decisions are arrived at through an analysis of planning appeals in Zimbabwe. The review of literature is in five parts. The areas covered are ideologies of planning law, which attempt to put development control into an historical context. In the next section the review of literature then outlines and discusses the conceptual framework for development control. On those concepts in development control, do stakeholders share the same view? Because they do not seem to share the same views, the fourth section of the literature review then focuses on Zimbabwe discussing planning appeals. Bearing in mind the objectives set out in Chapter One, the review of literature on Zimbabwe in the last passage of this Chapter covers issues pertaining to planning permission applications and generated planning appeals whilst trying to elucidate on policies, process and procedure. When the actual situation is presented in Chapter Six one would be able to compare, contrast, explain or comment on planning appeals in the context of development control. This will also furnish an explanatory or definitive basis for the review of literature in the context of studies that have been done before.

2.1 General Historical Overview of Development Control

Development control has been practised since the beginning of civilisation. It has evolved with time and has been shaped by the politics of the day. Settlement layout and development are, therefore, a way of life of a people (Curl, 1970). The Greeks, around 3000BC zoned their towns into areas for artisans, farmers and professional army. As far back as AD64 the Romans introduced legislation to improve urban living conditions to avoid the dangers of fire and the collapse of buildings. The legislation marked the

introduction of planning standards e.g. the maximum height of buildings was set at 70 feet (about 21 metres). Buildings were to be fronted with stone. Building laws were written into municipal charters thereby making them statutory. By AD127 settlement layouts had to accommodate water acquaducts. The provision of urban economic infrastructure became a must in addition to social infrastructure such as theatres and schools. These can be viewed as the formative stages of planning law.

As society evolved and human populations grew rapidly, the socio-economic and political conditions changed. With the ushering in of industrialisation around AD1800 and the preceding agrarian revolution sanitation became an issue. There was competition for different land uses. The resulting environmental problems needed advanced regulations. Town planning was pushed forward as a solution to the problems of organically (naturally or randomly) generated land uses (Harverfield, 1913), leading to a body of law in most countries that adopted the British planning system titled Town and Country Planning. This body of law is the basis of development control. However, for Zimbabwe planning law was also influenced by South African law, which in turn had been influenced by the Roman Dutch law. This influence came through colonisation. It explains why Zimbabwe has the Administrative Court as the court of first instance whilst the English deal with planning appeals administratively (also see passage 2.6.2 below).

Development control has been with us and is likely to be with us for the foreseeable future.

2.1.1 Ideologies of Planning Law

Planning law and therefore development control is formulated around three competing ideologies. *Firstly*, that the law exists and should be used to protect private property and its institutions. *Secondly*, that the law exists and should be used to advance the public interest, if necessary against the interest of private property. *Lastly*, that the law exists and should be used to advance the cause of public participation against the orthodox and public administration (McAuslan, 1980 p2-3).

The ideologies have their basis on the socio-economic issues in society. They acknowledge the existence of property owners, landlords or those who own the means of production. The propertied classes advance the ideology of private property. The propertied class exudes an aura of authority. They are focused on making money. As such the propertied class wants to dominate other social groups. In this manner they do not want development control to stifle their investment plans. At times they clash with proponents of the ideologies of public interest and public participation over the issue of property rights.

The ideologies also recognise the role of government and those who play the role of the civil servants. These want to present a balanced view of things by taking a line that is rational, towards a general will approach. They claim to advance the ideology of public interest, want to be seen to be in the driving seat and act to the benefit of everybody. Those who hold and practice development control in the 'public interest' clash with those who subscribe to the ideology of private property. The propertied classes want property and human rights to be respected. They would like to develop their properties as they see fit instead of being given 'dos and do nots' by advocates of 'public interest' in development.

Public participation is generally by those who do not own property or the means of production. Neither are they in the civil servants' boot. They are the employees, the very ordinary citizens or the poor, admittedly participants are very mixed. (In lobby groups it not surprising to find the propertied class and the public servant as members). Public participants hold the view that the propertied and the public officials always want to dictate to them on how they should live their own lives. Public participation tends to assume a radical approach to the left of the centre in the mould of individualism. Property owners and industrialists view it as bordering on the disruptive and retarding the march to creating wealth.

Development control then should be understood in the context of the three competing ideologies of planning law. McAuslan (1980 p147) argues that the ideology of private property dominates in capitalist oriented societies. However, it is conceded that there is an inter-play between the ideologies of public interest and private property. The ideology of

public interest collaborates with that of private property to out manoeuvre that of public participation especially at planning enquiries or in the courts. They collaborate because private property owners have influence socially, politically and economically. The propertied also need favour on one or two things from public officials at some stage. The sustenance of public officials is related to the taxation of the wealthy. Furthermore, the majority of the political leadership tends to come from the propertied and the industrialists. This is seen through the manner in which laws, regulations and circulars are formulated and circulated. The ideology of public participation is very subsidiary to that of private property and public interest, although it has been gaining ground recently.

The significance of the ideologies is that they influence how people view development control. The competing ideologies partly explain why disagreeing parties in development seek the view of the Administrative Court in Zimbabwe. These stakeholders (government, private sector and the community) would like to see fairness in the practice of development control. The ideologies form the main basis for disagreements in practice. Development control is there to cater for the divergent ideologies and yet the different views of the stakeholders in development are difficult to reconcile. The courts become an alternative for a second viewpoint to that of the LPA.

2.2 Framework for Development Control

Development control is centred on the "development plan". Morgan (1988 p5-6) states, "Where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provision of the development plan, so far as it is material to the application." There is a hierarchy of development plans that are used in development control. These are strategic plans, regional plans, master plans, structure plans, unitary plans, outline plans, scheme plans, local development plans, subject plans and local or priority or action plans Taylor (1985 p2-10). At a more detailed level are the layout plans. Specific types of plans that are used vary from country to country. In Zimbabwe it is mainly the master and local plans, outline and scheme plans and the subject plans that are in use. A development plan gives a LPA's

vision and direction of future development.

McLoughlin (1969 p279-290) sees planning as a system in the form of the planning process cycle. The implementation of a plan is essentially a control activity where control implies positive and negative intervention. Therefore, development control is a subsystem. McLoughlin sees control as "that …. which provides direction in conformance with the plan, or the maintenance of variations from system objectives within allowable limits". He states that the essence of plans is a trajectory of intended states (development) in the form of a set of matrices for each future time. Applications for development are hits on the system. The question then is "can they (applications) be accommodated or not?" McLoughlin argues, "the essence of control then is to regulate those disturbances so that the system's actual trajectory matches the intention as closely as possible." Each disturbance i.e. each planning-permission application, whether for new construction, demolition, change of use etc. must be examined for the total effect it is likely to have on the system. The variables used in control must be compatible with those in the plan and key variables used in the plan must be measurable by those controlling it. He further argues that in order to cope with the control of an area, some reduction of the very high variety of the human environment must be attempted and this is done by means of a development plan. Lee (1973 p113-119) agrees with McLoughlin (1969) on the planning process that "planning is a conceptual general system. By creating a conceptual system independent of, but corresponding to, the real world system, we can understand the phenomena of change, then to anticipate them and finally evaluate them – to concern ourselves with the optimisation of the real world system by seeking optimisation of the conceptual system. So one has a situation in which an attempt is made to control a very high-variety world using the low-variety tool of the development plan. In implementing the plan, if the system can no longer accommodate the disturbances (planning permission applications) the plan can be complimented by referring to other material considerations or total review of the plan.

Morgan (1988 p3-9) states that on receiving an application the LPAs may consider *first* and foremost the development plan in assessing an application. The development plan

covers population distribution and employment, housing, industry and commerce, transportation, shopping, education social and community services, policies and development proposals. The development plan:

- provides guidance for development and development control matters of regional importance,
- provides a framework for detailed local development plans,
- provides definitive guidance for development and development control of specific local areas.

Second, the LPA may consider other material considerations. As a principle, material considerations must be related to the objects of planning legislation. Materiality is dependent on the circumstances and has some limits. It is not a material consideration that planning permission has been granted for another similar form of development. Each application is considered on its merits. Material considerations can be social or economic factors, local policy in the form of informal guidelines, central government policy in the form of delegated legislation, circulars and speeches by Ministers responsible for planning. They also can be amenity and environmental considerations.

Other material considerations come into play if the development plan does not work. In this case the merits and demerits of going against the development plan are weighed. The other material consideration concept allows for the consideration of e.g. new information or change in technology. It gives development control some form of dynamism. If the merits warrant the issuance of a permit, it is done.

The *third* way the LPA may look at development control is by setting planning conditions. The conditions must be valid (Telling & Duxbury, 1993 p167-168). Since the developers may bank on other material considerations for approval of their project proposals, it is only fair that the LPAs should have the liberty to impose "such conditions as they think fit" McAuslan (1980 p148). It is a balancing act.

Pountney & Kingbury (1983 Part 2 p293) in a study in the UK said developers found the conditions attached to permits to be unduly onerous, especially design detail conditions

which they view as unnecessary. Developers noted that the way the conditions were being applied added to the negative aspects of the development control system. They delayed matters and at times did not lead to better standards. Some developers discuss their projects with officials and get committed to projects before plan approval. At approval conditions are incorporated and these have to be incorporated retrospectively. It makes projects become expensive or some of the conditions are ignored. It leads to appeals and resentment of the system. However, the court will not interfere with the LPA's discretion unless it is shown that the authority did not take into account the right considerations, i.e. that they disregarded something which they should have taken into account.

With other material considerations, planning conditions and the advertisement of some of the planning permission applications comes the *concept of need.* It is a major planning consideration. By need is meant that the public will suffer a disadvantage if the use is not allowed in the area. The need for a development should be sufficient to overcome objections. The granting or refusal of planning permission should be based on the merits and demerits of the specific case and there are no hard and fast rules on how to establish need (Supreme Court SC 47/95). The concept of need is also closely linked to the *special consent* procedure. Special consent allows an applicant to get planning permission if s/he proves the need for that specific project in an area where it would otherwise be refused.

McAuslan (1980 p49 & 178-79) and Pountney and Kingbury (1983 Part 1 p143-146) agree that the importance of other material considerations in development control has grown while that of the development plan has shrunk. They noted that development control would be a big problem without the use of other material considerations and planning conditions. The term other material consideration is vague and therefore leaves a lot to discretion. It is the "other material consideration" which allows for the interplay of the three ideologies of planning law discussed above in Passage 2.1. McAuslan (1980 p180-181) further argues that the failure by those responsible for planning to clearly tie the process of development control to the development plan led to the dominance of the ideology of private property over the ideology of public interest. LPAs are left with no choice but to consider the development plan, other material considerations, case law and legal opinions in order to

decide on whether to grant or refuse planning permission.

2.3 Views on Development Control

2.3.1 *Officers' and Local Authority's View*

McAuslan (1980 p2-4) argues that the legalisation of development control is a story of the triumph of the ideology of private property as espoused by lawyers over the ideology of public interest advocated by public officials (planners and administrators). Planners, therefore, regret the involvement of the judiciary in development control noting that public interest was a legitimate concern for administrators to advance and have regard to. Planners act in good faith.

Planners view themselves as best trained to deal with issues of development control. The planner's view is that s/he is best positioned to articulate the needs of the people. They argue that they can evaluate the situation thoroughly and come up with the best solution from a variety of options. Once in a while they make their decisions based on the concept of the general will.

The Local Authorities see it as their duty to prepare plans such as local, master and strategic plans to guide development in their areas of jurisdiction. These plans allow them to make projections, allocate land and manage development. Although debatable, the plans also reflect the views of the inhabitants (Bryne, 1979 p36). Where necessary they set conditions for development to comply with the neighbourhood or to make an application acceptable, which would otherwise have been refused. Local Authorities go further and seek planning agreements with developers. The agreements enable the Local Authorities to provide required social infrastructure or economic infrastructure. From a Local Authority's point of view, therefore, laws are created to maintain values and ensure through title, zoning and different use-class orders that only permitted development occurs, which result in better tax yields. (Wekwete, 1989 p11-12).

2.3.2 *Developers' View*

McAuslan (1980 p147) succinctly put across the developer's view as "development control is the sharp end of the planning system. It may stop him/her from doing what s/he wants with his/her land." Naturally, the developer may be determined to fight development control through other professional means e.g. than negotiation or planning gain. Developers also view planning law as a statutory imposition on the common law of land use and land tenure. They are normally concerned with how to make profit from their land. They long for a day when restrictions on the use of land will be removed. The courts are their relief. Lawyers are their relief because at times developers bring development proposals informally for discussion. The application takes care of the concerns raised at the informal discussion. However, on submission new issues are raised. Worse still the LPAs have a tendency to set what they view as unnecessary conditions (Hoyes, 1979 p27-28).

The effect of conditions may be fourfold. *Firstly*, they may lead to a lack of demand for the development. *Secondly*, the development may become too expensive for occupiers. *Thirdly*, they may limit potential occupiers/purchasers. *Lastly*, the site and finished development may fail to attract construction and long term finance. Conditions are therefore acceptable, acceptable with reservations or unacceptable to developers. Because of the adverse economic effects conditions have on development, developers would rather do without them.

Although developers, as outlined immediately above, seem to be against development control, it should be noted that different types of developers have different objectives. Some developers, both small and big, are also interested in maintaining the integrity of development control in order to pursue their advantageous environmental and trading activities. Set development control parameters give them certainty in the business environment e.g. when purchasing property and when applying for development. The value of their property and the environment in which it operates is protected. Admittedly, the pre-set development conditions may frustrate at times but it is better than a non-

regulated environment. To some retailers, they like development control because it reduces the competition. The funny situation therefore is that whilst some developers appeal against development control policies others appeal for the enforcement of the very same policies. It is as controversial as that.

Planners do not seem to appreciate the economic aspects of development. They forget that developers are motivated by the prospects of improving the land and trading. Developers expect a quick return from their investment. Therefore, there is a need by both planners and developers to adopt a realistic approach by assuming that there is always an economic aspect to all forms of development. Both should note that only development, which is viable in economic terms, is implemented.

2.3.3 *Public Participant View*

The public participant looks at development control from the point of individual rights and hence the right to participate in what is going on in the environment in which s/he is an inhabitant. S/He (the public participant) doesn't trust the public servant to articulate his/her concerns fully without prior consultation. The public participant's view is that the community knows what it wants and it should be given the opportunity to plan for itself or at least influence the nature of the plan through participatory democracy and not representative democracy. Its participation is expected to improve on the planning process through utilisation of ideas coming out of public participation. Another objective is that it will add detail, accuracy and clarity in trying to meet certain needs of the community.

The tricky part is that there are always differing views in public participation because no society is homogeneous. The way people see the pros and cons of proposed development varies. Perceptions are generally different between the rich and the poor, racial groups, religious groups, ethnic groups and those working in the informal sector and the formal sector. So what is public interest? Is it there and in what form? Is it catered for by advertisements in newspapers or on pillars? The role of interest groups/lobbies has deepened this problem of defining the public. A few individuals grouping as the public

may push through an agenda, which is not really in the majority interest. The individual public participants even when they take up their role, they are most likely to be sponsored by the elite and tend to confuse public (majority) opinion with personal opinion i.e. proposed personal/company view as public opinion. Curl (1970) advanced the argument that the politics of development of the day determine how development is directed. Sewell and Coppock (1977 p28) categorised publics into major elite, minor elite and individuals (poor mostly). The expression, major and minor, already implies that some public participants are more influential than others. The issue here is not land ownership but the principles of democracy and justice. It also includes morals and the fact that the control system is meant to work in the interest of the community. Public servants should act only after full consultation with the people (McAuslan, 1980 p272-73) and the public has the right to be heard.

In the UK, the government's attempt to review the planning system and local democracy has highlighted the conflicting pressures surrounding planning, partly from the development industry for greater speed and clarity in the planning process, and partly from a desire to empower individuals and communities to be active stakeholders in society, (Ellis, 2000 p205). Ellis asks, "How can public involvement be facilitated?" "What role can rights play in the wider project of defining the 'proper' relationship between the public and the state in the domain of land use planning?". He argues that the operation of the UK planning system, as expressed through its original legislative framework, did not provide significant rights of access to third parties. Instead, the overall legitimacy of the system was dependent on a public understanding and acceptance of land use control as being in the public interest and the merits of local representative democracy. There is evidence that this public legitimacy is breaking down, resulting not only in increasing disengagement with local democracy but in a proliferation of single issue protest groups against major development proposals.

The British Government of M Thatcher, in 1980, had other ideas about the public participant and public interest (Heap, 1996 p459-489). The LPA officials were taking too long to process planning permission applications. On the other hand the public participants

were holding up development through what the government deemed as unnecessarily prolonged public enquiries. This led the government to set up Urban Development Corporations, Enterprise Zones and Simplified Planning Zones in the 1980s with the aim to free business "from such detailed planning control and from rates" (Heap, 1996 p484-493). This had the effect of pushing through development since a developer who submitted a proposal in line with the scheme got automatic permission. By setting up Development Corporations manned by appointed officials (and not elected councillors in a Planning Committee) accountability to the electorate (the public) was reduced. Local Government authorities felt prejudiced by these new "single–minded agencies to spearhead the regeneration" of their respective areas.

Harvey (1973 p11-16 & 97-103) in his book Social Justice and the City explores four themes which surround the concern with social process and spatial form. The themes are the nature of theory, the nature of space, the nature of social justice and the nature of urbanism. He made the assumption that the principles of social justice have some relevance for the application of spatial and geographical principles to urban and regional planning. To him spatial forms should be seen as things, which contain social processes in the same manner that social processes are spatial. This leads one to the concept of social justice in the light of development control. The development control system is a process that takes place in a given space to regulate physical and social process.

In society individuals seek personal advancement, which should be encouraged. Since the pursuit for personal advancement may lead to conflict of interest, there must be an application of just principles to conflict resolution. With social justice everyone should be given an equal opportunity and distribution of land or activity should be fair and easily accessible. This concept of social justice brings to the fore the socialist versas the capitalist view on how to distribute and use land or activity. The socialists want equal access whilst the capitalist want it to be owned or used by those who can afford. Therefore, development control in a socialist society is viewed differently from that in a capitalist society, i.e. efficient production and equitable distribution according to need and activity or use distribution according to means, respectively. In the capitalist society private property is

protected by the development control practice. It becomes even more difficult to pin point the public and its role in a socialist state. The issue is no longer one of land-ownership or generation of activity but that of the principles of democracy and justice through just production and just distribution using the limited resource of land---.

2.3.4 *Conclusion on Views*

Wekwete (1989 p1) argues that planning law has got no ideology of its own, but is based on that of the state because laws are created to reflect state powers. In other words, the state creates the framework under which the planners and lawyers operate, determines how the developers and the public should respond, and gives room for selective public participation. These comments further explain McAuslan's (1980) observation that "....the ideologies do not always come out through (sic) so clearly nor must it be assumed that the courts always espouse the ideology of private property or the planners and administrators the ideology of public interest" (in Wekwete 1989 p1). It is not always the case that lawyers side with private property owners nor that planners are for public interest. Lawyers have been put into three categories by developers; those who claim to be neutral; those who are for traditional style and those who want to push for public participation. On the other hand planners are either traditional or liberal (McAuslan, 1980 p271-273). The practical situation in any given society is diluted since societal values differ from society to society. The battle in the courts is a continuation of negotiations, a clarification of arguments.

Programmes of government appear to stress the public interest over private property. However, the interplay of market forces in society puts private property before public interest and is reflected in the administration of the law of land use planning and control. Public interest and private property come together to combat the ideology and practice of public participation because it is a threat. The ideology of public participation is seen as the ideology of opposition to the status quo (McAuslan, 1980). Therefore, it is difficult to reconcile the 3 ideologies. The ideology of public participation can only be functional to an extent acceptable to the ideologies of public interest and private property. It is dictated

to.

The broad approach to planning, in the UK and countries that adopted the English planning system, lends itself to supporting the ideology of public participation and not the dominant ideologies of public interest and private property. Unfortunately planning is not operated and administered in accordance with the philosophy of planning which stresses participation, change, social justice and high quality of life. This is so in order to maintain the status quo where the ideology of private property is the dominant one with the acquiescence of the ideology of public interest. The ideology of private property is dominant because in society the propertied are the most influential. They influence policy through holding political office and through owning the means of production. This enables them to influence events in their favour. The noble theories of planning become irrelevant. Lawyers and planners to a great extent agree to minimise public participation. As stated in subsection 2.1.1 above, public officials do not want to irritate the propertied. Public officials tend to suppress public participation through the manner which laws, regulations and rules are drafted. They favour the haves (Seewell and Coppock, 1977 p7-9). The system of planning therefore reflects the ideologies of a governing elite rather than reflecting the aspirations and ideas of the public which planners so frequently commit to paper for discussion. Their action, therefore, opens them to court challenges.

2.4 Review of Literature on History of Development Control in Zimbabwe

Zimbabwe has a short known history of development control, which started around 1900. This coincides with the coming of European settlers and the development of significant urban settlements. Whittle (1975) categorised the time periods on the development of physical planning in Zimbabwe into three phases. These are from 1890 the coming in of settlers to 1923 a time when they were granted responsible government; from 1923 to 1945 which was the end of World War II; and from 1945 to 1975 before the promulgation of the RTCP Act of 1976. In development control terms phase I is the time when modern urban nodes were established throughout the country. Towards the end of this phase the peri-

urban expansion began to cause problems especially on sanitation and amenity. In the second phase there was an attempt to solve the problems of Phase I through the enactment of the Town Planning Act Chapter 133 of 1933. But further problems created by the influx of settlers from Europe after World War II led to the introduction of the Town and Country Planning Act of 1945. With the Act planning control was broadened to cover part of rural land (peri-urban) in addition to urban land to contain urban sprawl and protect commercial farming. The use of schemes and township conditions of establishment to control development became prominent. The phases are related to settler activities such as the establishment and expansion of urban settlements, the establishment of townships, ribbon development, market gardening, commercial farming, improvement in modes of transport and changes in the form of government. Race was a major issue in determining how to plan. There were two sets of standards, one for the settlers and the other for the Africans. The 1933 Town Planning Act, the 1945 Town and Country Planning Act and the 1976 Regional Town and Country Planning Act, in succession, gradually broadened the scope of physical planning and with this development control became more and more detailed as each act was reviewed.

There has been some debate in Zimbabwe since the late 1980s up to the present about development control and the changing socio-economic and political situation. This study will attempt to link this change in thinking to the continued evolution of the development control framework from a historical perspective. In the early 1990s, a Deregulation Committee of the Zimbabwe Government was set up with its portfolio to study the laws and regulations impinging upon development in urban areas (the establishment of industrial and commercial activities). The RTCP Act and its regulations were also put under scrutiny. The Deregulation Committee did some work on this issue and about six Zimbabwe Institute of Rural and Urban Planners (ZIRUP) Annual Schools discussed this topic. (Also See Appendix 2 and Chapter Five)

Crow (1996 p399-411) wrote an article on how development control developed and became prominent in England and Wales. He notes that the development control system got established gradually and its procedures developed with time. It was not formulated

and in put place within a day pronouncing "there shall be development control". As he puts it "It is a child that was conceived through expediency, and ignored by almost everyone, it grew up in the cold and only came in though the back door when almost everyone's attention was distracted". This means that administrators and planners were concerned more about other issues such as quality of buildings, development plans and sanitation without paying attention to what the product of their actions will be. Can the same be said about Zimbabwe? This study will try to relate this English experience to the Zimbabwe situation in the context of the evolution of the development control system and planning appeals in Chapter Five.

2.5 Review of Literature on Planning Permission Applications in Zimbabwe

A number of studies on development control have been conducted in Zimbabwe. Manyere (1989) looked at development control in the context of delays in processing applications made in terms of section 26 of the RTCP Act, Chapter 29:12. She tackled development applications submitted to the City of Harare looking at how they were received, recorded and processed, with emphasis on the time taken at each stage. She noted that, as the number of applications increased over the years 1980 to 1988, the percentage of applications processed within the statutory time decreased from 10% to 2 $^{1}/_{2}$%, roughly and that The City Council generally felt no urgency in processing development applications effectively and efficiently.

Sithole (1993) and Dube (1992) studied problems in enforcing development control regulations in poor suburban areas of Harare City. The problems, they explained, arose from a poor resource base for the developers. This forced them to embark on developments, which were not allowed, without development permission so as to raise or save income. Even if neighbours were aware of regulations prohibiting such developments, they did not raise objections. The growing informal sector and political patronage made it more difficult to implement development plans.

Hove (1991) delved into the cost implications of development control with reference to commercial property. His major finding was that delay in processing development applications led to increased project costs of between 16% and 20% due to the effect of inflation in the late 1980s. The recommendations in these studies are specific on the need for local authorities to process building plans and special consent applications on time and for councils to be resolute in implementing regulations guiding development.

Furthermore, Wekwete (1989 p11-13) reviewed the basic planning laws in Zimbabwe. Under the section on development control, he briefly discussed powers to control development. He added to this in 1995 by reviewing planning law in Southern Africa (Wekwete 1995). He argued that, although the basis of planning law has been heavily criticised, governments have perpetuated its use through development control. Politicians, despite criticising development control, cannot do away with it because at times it serves their interests. Therefore, new control laws have replaced old ones. In his discussion planning permission comes out as a key feature in the control of physical development. He tackles development control in general. Still in Zimbabwe, McAuslan (1981) studied the spatial planning system for Zimbabwe along the lines of Wekwete.

A major shortcoming of the recommendations made in Zimbabwe is that they mirror what has been studied outside the country without incorporating the local situation. This has led to the questioning of the suitability of the imported planning laws and the relevance of the subsequent recommendations. Chirembwe (1991 p2) points out that it is worth noting that "laws depend very much for their effectiveness on their social and economic factors". This study will add to past studies by detailing planning appeals in the context of Zimbabwe's our development control system.

This research takes note of the delays in processing applications for planning permission established by Dobry (1973), Manyere (1989) and the Audit Commission (1992). It will take it further by finding out the amount or time taken when the case goes through the appeal system. The issue of costs, tackled by Hove, will also be expanded from lodging an application for planning permission to the determination of an appeal to have a holistic

picture of the situation. Furthermore an attempt will be made to compare the body of applications up to council decision and the body of applications through to court decision and determine their characteristics.

2.6 Review of Literature on Planning Appeals

2.6.1 Where do Planning Appeals Come In and Who Appeals?

In town planning, the statutory process takes away an individual's right to do what s/he likes with his/her land or property. Essentially, development rights are nationalised into a system of development control (Greed, 1996 p88). In support of Greed, Crow (1999 p2-4) says, *the right of appeal* in development control came about because from the beginning of town planning it was understood that planning restrictions reduced the value of land. It is a principle of natural justice that no one should be dispossessed without a hearing. In origin, therefore, the right of appeal is a right of property. However, many people see appeals as an aspect of public participation. Therefore, appeal rights and procedures operate to three basic principles: fairness, openness and impartiality (Heap in Greed, 1996 p89-90). To the three principles aforesaid, Greed (1996 p89-90) adds a fourth, the fundamental principle of democracy.

Greed (1996 p90) puts across what she considered to be the underlying aims of the appeal mechanism:

- to bring impartiality to bear on a contested decision,
- to encourage debate from the contesting parties and
- to gain information which helps to reassess the contested decision. She considers the appeal system to be a useful gauge of government policy.

The role of appeals, therefore, is to provide checks and balances of decision-making correct wrongs through mitigation or amelioration and to be seen to practice natural justice.

Morgan (1988 p301-315) describes appeals as the "last resort" because he considers the LPA as the first level of decision making and the planning Inspectorate/Secretary of State as the second tier in the UK. So approaching the second tier gives relief to those aggrieved by the decision of the first tier. The second tier re-evaluates the control merits of a decision. Therefore, an appeal is an essential statutory safeguard within the development control system. Its purpose is to enable information to be examined and shared in order that the higher authority can reassess a planning decision. Objector and supporters are heard and treated equally. In the UK the Review Courts are there to ensure observation of the law (that the law is observed by everyone who is involved in the development control process including the Secretary and the Inspectorate). In performing that function the courts are said to act as a review body. The courts can substitute their decisions for those of another body.

In the first chapter it was pointed out that emphasis would be placed on planning appeals. Two later sections in chapter three; Forms of Appeal and Procedure for Appealing, will give a brief outline of the appeal process in Zimbabwe. This section deals with a brief review of planning appeals in general.

Laws governing development control have been written in a manner that provides for landowners'/developers' participation in the administration of development control. Public officials recognised that the developers will react negatively to development control so they involved the courts. Where developers (applicants) feel the decision made by the planning authority is intrusive they seek the aid of the courts (Telling and Duxbury, 1993 p113-14). Developers have the right to appeal if they have their applications refused or granted with conditions which are not agreeable. Planning appeals can emanate from those directly affected by the development proposal who disagree with the decision of the LPA. Planning appeals are a continuation of negotiations about an application for planning permission between the applicant and the LA/law enforcer. Appeals can arise from enforcement action. Normally when illegal development is noticed, the LPA opens discussions with the developer with the hope of rectifying the problem. If the discussions fail then an enforcement order is issued. If the development cannot be regularised as is

then the developer may be asked to alter it and comply with certain conditions. An ambitious enforcement order can be declared invalid. In the UK it can be issued within 4 years of the breach and in Zimbabwe there is no time limit. If development is not noticed within 4 years, then, it hardly represents a threat to amenity in the area.

On why developers appeal in the U.K., Morgan (1988 p301-304) lists the following reasons. The right of appeal exists because the planning committee, on making a decision on planning permission application may neglect national policy, its own development control policies or place undue emphasis on a single factor while failing to take into account other material factors. Grounds for appeal:

- a relevant factor has not been taken into account,
- an irrelevant factor has been taken into account,
- a decision is so unreasonable that no reasonable individual could have arrived at it,
- a decision is contrary to the rules of natural justice,
- the decision must represent an effective exercise of any discretion given by the statute,
- a mistake of fact may cause a decision to be set aside and
- the terms of any relevant legislation must be observed.

Pountney & Kingsbury (1983, Part II p286) advance a few more reasons. The major one is financial considerations, followed by the scale and type of development. There is also the effect of location and acceptance by the community. Planning applications can give rise to conflicts of priorities because of some social, economic and locational factors involved. Negotiations may not resolve these. Generally, an individual has the right to use his/her property as s/he sees fit. Appealing, e.g. in Zimbabwe, Australia and the U.K., allows an outsider (the inspectorate or the administrative court) who normally has no connection with the locality and the personalities to make a fresh determination of the issues thus giving a second opinion. Developers think, sometimes, an application is not considered favourably because of personalities. Appealing, therefore is a form of introducing quality control in development control, in a way testing consistency. It is a means of re-evaluating the merits of a planning application bearing in mind that only a few applications go through the appeal process.

If the decision letter is ambiguous or omits certain important issues of fact, the courts will have to determine whether its presence warrants the setting aside of that particular development control decision. With Enforcement Notices in England, if there is an error of law, the High Court refers it back to the Secretary of State to rectify the matter and re-hear. Reasons for going to court include failure to observe procedure when processing an appeal, omitting to give reasons for a decision and breaching the rules of natural justice. Pountney & Kingbury (1983: p285-86) pointed out that an applicant who has gone to considerable trouble to fit a scheme to local conditions finds it difficult to accept the need for delay in making a decision.

Hagman, (1986 p770) stated that in order to bring an action one must have a standing – *locus standi*. The US Standard Act provides "Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment (LPA) or any officer, department, board or bureau of the municipality" may petition the court. The system allows a third party to appeal.

To give a complete picture of why developers appeal in the UK, Morgan (1988 p303) also delves into reasons why applicants do not bother to appeal. He gave *six reasons*. It is either the applicant is convinced the application is at odds with the LPA and National Policy, **or** follows advice not to appeal after consultation with the LPA, **or** is asked to wait for a new master/local plan under preparation, which will permit that form of development, **or** the onerous condition(s) is removed, **or** lodges a fresh application **or** finds it too expensive to appeal because of lack of resources. Pountney & Kingbury (1983, p285-86) noted that some don't appeal for fear of victimisation. Others just don't have the time, money and effort (long process) needed to lodge and prosecute appeals.

As one analyses planning appeals it is worth noting three points raised by Pountney and Kingsbury (1983 Part II p285-286) in the UK. *Firstly*, that skilled developers, those who continuously deal with the system, learn to find ways of working with the system despite its defects. *Secondly*, those developers who use the system only once or twice usually find it difficult to fairly judge it. *Lastly* it is possible that some developers may have been

inhibited from complaining. It can be said the appeal cases that come through would have considered the three points raised above.

In the UK the applicant is given 6 months within which to appeal. In Zimbabwe it is one month. Morgan (1988 p301-303) justifies the 6 months thus:

> There is need for a time limit since circumstances change with time; local planning authority will strain resources if too many cases are kept pending; personnel movement affects the handling of cases and six months is long enough to submit a fresh proposal. The six months are to give chance to a negotiated settlement. An appeal to the Secretary of State should be made within 2 months of refusal notice. This is so because appeals to the Secretary of State are very specific in nature and do not consume too much time at preparation stage.

How do we justify our one-month in Zimbabwe?

This paragraph compares the UK and Zimbabwe systems with the USA system. In the USA the time period within which one must seek judicial review of a land use decision may vary from 10 days to infinity. By statute, some administrative decisions become binding unless they are appealed within periods as short as ten days. On the other hand, if a land use decision is made without giving the notice required by due process, a person who is entitled to receive such notice may have an infinite period of time within which to challenge the decision", Hagman (1986 p784). The reason for this is that e.g. construction relies on quick decisions within days, whilst building permits can take up to 2 months and land use zoning litigation, in general, can take more time because it is not challenging a specific development. Statutes stipulate these varied periods. However for one to go to court administrative remedies must have been exhausted. This is different from the Zimbabwe and UK systems where appeals are to be filed within a period of 28 days or six months, respectively. In Chapter Six an analysis of the number of appeals that were filed on time or out of time will be made. This will show how realistic the 28 days period is.

The definition of **third party rights** should be understood in the context of the wider political, legal and philosophical complexity of life. The application of such rights must

involve the capability of redress usually by means of a legal process. Ellis (2000 p212-214) attempts to clarify the nature of the individual rights in the planning process. Looking at the UK planning system he observes that the 1947 Town and Country Planning Act was not conceived as a platform for participatory democracy. Instead public accountability was to be secured by the presence of elected members in the decision-making process. In addition officers were charged with holding up the public interest, a vague and uncertain concept which appears to imply, in practice, that professionals will act impartially to uphold broad societal goals over narrow sectional interests. Ellis (2000 p209-214) then states, "there was quite logically, therefore, no need for legally enforceable third party rights since their interests were protected through both democratic and professional mechanisms".

Why has the "third party rights" become a big issue currently? Three perspectives are emerging (Ellis, 2000). The first perspective views the motivation for third party rights as a reaction to managerial failures in the current system rather than necessarily any functional deficiency i.e. poor implementation of statutory planning procedures and inability of LPAs to promote "Best Practice". The second perceives the rights as an issue of principle in terms of a broad political equal rights agenda. Third party groups think the planning process is driven by the development industry. The third perception is that third party rights are diversion from the proper role of planning in upholding the public interest and of representative democracy in guaranteeing accountability. Third party rights trash the role of the elected. In the final analysis third party rights are an issue to be addressed. In Zimbabwe there are no third party rights.

2.6.2 Appeal to Whom and How are they Conducted?

The development control system is practised differently from country to country. The land use planning system can be categorised in two the legal zoning system used in Germany and the USA and the discretionary system that originated in the UK (Raemaekers, 2000 p189-195). The discretionary system presumes that any form of development can take place anywhere whilst legal zoning allows development as stipulated in the zone. The type

of land use planning practised by a country is linked to legal system a country uses. Those that use English law e.g. New Zealand follow the discretionary system. Those that follow the Roman Dutch law lean towards legal zoning.

Appeal systems also differ from country to country. In Southern Africa Botswana and Lesotho have planning boards which deal with all matters of planning. A local authority cannot refuse planning permission but defers making a decision and refers the matter to the planning board. If planning permission is refused, the applicant appeals to the Minister. South Africa like Zimbabwe who have been influenced by Roman Dutch law seperates the administrative functions from the judiciary functions. So they have an Administrative Court to deal with planning appeals. In the USA there is no uniform appeal system. It varies from state to state of the 50 states (Hagman 1986 p770-785). Generally, appeals in the USA are dealt with administratively.

In the UK the Inspectors on behalf of the Secretary of State for the Environment attend to appeals. Those dealt with by the Inspectors include all appeals against the refusal of planning permission, or the content of conditions attached to planning permissions and the refusal of listed building consent (Morgan & Nott, 1988 p304-308). However, there are cases, which are dealt with by the Secretary in person e.g. the alteration of Grade I or Grade II listed buildings and applications that hinge on the interpretation of the term development. Generally, cases, therefore, are dealt with administratively. In any event, the Secretary of State can direct that he shall determine any appeal and take it away from the inspectors. This is guided by the factors listed below (Telling & Duxbury, 1993 p143):

-residential development of 150 or more houses
-proposal for development of major importance and having more than local significance
-proposal giving rise to significant public controversy
-proposals which raise important or novel issues of development control
-retail development over 100000sq.feet
-proposals for significant development in the green belt
-proposals against which another government department raised objections
-proposals which raise significant legal difficulties

-cases which can only be decided in conjunction with a case over which inspectors have no jurisdiction
-major minerals proposal.
If the applicant is not satisfied, the case can be brought before a judge and jury all the way up to the House of Lords. If Inspectors don't handle a case fairly it can be taken to the courts on the grounds of procedural incompetence.

The Secretary of state (or court) may decline to determine an appeal if satisfied that planning permission for the proposed development:
1) could not have been granted, and
2) could have been granted subject only to the conditions of which complaint is made.
The Secretary's decision is final. However, this can be challenged on a point of law, within six weeks that his decision is not within the powers of the Act. Time period for judicial review starts on the day s/he signs the papers. The person aggrieved can be any citizen who has "sufficient interest" in the case. On the other hand an Inspector's decision is as good as the Secretary of State's decision. Therefore, if appellant and respondent are not agreed, they go to the High Court for a judicial review.

In the USA judicial review of land use controls vary from state to state depending on administrative set up (Hagman, 1986 p770-785). Generally, appeals come from a Local Zoning Board or Planning Commission or State Administrative Agencies. The courts can take further evidence even if court action is through a petition from a Local Zoning Board. The Standard State Zoning Enabling Act provides for enforcement and remedies through fines, imprisonment and civil penalties. So the court can be used to challenge or enforce land use controls.

Several types of actions can be taken in the USA. *First* is *certiorari*. It is an action where a writ to review decisions of lower judicial bodies, i.e. the boards of adjustment, is issued. Boards of Adjustment's decisions are administrative rather than legislative functions. *Next* is the appeal action. This applies to a court review created by statute applied by lower courts. *Third* is *mandamus*. It is usually available as a means of reviewing administrative

decisions where the duty of an administrator is ministerial e.g. restore a revoked permit. *Fourthly*, an injunction action is instituted where an ordinance is being violated or to challenge the constitutionality of the ordinance as applied or to argue that the ordinance was adopted improperly. *Lastly*, there is the declaratory judgement which is used to review land use controls where there is actual controversy in a given area e.g. if an official fails to enforce the law.
Cases then proceed to Federal Courts and to Supreme Court.

Generally, in Zimbabwe appeals are lodged with the courts or with the Minister responsible for planning. A developer can lodge a complaint directly to the Minister of Local Government and National Housing. If the Minister decides to entertain the appeal it is treated as a "call in application". In this case the decision of the Minister is final. In Zimbabwe, appeals are lodged with the Administrative Court and are presided over by the President of the Administrative Court. Any further appeals that are on a point of law, are lodged with the Supreme Court.

2.6.3 Literature on Planning Appeals with Emphasis on Zimbabwe

There isn't much on literature dealing directly with planning appeals in Zimbabwe. Most of the literature tends to deal with the aspect of summarising the court judgements. These summaries are tied to specific concepts of planning law like need and special consent. A well-known document, in planning case law is the Index of Town Planning Court Judgements (1976) Second Edition. It is based on the 1945 Regional and Town Planning Act as amended in 1955. It groups the court cases by type i.e. refusal and prohibitions (S. 32 & 33), townships (S. 73), subdivisions (S.87), alteration of condition of title (S. 108) and objections to draft schemes (S. 14). As its title says, it is an index outlining just enough basic information about a case from which one can get the case number and the major issues about the case and then look for the full judgement for details. It also has a list of the court cases up to 1975, though they do not have all the details, under which it is indicated whether the case was *heard, lapsed or withdrawn.* It is suitable for both

academics and practitioners as a guide to details on planning cases.

There is the Town Planning Law Handbook for Zimbabwe by AMR Publications, which state on the cover that it is for use by property managers, owners, lawyers and developers. It attempts to give a simplified explanation of master and local plans and spatial planning (zoning). It gives the context in which development and subdivision permits, special consent and enforcement orders are processed and issued. This sets the tone for development management (control). The second half of the Handbook then dwells on planning appeals. Its case summary section is similar to that of an internal paper produced later by Department of Physical Planning in 1999. It covers *Case and Number, Proposal, Reason for Appeal, Judgement and Remarks.* The two documents are purposely selective on the cases chosen for outlines for maximum effect on the issues they want to put across. They cover the period mid 1980s to about 1998.

The rest of the sections on planning appeals in the Town Planning Handbook is similar to that of the Regional, Town and Country Planning Act, Explanatory Guidance Notes on Parts III, IV and V by Taylor (1985). It explains how planning court cases are processed and gives possible scenarios and the possible solutions (behaviour). They explain the law as set out in the Regional Town and Country Planning Act.

This study will take a different angle in that it will look at the statistics of planning appeals within the study period. The Index of Planning Cases, the Town Planning Handbook or the Explanatory Guidance Notes do not cover this area. It is acknowledged that the Index of Planning Cases has a list of appeal cases before 1976 from which limited statistics can be derived.

2.7 Conclusion on Literature Review

Development control is generally a lengthy and controversial process. It is very debatable on whether it is needed or not, though studies point to the fact that it is needed. This raises

the question of how it should be carried out. From the literature review the level at which one views development control is dependent on which of the three ideologies, see subsection 2.1.1 above, one holds. These contending views overlaid on specific development proposals can only be resolved by a third party, - the lawyers (first and second parties being the LPA and the Developers). Unfortunately, the lawyers are the product of a social class and operators in a given environment. Therefore, they tend to be biased at times. Going by case law and development project events, the ideology of public participation has managed to get noticed. With human rights issues coming into play, one wonders if public participation will continue to develop. The effect of the right to do what one wants on his/her land as advocated for by human rights activists is yet to be felt.

Development control in other countries like England, S. Africa and the USA has moved one step ahead of Zimbabwe. In S. Africa they operate one-stop centres at the LPA's offices (Report, ZIRUP Papers 1991-1996, Bulawayo Annual School 1996) to give information and handle planning permission applications. In the USA the system is decentralised for easy access. In England they have set the period within which one can appeal at six months after the LPA's decision date. This period was set after considering all relevant factors. There have been significant improvements on policy debates, the manner in which regulations are set, how documents setting out the planning framework are prepared and the processing of planning permission applications. However, at the end of this all planning appeals are being lodged without relenting.

Development control is practised mainly on the basis of development plans. The development plans give rise to the does and do nots in executing development. To achieve development there are set procedures to be followed and planning standards to be met. Because development is a competitive exercise mainly by the propertied the tension that results is calmed through planning appeals.

C H A P T E R T H R E E

3.0 STATUS OF DEVELOPMENT CONTROL IN ZIMBABWE IN 1996

3.1 Introduction

Chapter 3 is meant to put development control in Zimbabwe into the context in which planning appeals are made. It is an outline of what characterised the planning environment in Zimbabwe at the time (1996) the paper was written. As such it looks at the instruments of development control in Zimbabwe, the actors involved and from what institutions, parameters for development control, the various forms of appeal and the procedure followed when one is appealing. It also serves as background information to the analysis chapter.

3.2 Instruments Used in Development Control in Zimbabwe

There are a variety of instruments that exist for effecting the system of development control. The instruments in use include the RTCP Act, planning regulations and statutory plans. The RTCP Act is used together with Allied Acts e.g. Building Standards Act, Public Health Act and Mines and Minerals Act. Statutory plans are Regional Plans, Master and Local Development Plans, Outline Plans, Schemes, Priority and Subject Plans, Supplementary Orders and Layout Plans, which accordingly provide the statutory framework for land use zoning, subdivisions and detailed land uses. Planning Regulations are based on the RTCP Act and its Allied Acts. These include a variety of Rhodesia Government Notices and Statutory Instruments covering development standards and policy position. Another instrument for development control is the Enforcement Order. It is used to control illegal development. At times it is accompanied by a prohibition order, if there is need to stop development immediately. The legal framework for development control is incorporated into the Regional Town and Country Planning Act, the Rural District Councils Act, Urban Councils Act, Communal Lands Act, and Statutory Instruments in the

form of by-laws e.g. Model Building By-laws.

Generally, what is key to the exercise of development control is the development plan e.g. a master plan, local plan or town planning scheme. They outline in broad terms what is permitted development or development permitted subject to special consent and what is prohibited. Underwood (1981) submits that in the ideal situation development control is the implementation arm of the development plan. In other words, in the ideal situation the development plan acts as the framework in the context of which development control has to take place.

3.3 Institutional Framework for Development Control in Zimbabwe

The institutions that administer development control in Zimbabwe are Local Planning Authorities such as Urban Councils, Rural District Councils, the Minister of Local Government, Public Works and National Housing and the judicial organs of the state like the Administrative Court and the Supreme Court. The other specified LPAs are the Minister of Environment and Tourism, Department of Parks and Wildlife and Forestry Commission. The powers bestowed upon local planning authorities include powers to determine an application for development, powers for enforcement where the LPA considers that there is illegal development and powers to remove or demolish or alter exiting buildings or discontinue to modify uses.

3.4 Actors in Development Control in Zimbabwe

Within the institutions mentioned immediately above, the main actors include planners, lawyers, developers or landowners and development managers. Development control is administered by LPAs. Lawyers arbitrate between the principal actors the LPAs and the developers/landowners. The law and lawyers have played a more significant role in development control than in any other planning system (McAuslan, 1980 p270-73). Other

actors are the Ministers of Lands and Agriculture and Transport and Energy. The duties of the Minister of Local Government, Public Works and National Housing are making regulations, approval, handling of appeals, powers of direction, default powers, claims for compensation, judicial determinations, and policy decisions. The Department of Physical Planning, LAs etc. can be called the *operators* of the development control system.

Developers fall into different groups. Developers are landowners, LAs, Property Service Agencies, Government Departments and Individuals. Developers can be those who fund development e.g. Building societies and Pension Houses or those who organise and undertake development e.g. Real Estates or Construction Houses. These groups can be split into:

(a) property developers e.g. pension houses and insurance companies that build offices to rent;
(b) industrialists, commercial firms, individuals or farmers etc. who build for their own use;
(c) house builders –who speculate for the market or build houses for their own use; and
(d) public activities e.g. schools, roads etc.

A developer, therefore, is any individual, lessee or organisation which wishes to undertake development as defined in the RTCP Act Chapter 29:12 of 1996, Section 22. Private developers can be categorised as *users* of the development control system.

The public are represented by councillors. In some cases there are lobbyists. Direct public participation, as discussed under ideologies of planning law in Chapter Two above is still very limited. The public is represented by e.g. amenity groups and conservation groups as *consumers* of development.

The way the public participates varies. Public participation can be classified into three, (Hamilton W in Sewell and Coppock 1977). *Firstly*, it deals with the dispersal of information. *Secondly*, it concerns gathering information about physical factors, decisions taken by other public or private bodies and about public attitudes and opinions. *Lastly*, it includes interaction between planning authority and the public through widening of debate,

working parties for interest groups and/or encouraging the individual citizen.

Public participation in development control in Zimbabwe is catered for in Sections 26, 38, 40, 49, 61 and 67 of the RTCP Act. These allow for the participation of the public or allow for appeal by the concerned public. The public are the individuals, pressure groups, residents associations, small and big companies, NGOs, neighbours and other developers. There are a number of techniques that are in use in consulting the public on planning matters in Zimbabwe. These are public hearings, protests and demonstrations, advocacy planning, letters to editors or public officials, representations of pressure groups, court actions, public meetings, workshops or seminars and task forces.

3.5 Situation in which development may take place in Zimbabwe

In Zimbabwe, development should take place only in terms of a development permit or planning permit or subject to the provisions of a development order as "permitted development". In terms of Sections 26, 40, 49 and 68, this implies those individuals and/or any other person or a group of people, organisations and companies are not allowed to develop anything without seeking permission from the Local Planning Authority (LPA). There are set procedures to be followed and development should be guided by instruments used in development control as outlined elsewhere above. The determination of planning applications rests with the LPAs. An aggrieved party can appeal to the Administrative Court.

In terms of Section 25, the Minister is given powers to issue development orders specifying what development or class of development shall be permitted within the area specified in that particular order. The development order can be general or special. A development order is for developments that are normally permitted in an area or for minor developments, which may create unnecessary work for council at the same time causing delays to development. The Minister has issued the Regional, Town and Country Planning (General Development) Order 1982, Statutory Instrument No. 380; and the Special Development

Order (District Council Areas) 1982, Statutory Instrument No. 378. These allow developers not to seek development permission for certain developments which normally need a development permit. Below is a brief outline of the legal framework for development control followed by the procedures for handling a planning permission application.

Section 26 has a subsection on special consent. Special consent is applied to development which is generally not allowed in a given area. However, there may be need for such development such that the LPA is required to give the application special consideration. The reasons are that the terms of an operative forward plan may give special consideration to that type of application. Or the development may be a bad neighbour. Special consideration also applies to development that would conflict with a condition registered against the title deed of the property and which could be enforced by others.

Master and local plans are prepared within a set framework, stated in Sections 13, 14 and 17 of the RTCP Act. Generally, they are in two parts, the Study and the Written Statement. The Study contains the information collected in the field and the ideas of the LPA. The LPA should go further and indicate how it thinks the information will help it solve problems in a planning context. This will lead to the production of a Written Statement that contains objectives, policies and development proposals accompanied by maps and diagrams. Master and local plans are further detailed by layout plans, Section 43 in the RTCP Act and Section 205 in the Urban Councils Act. Development is expected to take place in the context of the plans.

Under Section 49 the Minister has powers to change the reservation of an operative master plan, local plan, an approved scheme or the terms of any permit. The procedure is that when a complete application comes in he consults owners of the adjacent properties. The intention to change the reservation is also advertised in the newspapers calling for objections or representations. This allows for the variation of an approved plan to cater for development of national importance or not catered for in the plans.

Sections 68 and 69 give the Minister powers to make regulations and give directions for all matters, which in terms of the RTCP Act can be prescribed. This means the Minister's actions may affect already existing procedures on development control or may lead to the laying down of "necessary" procedures on certain proposed developments. In turn this affects developers under Sections 26 to 37. Therefore, any action by the Minister in terms of Section 68 may be scrutinised under *Section 38 that provides for an appeal by the affected developer.*

An applicant submits a planning permission application. If the application form is found to have been fully and correctly completed, procedures outlined below must be followed. Taylor (1985 p21-41) and The Rhodesia Government Notice No. 924 of 1976 explain the procedures in detail. A letter of acknowledgement is sent to the applicant, within two weeks of receipt of the application, informing him that the application is being dealt with. For a Section 26 application, the acknowledgement letter must point out that if no reply or decision is conveyed within three months of the date on the letter, he/she must take it that the application has been deemed refused. In the case of subdivisions and consolidations, Section 40, the period is four months. The letter must also point out that he/she can appeal and that this can be done through writing to the Administrative Court lodging a notice of appeal, with a copy to the LPA. The applicant can extend the time by which a decision should have been made, if he/she agrees, on request from the LPA.

The LPA can reject an application if it has refused a similar application recently and the "new" application has no material changes. Similarly, the Administrative Court *may not entertain an appeal* if it is satisfied that the LPA could not legally have granted permission for the development.

The three or four months lead-time given to the LPA is to allow it to go through the consultation process within its committees of council. Also the LPA is bound to consult other government agencies, parastatals and the public. The form and content of the consultation letter is dependent on the nature of application. The list of consultees includes Secretary of Transport -State Roads and Civil Aviation Department, Minister of

Agriculture, the Provincial Planning Officer if a LA is the LPA, Secretary for Health, Secretary for Rural Development and Water Resources, Registrar of Deeds, the Surveyor General and the Mining Commissioner. The public is consulted through advertisements and hand delivered notes.

Development may only take place after a planning permit has been granted. The local planning authority may grant or refuse permission. If the application is refused, the developer may lodge an appeal with the Administrative Court. Similarly, a permit may be granted with *conditions, which the developer may deem unacceptable and forcing him/her to appeal.* Relevant third parties may disagree with what the applicant or the civic leaders have done pertaining to an application and object or lodge an appeal too. Public officials recognise that developers will react against development control, so the possibility of appeals and hearings for land owners is provided for in the administration of development control (McAuslan, 1980). The bringing in of lawyers allows for justice to be seen to be done.

3.6 Forms of Appeal with Emphasis on Zimbabwe

The appeal notice should state the general grounds on which the appeal is being made. Ratcliffe (1981, p470) on enforcement of planning control states that an appeal can only be made on certain grounds, which are, that planning permission for the alleged breach ought to be granted, had been granted or is not required, the time limit has expired, no development is involved, the requirements of the notice are excessive, or that the period of compliance is too short.

Appeals are made in different contexts:
Firstly, there are appeals prescribed under Sections 16 and 19 (RTCP Act). Within the process of preparing a master plan or local plan the document is put on public exhibition for two months and an advertisement is made, in a newspaper, calling for objections or representations from interested parties. This is a way of accommodating public

participation. After the two months, the LPA or the Minister has to study the objections and/or representations. If the Minister or LPA cannot amicably resolve the objections or representations with the concerned parties, they are referred to the Administrative Court for determination or to a local inquiry for investigation.

Secondly, there are Section 38 appeals. These can be caused by a variety of development issues such as an application for a development permit (including special consent) or preliminary planning permission in terms of, Section 26. In addition appeals can be made with regards to any issue resulting from a building or tree preservation order in terms of Sections 30 and 31; an enforcement and prohibition order through Sections 32 and 34; a notice in terms of Section 35; any permission required in terms of a development order through Section 25; and issues emanating from Section 68 which outlines the Minister's regulatory powers. The appeal, in general, should be made within one month of a decision having been made.

Thirdly, we have appeals in terms of Section 44. These cover subdivisions and consolidation of land applications. The applications affect the use of one's land and the pattern of ownership. The aggrieved can appeal against the decision of the LPA, the Minister responsible for agriculture or any such government agency that may be involved. The appeal must be made within one month of a decision having been made.

Fourthly, appeals can be lodged in terms of Section 49. In this situation we have an application for change of reservation on a piece of land covered by a master plan, local plan or scheme. The application is advertised. The interested parties are mainly the neighbours of the property that has been advertised for change of reservation or disposal from the Local Authority to an individual or organisation. *If a concerned party objects, the application is referred to the Administrative Court for determination* or to a local inquiry for investigation. The Minister will make a decision based on the recommendations of the investigator.

The Administrative Court or the Minister sets the timetable for the hearing of a case as seen fit. Among other factors the time scale is determined by the workload in both offices. The developer has no say, in general.

Of all the forms of appeal outlined above this study will concentrate on appeals based on applications for development and planning permission Section 26(1) and 26(3), subdivisions and consolidation Section 40, and change of reservation Sections 49.

3.7 Procedure for Appealing in Zimbabwe

An applicant, having submitted an application for planning permission to develop, waits for a decision by the LPA. If the LPA makes a decision and he/she disagrees with this decision the applicant has the right to appeal to the Administrative Court. This right to appeal is enshrined in the RTCP Act.

A number of steps have to be followed. These are clearly outlined in the Town Planning Court Rules, 1971, Rhodesia Government Notice No. 621 (Statutory Instrument 122 of 1980). An appellant has to serve a notice of appeal as prescribed in the Act or within twenty-eight days from the date a decision is made. It is lodged with the registrar of the Administrative Court. The notice of appeal may include a request by the applicant for the respondent to identify additional respondents or objectors. The respondent shall comply.

Within twenty eight days after serving the notice of appeal or within twenty eight days after the respondent has complied by responding to the issue of additional respondents, the appellant shall serve a copy of the appellant's case to all concerned. The appellant's case has to be clear and must set out all allegations of fact, any contentions of law and the precise relief being sought, including any order and costs. Also he should indicate whether or not he would be legally represented. If the appellant fails to do so, within the given time period, the appeal case lapses. However, the court may grant the appellant an extension of time depending on circumstances.

The respondent(s) is also given a twenty-eight-day period from date of receipt of the

appellant's case by the registrar to serve his case. An objector is free to file or not to file a case. If he doesn't file one, it means he is no longer an interested party. The respondent's case should be clear as to the degree of participation by the respondent and additional respondent(s). If the case is not in within the set time period then, the court regards the respondent as taking no further part unless he has been given leave to serve his case out of time.

The appellant may serve a reply to the respondent. This is done within twenty-one days of the registrar having received respondent's case. The case will follow the same procedure as outlined above. When this process is complete a date of hearing is set down and the case is deliberated on.

It is important to note that "any person who was not concerned in the decision appealed against may obtain the leave of the court to participate in the appeal as an additional respondent," (RGN No 621,1971).

The Administrative Court of Zimbabwe is based in the capital of Harare. Appellants from throughout the country have to come to Harare. In very rare instances the Administrative Court may sit outside Harare. In 1998, for the first time, Bulawayo was allocated a President of the Administrative Court effectively opening a second Court. But this is outside the period of study.

3.8 Conclusion

The development control system in Zimbabwe, one may argue, has a reasonably clear outline in terms of the situation in which development control takes place. The instruments used, the institutional framework needed and the actors involved and how they relate are well defined in principle. Society is dynamic and parameters for development control are not static either. This 1996 situation outline enables a comparative analysis in future writings on development control and planning appeals. It is within the set up described above that planning appeals are lodged and processed. Appeals that are to be analysed in

this paper are in terms of Sections 44, 38 and 49.

C H A P T E R F O U R

4.0 METHODOLOGY

4.1 Preamble

This chapter discusses the methods used in conducting the research. It begins with a review of literature on relevant research methods. This review highlights related works done by others and how they have been conducted. It also indicates where those methods used by others tie in with this research paper. The second part of the chapter dwells on preparing the planning appeals case register and how the register was used to select a sample for the study. It also points to and justifies the selection of the data used as a control sample in order to explain fully the appeals sample. The third part of the chapter outlines the strategies used in collecting data in the field and how it was tabulated. The fourth part deals with how the collected data was analysed. The last part of the chapter outlines the constraints encountered during data collection. The methodology chapter, therefore, covers literature review, how the research was conducted, problems faced during research and how the data was analysed.

4.2 Brief Review of Relevant Research Methods

The following explanation of evaluation research is a summary drawn from Smith's (1975 p293-304) work. Evaluation research seeks to assess procedures/processes that are being followed in an exercise, in this case processing planning permission applications and planning appeals. It is more into quality control with interest in what is and what ought to be. Are things working as they were designed to work? Are targets being met? Evaluation attempts to determine the extent to which the desired goal has been reached. Is there a need for change and in what direction?

Evaluation research design includes the following five points.

- an identification of interest groups with a likely vested interest in the policy outcomes;
- determination of these interest groups' concerns;
- the type of information relevant to these concerns;
- a determination of optimum means to get this information and
- decisions as to how to report the results.

In dealing with practical application of law Chirembwe (1991 p1) says,
"When a lawyer goes out to investigate the application of a piece of legislation in law and in the courts, the formulation of a research problem boils down to questions like whether or not the particular statute is correctly applied, whether litigants use its provisions etc."
Therefore, further questions are, How long does the process of obtaining an appeal judgement take? What is the cause of the delay in the determination of planning appeal cases? How effective is the procedure? Chirembwe notes that the effectiveness of the laws depends on their social and economic factors.

Since this paper will be partly descriptive, it is important to briefly look at this aspect (i.e.. descriptive) by way of literature review. Under descriptive research the following questions may be asked (de Vaus, 1986 p24-28). What is the time frame of our interest i.e. of the planning appeal cases? What is the geographical location of our interest? Is our interest in broad description or in comparing and specifying patterns for sub-groups? What aspect of the planning appeals are we interested in? The appeal laws, appeal rate or problems with the laws? The questions are relevant to the issue at hand i.e. the processing and determination of planning applications and planning appeals.

De Vaus (1986 p52-58) points out that a sample properly drawn up will accurately reflect its population. Such a sample is said to be representative. It ensures that certain types of cases in the population are not systematically excluded from the sample. In this paper the sampling method to be employed should produce a representative sample of the planning appeals.

Smith (1975 p15-21 & 217-218) (Moser 1979 p414) also discusses a number of useful

concepts in archival data gathering which this study took note of. There is *content analysis.* Content analysis refers to the means of summarising, standardising and comparing as well as systematically transforming already existing data. The historical accumulation of data does not normally fit into research structures. Structure is created when data is reorganised to suit the research. The form in which the data gathered through content analysis is presented is referred to as a *case data matrix.* It is an informative tabulation and research objective that answers the way archival data is presented and re-organised. The data is gathered in line with the *unit of enquiry* (Moser 1979 p44). The unit of enquiry is the item under scrutiny. In this study the unit of enquiry is the appeal case based on planning permission application.

The validity of the data matrix approach is ranked as one of the best methods in research. The ranking is partly accounted for by its being based on historical and actual data (De Vaus 1986 p30-32). Where information is available and the data matrix method is supported by case studies it yields even better results. It is possible to use it in a triangular research method where quantitative, qualitative and case study methods are used at the same time. The growth of the data matrix method is also complimented by the growing use of the archival research method.

The Planning Inspectorate in England and Wales produces Annual Statistical Reports. The report gives a statistical analysis of the work of the Planing Inspectorate. It covers statistics on planning appeals under the headings “received”, “withdrawn”, “decided” and “allowed”. The English system of appeal has three distinct procedures. These are written representations, inquiries and hearings. Appeals are further broken-down by the type of procedure. The statistics also reveal handling times by type of development proposal. This study will replicate some of these statistical techniques used by the Planning Inspectorate to analyse planning appeals in Zimbabwe.

On studying the assessment of building plans submitted to Harare City Council Manyere (1989) utilised a combination of random sampling and systematic sampling. She put the building plans into batches of four in chronological order using the building plans register.

Random sampling was used to select the starting point in the first batch. Thereafter every next fourth entry was selected for study. This random systematic sampling technique will be employed to sample the planning appeal cases. The advantages of this method are that chronologically all years will be proportionally represented yielding a balanced sample. Also within a stratum each member of the group has the same chance of being picked for detailed study.

4.3 Data gathering: History of Development Control 1900 to 1996

One of the objectives of this study is to explain and comment on the evolution of development control in Zimbabwe. The history documented and analysed several development control activities in planning law formulation that have taken place since the inception of physical planning in the early 1900s. This will help determine future direction. It is hoped it provided qualitative facts about the development control process. In this study both the planning permission application and the resultant planning appeal of the same case are being scrutinised. Since planning law is not a commonly dealt with area in terms of studies in Zimbabwe, this study investigated and contextualised the operative legal regime in the country using the archival method. This is meant to enhance the understanding of planning appeals in development control in the historical context and the current context.

4.4 Updating the Planning Appeals Register

The paper used planning appeal cases to evaluate development control policies and procedures. Three of the study objectives are related to planning appeals. One of them is on explaining planning appeal cases statistics from 1976 to 1996. To achieve these objectives the register of planning appeals at the Administrative Court was updated. The cases register has the following column headings: *Case Number, Date Lodged, Parties, Property Description, District, Order and Date Order was Made.* These column headings enable reasonable recording of planning appeal applications information. It led to the

production of a list of the cases that had been lodged with the administrative court. The case number of each planning appeal case is unique and enables easy identification of a case, hence a reference point. The column headings when filled in give a record of each case. It can be noted that the cases register did not ask for the specification of the RTCP Act section under which planning permission was applied for. To suit the research focus, the cases register column headings were named as follows; *Province, RTCP Act Section (or Type) and Time* (Number of days it took to determine the case), were added. This was done by *first* perusing all available information at the Administrative Court and *second* at the Department of Physical Planning. *Lastly* the same was done at the National Archives. The cases register at the Administrative Court, **before updating**, has a list of **608** appeal cases. The **updated** cases register produced a list of **603** appeal cases. Five cases were repeats or mere mistakes (See Appendix 4).

4.5 Planning Appeals Sample Selection

The planning appeals sample was prepared to come up with information for the objectives on determining whether or not there was delay in processing applications and evaluating the policies and procedures on development control. In line with the time period covered by the study, the sample frame covered the years 1976 to 1996. The sample was drawn using the updated town planning court appeal cases register as discussed in the paragraph immediately above. *It is a nation-wide sample.* The list, of all the determined appeal cases, was isolated from the total population to enable sampling and further data collection. The resultant table showing the details of each appeal case as per updated case register is in line with what de Vaus (1986) describes as a variable by case data matrix, which gives a structured set of data. In the context of this study the cases are the individual appeals and their (cases) attributes, which are outlined below under data collection strategies, in a paragraph that lists column headings for the matrix.

There are 603 planning appeal cases in the rationalised case register. The study focused on the relevant population of about 230 planning appeal cases that were submitted and determined (See Table 1 below). The study is focusing on determined cases because the

main objective is to determine how long a case took to be finalised by the Administrative Court. Of the 230 cases 170 fall in the four categories under examination (See paragraph below). The type of sampling applied to this study is in three stages i.e. stratified sampling to group the data accordingly, simple random sampling to select the starting point and systematic sampling to complete the selection of representative data. Stratified sampling is a modification of simple random sampling and systematic sampling, therefore, it produces more representative and thus more accurate samples (de Vaus, 1986). To be representative, the proportions of various groups in a sample should be the same as in the population. There was the fear that if simple random sampling only was employed, it may have yielded cases concentrated within a portion of the period under study i.e. within certain years of the 1976 to 1996 period at the expense of others **or** in one category say the subdivision and consolidation group only. Because of chance, simple random and systematic sampling on their own may not have been representative. Stratified sampling helped avoid this problem through the selection of relevant stratifying variables at the beginning i.e. characteristics wanted to ensure correct representation in the sample. The criterion was to order the sampling frame into groups according to the category of the stratifying variable, as outlined in the paragraph below, and then use random systematic sampling to select the appropriate proportion of appeal cases within each stratum.

A survey of the planning appeal cases population of the Administrative Court was carried out to determine the *grouping* based on the outcome of each case i.e. whether it was 'withdrawn', 'left to lapse', 'allowed or refused'. The appeal cases were also *stratified by type* of appeal into Section 40, subdivision and consolidation; Sections 26 (1) & (3), preliminary, normal and special consent development applications and Section 49, change of reservation. Sections 26 (1) &(3), 40 and 49, therefore, form the four tier strata as per study problem. Determined cases falling in these strata number 170 (See Table 1 below). Note was taken of the *reason* for appeal i.e. against condition(s), against refusal

DRAWING UP THE SAMPLE

TABLE 1: ISOLATING TARGET POPULATION AND DETERMINED CASES: Sample Framework

PROVINCE / RTCP ACT SECTION	MANICALAND		MASVINGO		MASHONALAND		MIDLANDS		MATABELELAND		TOTAL CASES LODGED	TOTAL CASES DETER-MINED
	LODGED	DETER MINED	LODGED	DETER MINED	LODGED	DETER MINED	LODGED	DETER MINED	LODGED	DETER MINED		
Sec 26(1)	11	0	2	0	73	29	3	0	20	4	109	33
Sec 26(3)	9	4	2	0	128	80	0	0	8	2	147	86
Sec 40	9	0	7	3	66	35	3	0	10	4	95	42
Sec 49	1	0	1	0	15	7	1	1	2	1	20	9
TOTAL	30	4	12	3	282	151	7	1	40	11	371	170

Source: Survey Results 1999

Notes on table:

Table 1 shows planning appeal cases under the four Sections or Subsections of the RTCP Act under study. The appeal cases are grouped by province and by RTCP Act Section. The provinces used are those when Zimbabwe was still divided into five (5) (District and provincial

boundaries change with time depending on population, workload and what the government of the day thinks) provinces and not the eight and later ten, as is the situation today. Where zeros, “0”, appear in the table it means no cases were handled under the specific column and row headings. This table brings out the dominance of appeal cases from Mashonaland Province.

The TOTAL CASES DETERMINED column is expressed as a % in Table 2 below.

An explanation of the low figures of determined case is given in Chapter Six where the planning appeal cases statistics are analysed.

TABLE 2: SAMPLE POPULATION: Ratio

	SEC 26(1)	SEC 26(3)	SEC 40	SEC 49	TOTAL
Target Population (i.e. Total Cases Determined per Section)	33	86	42	9	170
Section Target Population as % of Target Total (i.e. 170)	19	51	25	5	100
Sample Size: No. of Cases	**17**	**35**	**18**	**4**	**74**
Section Sample Size as % of Sample Total (i.e.74)	23	47,3	24,3	5,4	100
Section Sample Size as % of Section Target Population (Row 3 divide by Row 1)	52	41	43	44	44

Source: Survey Results 1999

Table 2. The table tries to show how balanced the sample is in terms of being representative of the target population. In the table columns show Sections 26(1), 26(3), 40 and 49 of the RTCP Act. The target population is that portion of appeal cases on which the study is focused and from which the sample is drawn

notice, against permit or against breach of agreement. A sampling fraction of 1 in 3 (or 2 in 7) (a minimum of 1 in 4 [25%]) was used to systematically select every 3rd/4th case after a random start. This meant selecting every 3rd/4th-appeal case within each stratum thus ensuring proportional representation from each stratum in the final sample. See Tables 1 and 2 above. The grouping enabled analysis within specific groups. The stratified and random systematic sample was 44% of the target population yielding 74 cases. This number was decided upon in view of the amount of work to be done on each and every sampled planning appeal case and the time available.

4.6 Selection of Planning Application LPA Sample Area (Harare City)

The selection of Harare City Council was purposive. This case study helps in explaining and commenting on the development control policies and procedures as demanded by the respective

objectives. The sample of applications for planning permission at the City of Harare was done to get an insight in general terms on the length of time it took the LPA to make decisions on planning permission applications. This would allow comparison between cases that went to the administrative court and the general trend of time frame in decision making at the LPA. Those cases that are determined by the administrative court, do they face the same length of delay at the LPA as other cases that do not go to the administrative court? The City of Harare accounts for the bulk of court cases. It was also for convenience in terms of cost and accessibility. Section 32 of the RTCP Act, enforcement orders, is included in the Harare City study to enhance and clarify the discussion on Sections 26(1) & (3), 40 and 49. Section 32 does not deal with planning permission applications.

4.7 Data Collection Strategies

This section outlines the manner in which data was collected and how obstacles were dealt with. Data was gathered mainly from the Administrative Court, The National Archives, the Department of Physical Planning and relevant local authorities. Data was also collected from people in practice in government, local authorities and individual applicants concerned. The main source of data was generated by the Administrative Court. The target object in this study is planning appeal cases. The appeal cases are from throughout the country though the majority are from Harare and its environs. This is so because it is the most active region in terms of planning applications.

Data collection strategies were devised in such a manner that information accumulated would enable

- documentation of the history of development control in Zimbabwe from 1900 to 1996,
- an analysis of and commentary on planning appeals between 1976 and 1996,
- an investigation into the impact of costs due to delay on development.

4.7.1 Planning Appeals Population: the 603 cases

At the research proposal drafting stage it is a requirement that one makes a deliberate attempt to

establish the availability of material, especially on researches that depend heavily on historical data (archival material). This was done through checking the Cases Register, locating relevant case files and identifying sources of supporting information. On setting out the actual detailed research it became clear that the Case Register was inadequate for the purposes of the desired research. It could not be used reliably for sampling and was likely to lead to far from real conclusions. There were significant information gaps. The first step to make the research possible was to conduct a mini research to come up with a more detailed and comprehensive Case Register of planning appeals. This was done through perusing files, judgements and the town planning appeals' Case Register at the Department of Physical Planning, the Administrative Court and the National Archives. Problems were encountered at the National Archives. Files could not be accessed and perused on site. They had to be delivered to the government department that generated them i.e. the Administrative Court. The field research timetable was delayed for months because of these unexpected complications. An updated planning appeals case register with 603 cases was prepared (See Appendix 3). The information was tabulated under column headings shown in Appendix 3. A few of these cases did not have complete information even after perusing and updating from available files and documents.

4.7.2 Planning Appeals Case Sample: the 74 cases

The 230 determined cases were isolated and the 170 cases in the four categories under study were further isolated. This is in line with the research problem that narrows down to determined appeal cases under sections 26 (1) & (3), preliminary, normal and special consent development applications; 40, subdivision and consolidations and 49, change of reservation; of the RTCP Act. From this list a sample was drawn using the random systematic sampling method (See Appendix 4 for sample).

Generally, the information used to fill in the "case data matrix" was obtained through questionnaire conducted interviews. Since this paper has, mostly, an historical approach, the information analysed in here was obtained mostly through the "content analysis" method (de Vaus, 1986 p32) (See Brief Review of Relevant Research Methods above). Contents of the individual court cases, as the primary source of information, were systematically analysed, summarised and tabulated in

a manner that made steps towards fulfilling the objectives of this study. Furthermore, efforts were made to get hold of files giving information about "units of enquiry". Statistical manipulation of the information followed (See Appendix 4). The variable by case data matrix enables comparison across sections of the RTCP Act and of year by year activity. Great effort was made to pick out a sample population, which was representative of the target population: i.e. whose characteristics reflect the group of 170 from which they were drawn.

One of the tasks set out in this study paper is to test whether there was any delay experienced in the processing and determination of planning applications in terms of the sections of the RTCP Act already outlined above. The information being sought was tabulated under the subheading **Application for Planning Permission**. It had these column headings:
Date of Application, this is the date the application was first received by the LPA;
Activity/Reply, any matters that were indicated as needing clarification including where the application was incomplete;
Date Acknowledged, the date the complete application in terms of the relevant planning regulations was acknowledged and registered;
Expected Decision Date, is the length of time needed to make a decision on a planning permission application as defined in the regulations e.g. a subdivision application made on 24 April 1993 should have been concluded by 24 August 1993;
Extension of Time, if the processing of the application is not complete by the expected date, time extensions to finalise the application are sought;
Issues Arising, certain unforeseen issues may arise during the processing of the application which cannot be ignored and
Actual Decision Date, the date the final decision is made on the application.
(See Appendix 4)

Further analysis was made on the type and content of the application form, the period between the receipt of the first submission of the application and the date on which it was acknowledged. Where necessary why did it take that amount of time to determine? Was there any delay? The recording procedure was put under scrutiny as well as the procedure for processing the application.

Particular note was taken on the reason for refusing or granting an application.

Information was also tabulated under the subheading **Appeals Against Planning Decisions**. The table has the following column titles:
Actual Decision Date i.e. date a final decision was made on the planning application;
Appeal Launch Date - the date the appeal was lodged. How many appeals were lodged out of time?;
Response Date - the date material from the respondent was filed. How many responses were made out of time?;
Trial Date - set down date;
Postponements;
Issues - matters that were dealt with outside the court and
Judgement Date i.e. on appeal. What about withdrawn or lapsed? (Time taken on case before appeal, any delays & who delayed? Time taken to process appeal. What was appealed against or for? Decision made and arguments/considerations).
(See Appendix 4)

4.7.3 Data on Planning Applications

The aim of this study is to evaluate the application of the planning permission process up to the Administrative Court. There was need to carry out case studies of some local authorities to establish trends at the LPA level. The processing of Sections 26, 32 and 40 applications in the Harare City Council was studied. This provided comparative windows in interpreting the appeal cases sampled.

City of Harare. Records in possession of the Harare City Council were not complete. For subdivision applications information is available from 1976 to 1992 and for special consent it is from 1991 to 1996. This presented a problem in that trends at the council could no be easily compared with trends at the Administrative Court. However, comparisons were made where the periods coincided.

At the Harare City Council steps taken to collect data were as follows.

The *first step* was to peruse the planning applications registers taking particular note of special consent and subdivision and consolidation. In the *second step*, the data available was prepared for systematic sampling. For subdivisions and consolidations the data was put in batches of ten in chronological order. The first record was chosen using simple random sampling. Thereafter every fourth record in each batch of 10 was selected. For special consent applications, every 6^{th} record in a batch of 15 was chosen. The samples represented 9,8% of subdivisions and consolidations and 6,8% of special consent applications. However, they were included here to enhance data analysis and interpretation in later chapters. The *third step* was to study comments written in the remark column of the sampled records. The fourth step was to draw up tables with column headings *Date Received, Date Acknowledged and Decision Date.*

4.7.4 Property Market Data

A study of the rate of annual inflation and devaluation was made. The rates were tabulated for the period 1976 to 1996 and related to time lapse and the cost of the proposed development project. Time lapse is seen in the context of the time the application was launched to the time a decision was made on the appeal. This was done to ascertain the effect of delay on project viability. A table on interest rates was also drawn up for the same period. An attempt was made to relate inflation/devaluation to time lapse and the possible increase in project implementation costs.

A visit was made to the Central Statistical Office in search of data on inflation and devaluation of the local currency and construction industry. There was also a visit to the National Archives to study the prices of properties and building material. The standard price of properties used against which the research was analysed was 3 bed-roomed houses in the Highlands, Borrowdale, Avondale, Gunhill and Alexander Park suburbs. A 3-bedroomed house was chosen having in mind the planning standards applicable to the suburbs. For flats it was 2 bed-roomed flats in the Avondale and Avenues area. The Avondale and Avenues suburbs are areas dominated by high-density medium to high cost flats. Once more the area was under the influence of the RTCP Act unlike flats in Mbare Suburb. The chosen residential areas had a well-developed market unlike in the high-density residential areas. This is so because historically the whites occupied the low-

density suburbs where ownership of property was freely allowed. On the other hand blacks occupied the high-density low cost suburbs. Ownership was very limited and most of the houses were council, company or parastatal owned. In these areas a very small percentage was on home ownership although this has since been changed anyone can own residential property anywhere. In any case blacks were in town to provide labour and not as permanent residents. To this end the whites paid attention to the value of their property unlike the blacks who lived in rented accommodation. The RTCP Act did not apply in the high-density low cost suburbs (See Chapter Five for more detail). The industrial areas and building materials considered were those for Harare, especially the Msasa area. These areas were chosen purposively because most appeal cases came from Harare. The farm properties considered were also within the vicinity of Harare i.e. Salisbury (Harare West), Goromonzi and Arcturus districts.

4.7.5 History of Development control

The next thing to do was to gather data on the history of development control in Zimbabwe 1900 to 1996. This was obtained through reading memoranda by the Minister responsible for planning, minutes of meetings attended by the government actors in spatial planning, material from the National Archives, Department of Physical Planning (DPP) library material, Local Government Circulars and DPP instructions. The findings are discussed in Chapter Five of this study.

4.8 Constraints to Data Collection

On updating and detailing the Case Register the work was done in an incremental fashion at the beginning. As the research progressed after 10 to 15 cases, it became apparent that it was going to be a massive database which, could not be easily or manually handled or tabulated in detail. This led to the devising of a coding/abbreviation system and the creation of a database. The Town Planning Case Register was computerised (See Appendix 3) for ease of manipulation and analysis.

4.8.1 Sample problem

The cases were classified by type, i.e. Section 40 subdivision and consolidation, Section 49 change of reservation, Section 26 (1) and Section 26 (3) preliminary, normal and special consent applications. Sampling was done within the group type i.e. random and then systematic. What arose from the sampling technique was that:

a) Sampled cases across the section categories resulted in consecutive cases forming the sample e.g. Case Numbers T1516, T1517, T1519, T1520, and T1521 even though these cases represented different sections of the RTCP Act.

Then as a result of the sampling technique used no cases were selected from any sections of the Act between Case Numbers T1522 and T1533.

b) In addition cases were withdrawn en bloc by the appellant i.e. from case T1730 to case T1746. This gives a distorted distribution of the sample since only the determined cases were tabulated for sampling.

c) In very few cases after picking a case as a sample it was found through further research that the case file may have no information. This meant dropping it and going to one before or the one after the originally sampled case depending on the status of the Case File. It was not plain sailing on the sampling activity.

d) A number of cases (4) were indicated as having applications based on section 26(1), but on detailed analysis of the file it came out that it was a section 26(3) application. This created further problems with the sampling process by affecting the grouping by type and affecting the proportional representation that was expected, though to a lesser extent. After noticing the mix up sampled cases were processed and assigned accordingly.

e) Information availability in case files occurs in varying degrees (detail varies from file to file). Some of the files contain details from the time the application for planning permission was launched to the Judge's decision. Others start at Notice of Appeal stage (these are the majority) and yet others contain the judgement only. In other words the details of information filed in the case files is not consistent. Interpolation was needed in some cases for the information to make sense including further verification at the Department of Physical Planning and the National Archives.

4.8.2 The Accuracy of the Administrative Court Register

As discussed at the beginning of this chapter a reasonably comprehensive Administrative Court register was produced. It is from this that a sample was drawn. As the sample was being studied closely and analysed about 15 court case records were further adjusted on the register. In other words the register was continuously adjusted whenever the researcher came across "new " useful information and adjustment would be done throughout the rest of the report as necessary. For example Cases T1423 (C Milne Vs. The City of Salisbury, March 1977), T1436 (J B Rulton Vs. Bulawayo-Essexvale Rural Council, June 1977), T1479 (Perfect Dry Cleaners Vs. City of Salisbury, February 1981), T1648 (CABS Vs. City of Harare, February 1988) were later shifted from other use types (sections) to that of change of use. What it also means is that the proportional sample was affected, that is as the sample was being analysed some use types gained whilst others lost cases. The total number of Section 26(3) cases increased. This explains why the percentage of sampled cases instead of being around 51% went down to 47,3% (See Table 2 above). Corollary, Section 26(1) lost cases to Section 26(3). Its percentage of sampled cases instead of being around 19% rose to 23%. However, the changes did not significantly affect the overall sample, which remained the same in terms of the sampled number.

4.8.3 The Issue of Dates

Important dates in relation to planning appeals can be grouped into three.

a) The date pertaining to the time a planning permission application was made:

As one goes through the files it comes through that the courts are more interested in the date a planning permission application was made. In cases where reference was made to the date when the planning permission application was submitted there is hardly any mention of the date of acknowledgement. It is the date the applicant wrote his/her planning permission application letter that is prominent. It is so maybe because in a notice of appeal or the appellant's case the date when the planning permission application was made is the one the appellant uses, especially in development and special consent applications.

With subdivisions there is a mixture of reference to date a planning permission application was made and the date of acknowledgement. However, the issue of which date to use is a bit confusing since there is no standard outline for reference to dates. Some made reference to date of initial

application for planning permission and ignored subsequent dates on correspondence and acknowledgement. Others make reference to date of acknowledgement i.e. LPA officials especially in subdivision applications.

b) The date as to when a council or LPA decision was made:

At refusal notice or permit issuance stage the date LPAs used has been taken as the date a letter on the respective decision was written. A closer look at the date, especially Harare (As discussed in Part Two of Chapter Six), shows it took an average of about one month from the day the council made a decision to the day officers wrote out a letter informing the applicant of council's decision.

c) The date used in lodging planning appeals:

Which is the legal date? Is it the council resolution date or the date of the letter notifying the applicant when council's decision was made? If one takes full council's decision date, the majority of the appeals were lodged out of time. The issue of which date to use was further complicated by the appearance of a few different dates on which the same event would be said to have happened. In this case, for example, on the date a Notice of Appeal or respondent's case was filed the first preference was the registrar of the Administrative Court's date. If it wasn't there then the date on the letter or signature and date section was taken. If it weren't there again the date would be derived from other correspondence e.g. where they say your letter of *29 November 1986* Or respondent's case of *12 May 1992* and then outline the issues.

4.8.4 Findings

In the court register from 1991 the columns on *date, decision made* and *nature of decision* have not been completed in full. This means at a glance one would not know whether a case was concluded, let alone the nature of the decision and when, and yet the register is said to be a public document. There are also a couple of cases that have the *case number, date lodged* and *parties* only. The rest of the details of the case are not there (i.e.. property description, district, date concluded and terms/order). The section of the RTCP Act from which the case emanated is not stated. In rare instances cases were recorded twice (it looks like property description problem or

name of parties involved problem).

4.9 Data Analysis and Analytical Techniques

Once the updated register, the sample frame and the sample were drawn up, data was tabulated in line with the case data matrix. The constraints to data collection were noted and after this the - population was statistically analysed. This was done by grouping the cases by province and by district of origin. The cases were further grouped by those that were determined, withdrawn, lapsed and cases where there was no indication as to what had happened to them. The details are discussed in chapter 6.

4.9.1 Analytical Techniques Used

- The Database computer program was used to construct the appeals case register and the initial sample register.
- The Excel computer package was used to perform calculations to find number of days between given dates i.e. time taken to process application, mean, median, deviation and range of time periods.
- The historical aspects of the research were dealt with through content analysis.

4.9.2 Forms of Analysis

The analysis of planning appeals was done at two levels. The first level was one where the planning appeal cases population was statistically analysed. The units of analysis here are the provinces, districts and towns. This was done to give a broad picture of planning appeals during the 20 years under consideration. The analysis then proceeded to the sample of 74 cases, *a nation-wide sample.* The categories used were Section 26 & (1) & (3) preliminary, normal and special consent, Section 40 subdivision and consolidation and Section 49 change of reservation applications. These address the research problem.

The task set out in the research was to evaluate the development control system in particular sections 26, 40 and 49 development permit applications in the context of the planning appeals system. The presentation of information is in the form of:

a) An outline, accompanied by explanatory notes, of the laws affecting development control (and planning appeals) in an historical and chronological perspective.

b) Using the nation-wide sample of 74 cases as the base, an analysis of judgements was made. The analysis was through absolute and percentage value tables. The analysis was aimed at:

- showing the time period each sampled section 40, section 26 and section 49 application, of the RTCP Act, took to process.
- showing what was appealed against.
- showing whether the appeal was granted or refused.

The analysis took into consideration the two types of development, namely, physical development and change of use. The set out of the tables responded to the requirements of specific objectives a), b) and d) in chapter one. Tables based on absolute figures and derived figures were to be used to enable comparison and inference. (The stated policies and legal provisions were compared with actual practice.)

c) An interpretation of the tables in b) above to answer the questions:

- How long does the process of obtaining a judgement take?
- How are the applications handled?
- What is the cause of delay in determining the appeal?
- How many cases succeeded or failed and why?

This entailed tracing the processing path of the application.

4.10 Conclusion

The methodology has been devised in a manner that enabled the updating of an appeals case register because the one at the administrative court is incomplete and inadequate. For a better understanding of the planning appeals the appeals case register was statistically analysed. The updated appeals case register was used to make a nation-wide sample. The sample included

determined cases of the four categories under study from throughout the country. The sample was then analysed so as to answer the problem and the objectives of the study. The analysis of the sample gave the *second part* of data analysis. The *third part* of data analysis dealt with the cost effect of delay. This is brought out by relating time taken to decide a case to change in costs over time.

The registers were studied and the entries were summarised. The trends were compared with the court's to tackle the issue of delay.

The issue here is what is the appeal process like, what are the procedures, how is the process viewed and what does the out come of this process look like? The paper analyses and evaluates the appeal process and gives an empirical and qualitative view of what has actually happened and then links it to the intended purpose.

C H A P T E R F I V E

5.0 THE HISTORY OF DEVELOPMENT CONTROL IN ZIMBABWE

5.1 Introduction

One of the areas of concern of this paper is to explain and comment briefly on the history of development control in Zimbabwe from about 1900 to 1996 and outline how it has evolved. This brief history of planning law in Zimbabwe with emphasis on development control is done to put the planning appeal procedure in context. Also it is aimed at bringing out the laws which form the framework for development control. This chapter differs from existing works in that, it traces the evolution of development control tools (including planning standards) and how they shaped development control over 75 years. The approach here is based on the argument that planning standards are the key components of any development control system. Their implementation and change directly relate to development control practice. Planning appeals are mainly a response to development control and they (planning appeals) directly affect the development and setting of planning standards. Planning appeals today reflect the understanding of development control over the years. The outline may not be exhaustive but has attempted to give a full picture of how development control evolved in Zimbabwe. The totality of the outline gives the context in which applications for planning permission and planning appeals are launched.

The backbone of planning law in Zimbabwe is policy, laws and regulations governing the practice of development control. This is generally so because development control is the realisation of national policies and primary law, forward plans including regional and master plans, development management plans including layout plans and the creation of settlements and the built environment in space. Space for development is a scarce and interest loaded resource that invites regulation irrespective of who has or wants it. Most planning appeals originate from the application of development control policies, laws and regulations. It is relevant to briefly outline the history of development control and discuss its development to bring to bear the context in which planning appeals have been and are being made and prosecuted, and to show how the right of the landowner, tenant or developer to use his/her property as he/she wishes has been gradually taken away.

5.2 1900 to 1933 A Case for Development Control in Zimbabwe

Between 1900 and 1914, there was hardly any planning control to talk about. The little that was there focused on urban areas only, i.e. the European occupied segments. As the population increased further urban development was generally through infilling of the planned areas. By 1914 urban sprawl in Harare, Gweru and Bulawayo became significant and government battled to control this urban development phenomenon. *One* of the major influencing factors was that land outside the urban centres was privately owned unlike urban land, which was owned by the British South Africa Charter Company (Government Town Planning Office, 1951). The *other* factor was that government was encouraging settlers to go into farming and it wanted to protect the farming industry. However, this was affected by the outbreak of the First World War from 1914 to 1918.

In mid 1920s peri-urban settlements increased with the aid of the motor car, the desire by people for larger plots and increased immigration. This is also linked to worsening/poor sanitary conditions in the urban centres, which unfortunately spilled into the peri-urban areas as well. The peri-urban townships did not have roads, water and/or sites for public utilities. In 1924 the Ministry of Health was tasked with handling issues of urban sprawl and planning in general. Up to 1933, a Committee under the Ministry of Health controlled the subdivision of land. As workload increased and planning issues became complicated, in line with developments taking place in planning in England, the Zimbabwe government made the initial bold step towards controlling the creation of settlements (Government Town Planning Office, 1951). These developments mentioned immediately above led to the passing of the Town Planning Act in 1933 with a view to controlling the establishment of townships and the creation of subdivisions through the preparation of schemes. In 1930 government passed the Land Apportionment Act. This act is significant in that it created the three major settlement types i.e. urban land, commercial farms and communal land (Tribal Trust Land). The Town and Country Planning Act applied mainly to urban land and partly the commercial farms surrounding urban land.

Chapter 133, the Town Planning Act, was promulgated in 1933 and was administered by the

Minister of Internal Affairs. The Town Planning Act was applicable to title held land and not to African Reserved Land or Townships. The European settlers were more concerned about the quality of living environment in the areas they, stayed, which were mostly urban centres. In some books on towns e.g. O'Connor, "The African City" – towns that were developed in Africa are referred to as "European Cities". They cared less about how the Blacks lived. This is why development control applied only to predominantly European areas. Development control applied to land with title. Designated settlements, where Blacks lived, did not have title. Chapter 133 sought to set a framework for development control through a number of ways. (Reports: ZIRUP 1991 - 1996);

a) It authorised the making of schemes i.e. forward plans which were to form the basis for development control. The purpose of the scheme was to have "a co-ordinated and harmonious development of the town, township, area and region to which it relates .... in order to promote health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications." Under the 1933 Act Bulawayo, Gweru, Masvingo, Kadoma, Mutare and Harare were required to prepare Town Planning Schemes. A look into some of the matters to be addressed by scheme plans show that schemes were essentially a framework for development control. The scheme was to:

- zone areas to be used exclusively or mainly for specific purposes i.e. industrial, commercial, residential and institutional.
- address, among other issues, issues of sewerage and sewage disposal, water supply, refuse disposal, the subdivision of stands and stand size, and the prohibition or restriction of the use of land (Government Town Planning Office, 1957).

The status of the scheme was such that when in place all development was supposed to be according the scheme. The schemes had a zoning effect like that in the USA or Germany.

b) The 1933 Act also provided for the protection of amenities and preservation of buildings. It dealt with buildings and building operations. In scrutinising planning permission applications amenities and building quality became issues.

c) The 1933Act further provided for the alteration, suspension or removal of conditions of title. Conditions of title in some cases determine what a title-holder can or cannot do on that particular piece of land. They also include clauses on enforceable rights of neighbours. An application for planning permission that went against development permitted in the title was to be advertised.

Development conditions were derived from township permits or earlier planning permissions granted to a piece of land.

d) The 1933 Act went further to regulate the establishment of townships and the subdivision of land for various uses. This had the effect of controlling settlement creation. The fact that one had to apply to the Minister to establish a township indicates that there was a restriction on what one could do with his/her land. The subdivision of any titled land was controlled in terms of the Act.

It is important to note that the 1933 Act does not use the term development control. It pinpoints each and every aspect that is to be dealt with to control development. Furthermore, the control of development was limited to six local authorities. At this moment the majority of property owners had the freedom to use their land as they wished.

5.3 1934 to 1945 Dealing with the Inadequacy of the Existing Planning Law for Development Control

The enactment of the 1933 Town Planning Act was the beginning of the "real debate" on development control. The discussion was on how to improve the implementation and process of development control. Even after setting the framework for development control, it took the government two years to appoint an officer. In 1935 the first Government Department of Town Planning Officer was appointed to implement the 1933 Act. Between 1933 and 1945 Town and Country planning control was exercised in two ways

i) through control of subdivision of land, and
ii) through town and country planning schemes. (Reports: ZIRUP 1991 – 1996, Gweru Annual School 1992)

The 1933 Act was overtaken by events. The transition period from development control practice managed by a Committee under the Ministry of Health to a fully-fledged department under the Ministry of Internal Affairs led to further policy assessments and pronouncements.

Since the colony (Zimbabwe) started there were people who preferred to live outside the municipal area who were prepared to do without the amenities of piped water, sewerage, tarred roads, etc.

Landowners subdivided land at will to cater for the demand. Sewage disposal was by way of pit latrines or septic tanks and soakaways. They got water from wells and yet plots were half an acre (2000sqm) in size. This posed a health hazard because boreholes and wells were contaminated by soakaways. Therefore, 2-acre (about 8000sqm) plots were set as the minimum plot size to cater for the increased population per plot. Too many plots were created leading to the deepening of borehole and drying up of wells. The drought of 1946/47 added problems and strengthened the argument for stringent development control mechanisms. (Reports: Local Government Reorganisation, 1974)

The expected preparation of schemes was a failure but settlements continued to expand. However, as the Second World War was coming to an end it was realised that there would be an influx of Europeans into Rhodesia (Zimbabwe) leading to increased settlement. The problem of accommodating poor people of European origin (mainly white immigrants from and through South Africa) was tied into some aspects of development control. It partly accounts for the establishment of the various townships e.g. Waterfalls and Prospect. Because they were poor and did not have the resources to farm significantly they were made to settle on small arable plots to supplement their income. The issue of a second home came later. Those who wanted a second home were allocated land in the hilly areas e.g. Cromlet and Gardiner Townships. It also made planning sense that second home seekers were made to occupy less productive land. The Town and Country Planning Bill was drafted in 1942.

Because of the delay in preparing schemes, there was not any significant form of town planning control. The subdivision process did not have clear guidelines and it was being done in an ad hoc manner. The peri-urban area townships were laid out without much regard to each other. Traffic circulation was not catered for and it created problems in providing public transport. The provision of public transport was made worse because of the sparse population that affected transport viability. Vlei and sponge areas were destroyed. Good agricultural land was split into plots without regard for agriculture. There was no provision for public facilities, e.g. schools, shopping facilities and recreation grounds. But there was an urban sprawl problem. The preparation of schemes took into account the problems outlined above but the process was slow. At a later stage the number of plots was related to availability of water (Government Town Planning Office, 1951).

Therefore, there was need for compact settlements that were easy to service. Development control was to be used as a tool to balance and manage land use.

It became clear that the 1933 Town Planning Act was inadequate. There was need to revamp the planning system to formulate clear guidelines for development control. The Town and Country Planning Act was passed in 1945 and it became operational in January 1946. It emphasised the process and procedure of setting up townships and subdivisions, and buildings. It attempted to detail the process of preparing schemes and how to process subdivision and township applications. It also took into consideration lessons learnt in developing the planning framework in the U.K. To complement this effort and improve development control etc., the Government Town Planning Department opened an office in Bulawayo in 1948 and the Municipalities of Bulawayo and Harare appointed Town Planning Officers within their establishment. The Government Town Planning Department was no longer coping with issues and queries from the people who were being affected by development control. It was thought decentralisation would relieve the pressure and appease the developers. Government took note that the developers' freedom to use their land as they wished had been reduced by the ever-increasing development control mechanisms.

In conclusion 1946 to 1975 saw a boom in the development of guidelines on how to produce development control tools as well as guidelines on how to apply the tools. It is this period in which development control was streamlined and the appeal system was gradually developed in line with developments in development control.

5.4 1946 to 1975 Broadening the Base for Planning Law and Development Control in Zimbabwe.

5.4.1 Capewell Commission

A commission of inquiry on Town and Country Planning Control in Southern Rhodesia (Zimbabwe) was set up in 1949. It was known as The Capewell Commission of Inquiry. Its mandate was to review all planning control activities in Southern Rhodesia i.e. the legal framework, how planning control has been practised, its impact, problems faced and suitability of

the various forms of control and recommend a way forward. It was formed because government was facing development control problems especially the fact that development was out pacing the development control tools put in place at that particular time. In Chapter 3 of the Commission's report, The Need For Planning Control, the opening statement says, "For some years past the Government has recognised that some control over development in the Colony was necessary, and has passed legislation from time to time to achieve this end. It is essential that the present system should be reviewed in the light of the experience gained so far, and in anticipation of the considerable future development of the Colony which is now forecast." (Capewell Commission, 1949)

Its broad observation on planning was "In order to make planning control effective and to ensure the best use of the land and resources of the Colony, there are certain matters which must be controlled centrally by the Government acting through the Government Town Planning Office." The Commission strongly recommended a situation where planning control was applied without fear or favour. Planning control was to take into consideration water availability when planning for industrial development and urban expansion in general. The size of towns and the establishment of satellite towns was to be controlled to allow for effective control of development. This was to be balanced with agriculture and food supply. Ancillary development at mine areas was to be controlled i.e. sewer disposal, road network and public health administration.

For the planning system, the Commission recommended that Southern Rhodesia substitute Development Plans for schemes. The development plan was to cover 3 to 5 years instead of the 10 to 15, which the scheme covered. The main advantage of using the development plan was said to be that it would be flexible as a tool for development control, thereby creating a workable framework for development control. It was expected to be flexible in that the development plan would be subject to review at frequent intervals. It would zone only areas that are ripe for development and was expected to discourage urban sprawl. Planning control, it was said, should be able to check disjointed development and encourage compact development. Schemes were taking too long to prepare because they were more elaborate than the development plan. The Commission, from interviews with those involved in planning control, had learnt that settlement establishment was taking place rapidly in the form of urban sprawl. Schemes would have

encouraged speculation and non-continuous development because they covered wider areas for a long projected implementation period. The Commission's observation was that it was better to identify segments of countryside ready for development and concentrate on these using development plans.

Other recommendations that were relevant to the current topic are

a) power should be reserved by the Minister of Internal Affairs to make orders or regulations that would allow him/her to call in from planning authorities any application to develop for his/her decision, subject to right of appeal to the Town Planning Court. (Capewell Commission, 1949). In the current system, powers to decide on planning permission applications were held by the LPA only. Some of the decisions that were being made by LAs were not promoting central government policy. From discussions with stakeholders in planning the Capewell Commission thought the best way to rectify the situation was to intervene where necessary. The Commission was acknowledging that planning could be political and, therefore, central government should be able to direct LAs to achieve the objectives of its policies. This is why when incorporated into the RTCP Act, the Minister's decision on called in applications was to be final. In Zimbabwe unlike in the UK the decision would not even go for judicial review.
b) No planning authority should have the power to consent to any application for development, which conflicts with the Development Plan without the express consent of the Minister of Internal Affairs. This was later removed so as not to seriously handicap LPAs on deciding about development. The Minister could still use call in powers.
c) On compulsory acquisition, the price to be paid for the land was to be its value in the open market restricted to its present use. The Capewell Commission recommended that compensation should only be paid to owners whose land was compulsorily acquired or rendered incapable of beneficial occupation. (Capewell Commission, 1949)

By 1949 LPAs for schemes within their areas were City of Bulawayo, City of Harare, Municipality of Kadoma, Municipality of Gweru, Municipality of Kwekwe, Municipality of Mutare, the Town Management Board of Masvingo, the Town Management Board of Shurugwi and the town Management Board of Highlands. Each LPA was responsible for enforcing the schemes. The Minister of Internal Affairs was responsible for enforcing the schemes outside LPA areas. The

Government Town Planning Officer acted as the planning authority on behalf of the Minister. The schemes that were in the course of preparation by 1949 were Ruwa, Que Que (Kwekwe), Lesapi (Rusape), Salisbury (Harare) East, Salisbury West, Salisbury South, Salisbury South No. 2, Bulawayo North, Bulawayo East, Bulawayo West, Vumba, Gwelo (Gweru) and Hunyani Poort. Scheme preparation was only *one* side of planning control the *other* side was control by means of consent or refusal to develop. (Capewell Commission, 1949)

5.4.2 Endowment

The Capewell Commission of 1949 noted that endowment on subdivisions and townships was devised for two main purposes:

a) To provide funds for the Local Government to perform the area's administrative duties. To implement effective development control, there is need for funds for administrative duties. The LA officials had to travel around and monitor (or even supervise) development activities to ensure that implementation complied with the permit conditions. Strict development control needs a well-resourced administration.

b) To ensure by means of conditions imposed when a subdivision/township permit was issued that the LA responsible had money/land for roads, for public and LA facilities and for sanitation. If this were not done then council would have to find money from elsewhere to finance the infrastructure of the new settlement. Developers would profit at the expense of council. The Commission noted that it was a development management tool that was working fine. It also noted that endowment varied from place to place and from time to time e.g. $7^{1}/_{2}$% in Prospect Township in 1940 to 15% in Marlborough Township in 1948. The Commission recommended that it be standardised so as to address the complaints raised by developers. Developers thought the endowment system was not transparent. (Capewell Commission, 1949)

The rate of endowment charged depended very largely on the acreage of subdivisions and their situation. No endowment was charged on approved subdivisions situated in an area where a local authority already existed. If there was no local planning authority, the overall maximum endowment of 15% was charged on all townships. No endowment was charged on subdivisions of 15 acres or more. Today it is 20ha or more. Any subdivision smaller than 15 acres, which was

likely in future to come under the jurisdiction of a local authority, was liable to endowment. Endowment varied depending on the circumstances of each case. For example, in a township where only gravel roads were provided endowment was charged at the rate of 15%. Where tar macadam roads or a reticulated water supply was provided, it was charged at a rate of 9%. Where tar macadam roads and a reticulated water supply system were provided, the charge was 3%, and where full service including sewerage were provided, no charge was made at all. In the case of subdivisions, the maximum endowment was 15%, and the minimum was 7%. The amount charged for subdivisions was subject to further allowances and reductions in respect of connecting roads and the making up of roads (GOSR Broadcast Statement, September 1955). The developer was put in a corner.

There were still complaints that there was no clear-cut policy on how endowment paid in land and money combined was to be calculated. In 1955 the Government undertook to review its policy on endowment in order to reach the most equitable method of its application. With effect from June 1956 there was a definite relationship between the amount of land taken for public purposes and the amount of cash endowment imposed. The same principles and rates applied to both subdivisions and townships. The aggregate of land taken for public purposes and cash endowment was not to exceed $12^{1}/_{2}$%. Endowment was based on the intrinsic value of the land (GOSR Public Statement, 22 June 1956). Loopholes in the development control system were closed and more responsibilities were placed on the developer.

A further clarification was made in 1958 that landowners did not have the choice on whether to pay endowment in cash or in the form of land. The reason was that if this happened, sound Town Planning Principles would be prejudiced in that the landowner could decide what portion, if any, of his land should be surrendered for public purposes. At the same time the developer may have offered cash whilst Government wanted land. Developers lost the right to decide on how to pay endowment, a further source of problems.

5.4.3 Services

Parallel to the development of the endowment policy was the issue of standardising public

infrastructure. A policy on the developer's liabilities in the provision of services was also formulated. The construction of gravel roads was made a basic requirement of all developers irrespective of whether applications were treated as subdivisions or townships. Where the developer provided roads, this was to be counted as part of the land endowment. Where plots of less than two (2) acres were applied for, the developer was required to provide a piped water supply from an approved source. However, this was at the developer's cost. The developer was permitted to recover the costs by charging a capitalisation fee to plot purchasers of a sum approved by the Minister. The water supply system was to be handed over free of cost to the LA responsible. Furthermore, a reticulated sewerage system was to be provided in the case of plots being less than one (1) acre. Government was aiming at encouraging development but at the same time minimising public expenditure (GOSR Public Statement, 22 June 1956). Towns were to be treated as living units, which were economic entities. They had to be viable and self-sustaining (GOSR Broadcast Statement, September 1955).

The created townships and subdivisions led to a demand for African (Black) labour. Since the race policy discouraged mixing Blacks and Whites, enclosed Black settlements were created in the midst of (or the periphery of) the townships. These had to be planned for separately. For example, with the expansion of settlement in the scheme areas, the provision of public facilities for Africans became an issue. There was need for Government policy on this. The Native Education Department indicated that they would like sites set aside in scheme areas for African schools. However, the Town Planning Act did not have this provision. This called for an amendment to the Second Schedule of the Act (1945 as amended in 1955). In addition the following agreed aspects of development control were outlined.

a) The schools were to be sited adjacent to the proposed beerhall and recreational centres.

b) Only the headmaster's and the caretaker's houses were to be sited within the school site.

This new development was accommodated in the Land Apportionment Act through the Native Department.

5.4.4 Servitude

As peri-urban settlements expanded and density increased by 1958 storm water drainage became a problem. It was agreed by stakeholders that Section 45 of the Natural Resources Act be amended to make provision for diverting storm water from one property to another. This enabled conservation of land (GOSR Minutes, 15 October 1957). Servitudes were also introduced for electricity, roads, storm drains, telephone lines, sewer and water pipes. There was need to have powers to get development across property boundaries with little problem. Hence the LPA could make overriding decisions.

5.4.5 Plot size

Subdivision is a development control instrument that changed over time. Subdivisions in the 1950s were guided by the principles that:

a) in rural areas, the subdivision units should be viable. Therefore, the decision whether to be allowed or not was linked to Intensive Conservation Areas and farming regions
b) in peri-urban areas they were to allow for market gardening.

In 1949 RGN No 244 stipulated that subdivisions creating properties above 250 acres (±100ha) in size could be subdivided (done) freely unless the area was covered by a scheme. This limit was raised to 750 acres (±300ha) in 1955. For less than 250 acres or later 750 acres in the rural areas, consent was to be sought. The rural area was to have plots of between 10 and 250 acres for market gardening. The Natural Resources Board worked on matters relating to minimum subdivisions for the purposes of Section 65 of the Act. Five Intensive Conservation Areas were mapped out. The Minister finally settled for 4 zones (ICAs).

Zone 1	1000acres	(±405ha)
Zone 2	5000acres	(±2024ha)
Zone 3	9000acres	(±3642ha)
Zone 4	20000acres	(±8094ha)

The limits placed on free subdivisions were to be regarded as a guide rather than a bar to development in the rural areas. This was not to be confused with situations where subdivision minima were specified under certain conditions e.g. "...that the Minister must be satisfied that a reticulated water supply was available from an approved source." The size of subdivisions varied

from region to region (zones). It was also noted that viability differed from region to region. Farms with reticulated water could be very small. Viability and not size was a major consideration e.g. 30 acres under irrigation can be viable whilst 250 acres without water can be non-viable. The creation of uneconomic units was discouraged since this would negatively affect the economy of the colony. (GOSR Minutes, 15 October 1957 and 2 November 1959). It is along this line of argument that in 1970 Mr Slater (a consultant) successfully argued that 10 acres of apples, plums and peaches grown on a commercial scale, in a suitable area by an average smallholder with a moderate amount of capital, with mature trees (9 years old) could be viable in Umwinsidale Valley. Today there are many plots of this size under fruit farming in the Eastern Highlands of Zimbabwe.

In 1951 in peri-urban areas the minimum subdivision for *residential smallholdings* was 15acres (±6ha). In 1957 it was reduced to 4 acres (±1.6ha). Four acres are being used to this day but in specified townships. The reduction in the minimum size was done after noticing that small plots may negatively affect agricultural production. Land is finite. At the same time the agricultural part of residential smallholdings was not being practised seriously, therefore, there was no need for big plots that were being used as a second home.

A Ministerial decision was made in the early 1950s to allow *residential subdivisions* down to a minimum of 2 acres in the peri-urban areas without piped water and 1 acre with piped water. It was meant to accommodate more people because of high demand on all plots, the 1.6 hectares, 2 acres and 1-acre. The soils were to be suitable for septic tanks and soakaways. The statutory instrument on sizes of subdivision stipulates the criteria that should be meet before subdividing. Because sewer disposal was by septic tanks and soakaways, it become impossible to meet the health standards e.g. a well should be 50m away from the soakaway. The Ministerial decision led to premature subdivisions of land and uncoordinated shopping facilities in the suburban areas. Subdivision policy changed in 1964 to allow subdivision within urban areas only. Up to 1957 subdivisions below 15 acres on the farms and townships to cater for a rural store, garage, hotel, petrol site and churches were freely allowed. However in 1957 the Chief Town Planning Officer argued for the creation of “development areas” in the peri-urban areas to be provided as nodes and become the hub of the community, commercial and industrial activity. This was where plots less than 15 acres were to be provided. It would not be right to provide shops or garages anywhere

anytime. This marked the beginning of organised Business Centres in the peri-urban and suburban areas, to the frustration of most developers.

5.4.6 Green belt

Further extension of development control into the rural areas (commercial farms) took place with the proposal of the green belt policy in 1955. The green belt was meant to check urban sprawl as well as protect agricultural land. Outline Plans and Schemes controlled development within the towns and in the peri-urban areas. The land beyond had no planning guidelines. There was a look at the possibility of creating a greenbelt outside scheme areas of Salisbury (Harare), Bulawayo, Que ue (Kwekwe) and Gwelo (Gweru). On evaluating pros and cons it was discarded as policy since its demerits were found to outweigh merits. The policy on subdivisions was based on the merits of each application as per 1954 amendment of the Act. It was hoped the subdivision policy would yield Green Belts (GOSR Minutes, 24 August 1955) through setting minimum sizes for subdivision, preventing close settlement around the large towns, preventing ribbon development and consulting the Natural Resources Board. The idea of creating green belts was mooted and discussed.

An example of where schemes were used to achieve a green belt is Salisbury. In 1957 Government had become concerned about the rapid sprawl of Salisbury. There was urgent need to limit the sprawl in the interests of the country since it was the capital and also on economic grounds. As such government were to preserve the agricultural land around Harare in economic farming units so that it fulfilled its main function of growing food and doubling as a green belt. Government, in close consultation with the Natural Resources Board declared a Rural Scheme Area around Greater Salisbury known as the Salisbury Outline Plan. Contrary to other scheme areas, its emphasis was on agricultural rather than urban development. In the area covered by the Salisbury Outline Plan subdivision of land for more intensive agricultural purposes were, subject to the advice of Natural Resources Board, generally permitted. However, subdivision of land for non-agricultural uses was permissible only in exceptional circumstances where the need for the subdivision was proved to be in the public interest. Government also recognised demand by urbanites for second homes in semi-rural surroundings. This partly led to the establishment of townships more or less evenly

dotted around Harare. The township areas were to be selected in such a manner that they would not interfere with the existing economic agricultural units or disturb the agricultural economy of the neighbourhood (GOSR Public Statement, 25 January 1957). The government advanced the concept of the public interest (through representative democracy by councillors) in policy formulation thereby overriding private interest.

5.4.7 Outline and Scheme Plans

Outline and scheme plans were introduced by the 1933 Town Planning Act with the aim of setting a conceptual framework for managing development control. They were to be enforced by the LAs. The main objectives of outline plans and schemes were:

a) To create and preserve the amenities of all and promote good neighbourliness,
b) To give reasonable security of property use by having a predictable pattern of development. The effect of schemes was that they allowed for greater development control since they defined parameters for development. For example, the Vumba Scheme prevented the spoiling of the scenic beauty of the area. The main uses were agriculture and forestry but holiday and retirement homes were also allowed.
c) The outline plan limited the sprawl of towns and preserved farming land. The Minister approved boundaries, for both the outline plans and schemes.

As early as 1955 the government took a position that development in the urban and peri-urban areas should continue to take place even without schemes. The slow preparation of the schemes was not supposed to hold back development. Schemes were taking too long to prepare. The section on schemes in the Town and Country Planning Act (1933) was not implemented. There were manpower resources problems. If government were to insist having schemes in place first before development, it would have meant that development was going to come to a halt. It was both in the interest of government and investors to continue development without the benefit of long term plans. Similarly, townships could be created in areas not covered by schemes. This meant development control could be done without development plans in place. By 1962 schemes covered Redcliff, Que Que, Gatooma, Salisbury, and Kyle (Mutirikwi) and Environs. Scheme preparation focused on urban and peri-urban areas because these were areas where there was

serious conflict of land use e.g. in Salisbury. The conflict was between residential use and agricultural use or between institutional use and residential use or between agricultural use and sewer/refuse disposal. Subdivision policy was extended to areas beyond the scheme boundary. Government recognised the importance of other material considerations in deciding an application for development. In deciding applications, government looked at needs compatibility and financing of social infrastructure to determine whether to accept or refuse an application for planning permission. The idea of other material considerations especially need was later clarified by the Town Planning Court in cases brought before it.

As years went by and there were numerous outline plans and schemes in preparation the problem of what a scheme should contain arose. The issue was that since it was to be used as a development control tool the interpretation and application of the schemes was supposed to be consistent throughout all local authorities. In 1965 the Government Town Planning Department drew-up a list of Town Planning Scheme Model Clauses for use in the preparation of schemes. These were based on Chapter 213. The model clauses were to be used selectively and adapted to meet special local circumstances. However, the Minister of Local Government and Housing retained full discretion on the issue of whether it was proper in a particular scheme to include or modify any individual clause. Central control reduced serious divergence. This is where the terms First, Second etc. Resubmission as subtitle to scheme plans originated from because schemes were to be revised every 5 years. It was done to keep pace with change and make development control a dynamic exercise. Unfortunately, this dynamism was lost after 1976 and got stuck with 15-25 year old schemes that no longer accommodate reality and lead to unnecessary court cases today. In other words planners are still using plans that were prepared in the early 1970s. A number of possible reasons may explain the continued use of “outdate plans”. During the few years before Zimbabwe’s independence and soon after planning policy development could have been treated as a peripheral issue. In 1982 planning control was spread throughout the country to cover the communal lands as well (see paragraph below for detail). Resources both personnel and financial were stretched far. Government concentrated on implementing development instead of formulating policy. Because planning decisions could be based on other material considerations there was no need to hurry in revising the schemes.

In a bid to make development control more effective settlement hierarchy categories were defined in the early 1980s. The settlement hierarchy is village at the bottom, followed by Business Centres, Rural Service Centres, District Service Centres, Towns, Municipalities and Cities. This was entrenched by the RTCP Act (Prescription of Controlled Development Centres) Notice, 1982 Statutory Instrument. The lessons of the uncoordinated shopping centres in the suburban areas was used for country wide planning as the RTCP Act was strictly applied throughout the communal lands as well. The aim was to produce organised development. It meant more personnel, more financial resources and the need for relevant business centre mapping throughout the country. It also meant that business centres were to be established using set criteria and the practice creating business centres anyhow was to be stopped.

5.4.8 Subdivisions

In this section the term subdivision refers to townships and subdivisions. Townships created residential smallholdings and subdivisions were mainly for agricultural land. Later in the early 1980s the process of subdivisions and township establishment was merged and referred to as subdivision and consolidation. The practice of controlling the subdivision of land was introduced in 1914 with the object of restraining urban sprawl. The Ministry of Health managed the process from 1924 up to 1933. In 1954 Government allowed free subdivision of property in scheme areas. There were management and environmental problems and the subdivision policy was modified subject only to the requirements of the Town and Country Planning Regulations of 1960. But in 1966 this was reversed. From there onwards subdivisions were to be confined to LA areas where the infrastructure for public services i.e. roads and reticulated water supply was available. Even then urban sprawl was to be checked. Therefore, the fact that a subdivision application met the minimum stand sizes set in a scheme did not mean that it should be approved. The issue of the present use and the future use was considered for a permit to be issued. Therefore, land was looked at in four major contexts i.e. was it for urban settlement, mineral extraction, agriculture or forestry? This was in line with the subdivision policy enunciated in 1967, which stated the following:-

Policy 1: to confine future residential subdivision generally to existing urban local authority areas. The policy was designed to stop the uncoordinated sprawl of subdivision and to prevent the unnecessary expenditure of public funds on the provision and maintenance of public services.

Many subdivision applications have failed because of this policy.
Policy 2: individual subdivisions outside existing urban boundaries would be considered on their merit and the determining factor in such cases would be that no new demands would be created on the existing infrastructure of services i.e. roads, water supply etc. Policy 3 Smallholdings (Smallholdings are plots less than 20ha in general):-
The policy was to avoid scattering smallholdings deep into the rural farming area. These were to be concentrated near the urban area with the size of the plots increasing away from the centre. Good arable land would be reserved for farming, mainly cropping (GOR Minutes, 3 May 1967). Appeal cases today cite the small plots as justification for further land fragmentation.

Within Scheme Areas subdivisions were to be determined by the suitability of the land concerned. From 1950 the size of the subdivision was determined by topography subject to an overall minimum of one acre where a proper reticulated water supply and roads were available and two acres where water supply was provided within the plot itself. It was also to take into account important natural resources e.g. catchment areas that may affect food supply.

Consultation process: In relation to the three policies outlined above and to the weight placed on schemes, the processing of subdivision applications followed a lengthy consultation process that involved a number of consultees. As the consultation process on subdivision proposals evolved, the list of consultees also grew with time. At the beginning it was the Ministries of Health, Internal Affairs, Local Government and the Natural Resources Board only that were involved. Subdivisions were viewed as a health, administrative and natural resource use matter. As peri-urban settlement development became more problematic the Surveyor General and Deeds Registry were enlisted to help. The two departments were to oversee the accurate positioning of the plots on the ground and on paper, and the maintenance of an up to date register of plots. By 1966 farm viability had become a major issue resulting in the Department of Agritex getting involved. As the decision making process became more demanding and comprehensive the National Subdivision Committee, whose membership included Commercial Farmers Union, Agritex and NRB, was established to decide on agricultural subdivisions. Agritex were to assess farm viability and table the report before the National Subdivision Committee. However, the early 1970s it was realised that inputs on water and roads were lacking. This was answered by adding the

Departments of Water and State Roads on to the list of consultees. They were also to inspect infrastructure on subdivision plots before they were transferred. The developments and resultant institutions were meant to provide checks and balances in the processing of subdivisions and consolidations applications.

These gradual changes in the manner subdivision applications were decided on and implemented were to accommodate complaints by developers, take care of lessons learnt in the Administrative Court and accommodate the dynamism of society and settlement development. This is how the Minister of Agriculture became second respondent in some of the court cases and the Departments of Water and Local Authorities being called in as witnesses to agricultural subdivisions. Generally developers and government do not want to go to court to solve their planning differences. Refusal notices were to contain such reasons for refusal that are defensible in terms of the Town and Country Planning Act before the Planning Court.

5.4.9 Environment

As building intensified and urban sprawl continued the environment became a topical issue in the first half of the 1970s. Since town planning development control started planners in Zimbabwe tried to site industries down wind of residential areas and used very high chimneys to combat atmospheric pollution. However, this arrangement did not work as towns expanded and uses became more mixed. Atmospheric pollution became a big problem so in 1971 the Atmospheric Pollution Prevention Act was passed to control any form of air pollution. It was noted that narrow streets with tall buildings exacerbate the air pollution problem therefore, streets were to be wide (Selected Papers, 1973 GTPO). In 1973 18% of the population of Zimbabwe lived in towns. The one-acre residential plots were mainly a product of the early 1950s with septic tanks for the sanitary facilities. By 1973 it was apparent that if government did not rationalise its approach to land usage, Zimbabweans were going to run out of suitable land in and around towns (Selected Papers, 1973 GTPO). The misconception that land is plentiful in Zimbabwe was to be done away with. Densities had to be increased (Nyamayaro, 1990). There is no residential high density to speak of in Zimbabwe compared to the international scene, therefore, there is room for increased density through expanding upwards.

Another example is that of pit sand extraction. Up to 1976 there was no law barring people on commercial farms outside scheme areas to extract pit sand as they wished. Judgement T1436, J B Rulton Vs. Bulawayo-Essexvale Rural Council, 1977 confirms this. A company known as Khamera of Bulawayo was extracting pit sand from Khamera farm. The Bulawayo-Essexvale Rural Coucil issued an enforcement order arguing that what the company was doing was illegal. Khamera appealed and won because there was no law governing the extraction of pit sand. Local authorities were asked to formulate bylaws that took this into account. The case lead to a reduction in grounds for appeal.

5.4.10 General Policy

In the early 1970s there was debate on whether the Department of Town Planning could do more in planning for the rural areas. The preamble of the Town Planning Act Chapter 133 says "the making of schemes with respect to the development, redevelopment and planning of land, whether urban or rural, to provide for the protection of urban and rural amenities….". However in practice this was not fully realised argues Whittle (1975). Discussions in workshops organised by government Town Planning Office led to ideas about strategic planning as a framework for development control. These were to be medium term plans (Whittle, 1977). In 1973, there were 30 Local Planning Authorities and only 10 of them covered rural areas e.g. Essexvale (Selected Papers, 1973 GTPO).

The Regional Town and Country Planning Bill was tabled in 1975. Criticisms put forward against The 1945 Act that are relevant to development control were (Whittle, 1975):

- the 1945 Act made no provision for planning control in Declared African Townships in European areas or in Tribal Trust Lands.
- some of the control procedures under the Act were ponderous and the dividing line between what constitutes a township and a subdivision was slender.
- the declaration of scheme areas has given rise to planning problems emerging beyond the scheme boundaries.
- The Act was geared more to urban planning at the expense of rural and/or regional planning.

The 1976 Act tried to cater for these observations and streamlined the laws governing development control through re-organisation of the chapters as discussed in passage 2.4 of this study.

5.5 1976 to 1990 Perfecting Development Control

Major development control policies, laws and regulations were formulated between 1946 and 1976. Changes in laws and regulations between 1976 and 1996 were not radical and did not set notable precedents. They were mostly administrative e.g. the rearrangement of local planning areas through the enactment of the Rural District Councils Act of 1988 (Chapter 29:13 of 1996). Some of the changes were procedural e.g. the collapsing of the Town Planning Development Form 1 (TPD1) and TPD2 into TPD1 Form only. However, the most important changes were the repeal of section 24 of the 1976 RTCP Act, explained by the attainment of independence by Zimbabwe from Britain. The whole country was placed under the RTCP Act and development control practice was extended to communal lands without reservation. The potential for the volume of appellants also increased since the area covered by the RTCP Act broadened and some in the communal areas have exercised their right to appeal planning decisions e.g. Mahusekwa in Marondera and Juru in Goromonzi.

The gazetting of Statutory Instrument 380 of 1982, General Development Order set out "permitted development" in part or whole of a LA area. Unlike the 1976 Order the 1982 one covered communal lands. Under the order permitted development was possible without applying to the LPA for permission. This concept of permitted development, in terms of Part V of the RTCP Act, shows government's desire to promote development as much as possible. Six classes of permitted development were included in the Statutory Instrument. The classes are:

Class I: Residential (single detached dwelling houses only). This allows for the alteration of a house by up to 30sq.m. The developer can also build an outbuilding.

Class II: Agricultural. On a farm more than 100ha one can carryout building operations ancillary to farming without planning permission provided they are 200m away from the district road.

Class III: Minor building works.

Class IV: Temporary buildings and uses.

Class V: Local authorities and statutory bodies.

Class VI: Development by state leasees on aerodromes.

The effect of this was that it reduced the number of applications made to the LPA thereby making the LPA's task easier. Similarly, a Special Development Order, Statutory Instrument 378 of 1982, was promulgated to indicate permitted development in the Communal Lands. These two Statutory Instruments were accompanied by Statutory Instrument 379 of 1982, which specified centres in the communal lands that were to have planned and controlled spatial development just like urban nodes. It meant for the first time development control procedures in urban areas, commercial farming areas and communal areas became the same. One of the aims of these statutory instruments was to indicate to developers the parameters of development. The other aim was to reduce the number of planning appeals (Taylor, 1985 p16-20).

5.6 1990 to 1996 Challenging Development Control

Development control, as stated in Chapter One of this study, is regarded as a hindrance to development by developers (Pountney and Kingbury, 1983 p291-295; ZIRUP Papers, 1991 to 1996 – Kadoma Annual School 1995). Various actions have been put into motion to counteract or reduce the burden of development control. The first form of action has been the implementation of the process of decentralisation. In 1993 the Zimbabwe Government completed the process of amalgamating Rural Councils and District Councils. This process was started in 1988 after the promulgation of the Rural District Councils' Act. The decentralisation process did not mean a change in planning methodologies and procedures. It is a shift of planning powers from Central Government to RDCs, thereby putting the rural and urban councils at par. With decentralisation, all LAs are to assume full powers in master plan, local plan and layout plan preparation and implementation. The powers of preparing master and local plans in RDCs and small towns are vested in the Minister. Critics have said that this merely delays the setting up of a development control framework in LA areas (Deregulation Committee 1993; ZIRUP Papers, 1990-1996 – Bulawayo Annual School 1993). Ideally, the Department of Physical Planning should focus on

planning research and policy; strategic and regional planning; interpreting and advising on planning legislation and procedures; advice and guidance on rural master plans; promotion of investment, and processing major controversial planning applications (ZIRUP Papers, 1990-1996). Local Authorities should thus focus on master and layout plan preparation and implementation - including development control and management.

The beginning of the decentralisation process came more or less at the same time as the establishment of the Zimbabwe Investment Centre (ZIC); the embrace of the Economic Structural Adjustment Programme (ESAP) (later ZIMPREST), the formation of the Deregulation Committee, and the conceptualisation of Export Processing Zones (EPZ). The Department of Physical Planning was to devolve some of its powers to the RDCs to fulfil the RDC Act. From 1933 we have seen the gradual increase in LPAs from 6 to 30 in 1973 and about 80 in 1993. Over the years from 1914 up to 1976, as demonstrated in the earlier part of this chapter, there has been a gradual development of planning standards to tackle development control issues that government met with. This resulted in planning laws, regulations, policies and set procedures for use in development control. However, since the introduction of ESAP in 1990 the mood has been to modify or undo some aspects of the development control parameters. This has come through clearly in the ZIRUP Annual School discussions from 1991 to 1995.

The economists and the majority of the business community at the ZIRUP Annual Schools have been very open that investors think mostly about project viability and profit maximisation. Through deregulation, they would like to see the loosening of planning standards and zoning. They have argued that implementers of development control forget that there are 3 major factors of production i.e. land, labour and capital. Planners behave as if business location is affected by land availability alone. In line with economists thinking they want to see a reduction in stand sizes, liberalisation of construction materials, a relaxation of zoning and use group regulations, a faster process in the approval of local and layout plans, a shorter period for processing subdivisions and an acknowledgement of changes in technology.

On the other hand people from the health sector, some property managers and planners acknowledged what the investors were saying but went on to present their view of things (ZIRUP

Papers, 1990-1996 – Kadoma Annual School 1995). They admitted that the development control system is likely to face a challenge from a faster pace of development under ESAP, ZIC and EPZs. Development control policies, procedures and regulations are a small part (factor) of the investment promotion issue, the advocates of planning control concluded.

With such plausible but contradicting views on how to deal with issues of development control what is the way forward? It is generally agreed that deregulation should not mean scrapping of regulations. It should be understood to mean formulating investment encouraging regulations instead of the "control, control and control" regulations. Public health should be protected and even investors want a healthy labour force and community. Statutory Instrument 216 of 1994 was gazetted to encourage the development of home based industries and make maximum use of space in residential areas. Powers to prepare master and local plans, which lay with the Minister, were to be transferred to LAs. ZIC and EPZs were to conform to LA procedures and by-laws but LPAs were not to unnecessarily delay the processing of applications. The setting up of one-stop shops or "plan approval units" to handle planning matters was encouraged (ZIRUP Papers, 1991-1996 – Bulawayo Annual School 1996).

Where does this leave us in relation to planning appeals?

5.7 The Development of the Planning Appeals System 1933 to 1996

In Zimbabwe one can appeal if the LPA refuses planning permission or issues a permit with conditions that are not acceptable to the applicant. An applicant can also appeal if his or her application becomes a deemed refusal. An interested party can appeal if a permit is granted without being consulted or if development is not following what has been stipulated in the permit. Any interested party who thinks he/she has been prejudiced can appeal.

5.7.1 Evolution of Courts Responsible for Planing Law

Appeals that are being dealt with are those that came before the Administrative Court and not the

Minister. In the past appeals were heard in the magistrate's court in terms of Section 127 of chapter 133. This set up was found to be unsatisfactory. The Town Planning Court (later the Administrative Court), a court of first instance, was set up, in 1946, specifically to tackle town planning cases. In this situation the appeals were to be handled by judges who at that particular time were focusing on administrative law. This would help improve consistency. The High Court was brought in to cater for any unforeseen circumstances in the field of planning law or cases that were too general for the Administrative Court to handle.

5.7.2 Provisions for Appeal

Both Chapters 133 and 213 provided for an appeal against a decision made by the Minister. However, if the Minister certified that his decision or condition thereof was made or imposed "in the national interest", such a decision could not be appealed against. The 1946 Act made the appeal process prominent among other planning issues by starting with a Part on the Town Planning Court. The Act puts emphasis on the rights of the developer. But in the 1976 Act appeal procedure is embodied in the specific planning sections i.e. sections 38, 44 and 49 of the RTCP Act, which deal with specific matters or processes, publicity, advertisement of activity or application steps.

The payment of endowment was a potential source of appeal. The Minister tackled this issue on a continuous basis to avoid going to court. Conditions set in the permits for subdivisions and townships were made as explicit as possible. The amount of endowment also varied from township to township and from town to town. The endowment fees were later standardised as development control got established (GOSR Public Statement, 22 June 1956).

Compulsory acquisition was introduced because government feared that an individual might block development by not releasing land. Also to be seen to be fair, owners were to be compensated if proposed development injured property.

On the handling of objections and representations, Case T867, African Explosives Vs. Salisbury Rural Town Planning Authority, January 1962, firmly established the practice today that the local

authority should give the applicant the opportunity to comment on objections. The LPA after receiving objections to the proposed change of use to establish an explosive factory refused the application on the basis of the objections without referring them to the applicant. This is reflected in the 1971 Town Planning Court Rules and the way the sections on appeals in the 1976 RTCP Act were drafted.

5.7.3 Legal Opinion and Case Law

Legal opinions clarify substantive and procedural law, in essence how to interpret the law in controversial situations especially where the legality of a local authority action was being questioned or where the local authority was not sure of how to proceed. This engendered fair and consistent decisions (DPP Office Files). Legal opinions have helped shape the way stakeholders in development control do business and the formats used from applications for planning permission to appeal cases, e.g. GOSR Office Instruction No. 15 of 1964 on township permits. The phrasing of permits has also evolved over time as it was tested in informal and formal discussions and in the Administrative Court (GOR Office Instruction No. 7 of 1966). Legal opinion has also shaped conditions council officials set in the permits e.g. on vesting of the roads to local authorities (GOSR Office Instruction no. 10 of 1964).

5.7.4 Appeal against Decision of the Administrative Court

The RTCP Act states that any party who is dissatisfied:

a) with the determination of the Administrative Court of any matter under this Act; or
b) with any decision of the President of the Administrative Court as to whether a matter for decision is a matter of fact or a matter of law; or
c) with any award of compensation for injurious affection;

may appeal to the Supreme Court.

5.8 Conclusion

Development control gradually expanded from the towns into peri-urban areas and into large-scale commercial farming areas between 1914 and 1960. In 1982 development control was applied equally throughout the whole country. Government increased its influence from determining stand/plot/farm sizes to prescribing where types of development could take place. It set rules and regulations on how to apply for and set up development projects. As government made efforts to advance the public interest in development it created standards and policies that were not agreeable to every developer. Government had go ahead. The best way to deal with those who disagreed with its development control practice was to refer them to the courts for judicial review of its decisions. To be seen to be fair, it has continued to allow the determination of appeals by a neutral party.

Planning appeals are made in a dynamic planning environment. The evolution of development control and planning law shows that what may be an appeal issue today will not be so tomorrow. Similarly, what was not a planning appeal issue yesterday may become an issue tomorrow. This is seen through the Department of Physical Planning's Office Instructions, legal opinions, case law and aspects of political correctness. Furthermore, planning standards change with time leading to a change in the area o emphasis at appeal. This dynamism may partly account for the increase or decrease in the number of planning appeals that are lodged with the Administrative Court. It may also account for the number of cases that are determined.

C H A P T E R S I X

6.0 ANALYSIS OF FINDINS ON TOWN PLANNING APPEALS AND DEVELOPMENT CONTROL

6.1 Preamble

The main body of analysis of this paper dwells on the planning appeal cases from 1976 to 1996. Chapter Six is in three parts in line with the objectives of the research as set out in Chapter One. The *first* part seeks to analyse the planning appeals population from 1976 to 1996 i.e. to establish and explain the planning appeal cases. A variety of factors influencing the direction of planning appeals are examined. The *second* part tackles the aspect of time delays in handling planning appeals. It was realised that this could not be done using the 603 appeal cases. A random systematic sample of 74 appeal cases was drawn and used to discuss the processing of and rules and regulations governing planning appeals. Finally, the *third* part looks at the suggested positive link between time delays in processing planning permission applications and the increased costs in implementing planning permissions or a reduction in benefits that are supposed to accrue from the investment.

PART ONE (Chapter Six)

6.2 General Analysis of Planning Appeal Population 1976 to 1996

One of the objectives of this research, set out in Chapter One, is to explain and comment on planning appeal cases population statistics in Zimbabwe. This Part One of Chapter Six gives a statistical break down of the planning appeal cases and attempts to explain the outcome. It also looks at the geographical distribution of the appeals to establish from which region most appeals were made and offer explanations where possible.

6.2.1 Number of Cases Brought before the Administrative Court 1976-1996

A total of 603 appeal cases are the subject of discussion (See Table 3). Fig. 1 shows the general trend of appeal cases over the 21 years under study. The highest number over the study period of 63 appeal cases was lodged in 1989 and the lowest number of 9 (nine) appeal cases was in 1979 (See Table 3 and Fig 1). The mean average of the appeal cases lodged per year is 29 with a median of 25 indicating that 63 appeal cases in 1989 were on the extreme high side.

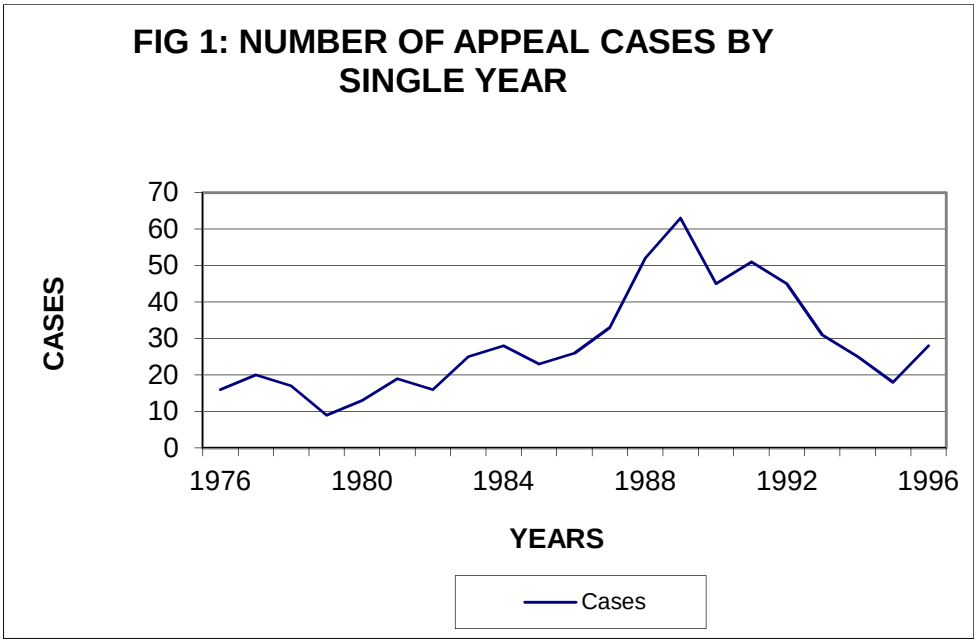
TABLE 3: SUMMARY OF APPEAL CASES 1976 TO 1996: ADMINISTRATIVE COURT

YEARS	NUMBER OF CASES	% CHANGE OVER PREVIOUS YEAR	CUMULATIVE TOTAL	% OF 1976-1996 POPULATION
1976	16	--	16	2.7
1977	20	25	36	3.3
1978	17	(-15)	53	2.8
1979	9	(-47)	62	1.5
1980	13	44	75	2.2
1981	19	48	94	3.1
1982	16	(-16)	110	2.7
1983	25	56	135	4.1
1984	28	12	163	4.6
1985	23	(-18)	186	3.8
1986	26	13	212	4.3
1987	33	27	245	5.5
1988	52	58	297	8.6
1989	63	21	360	10.5
1990	45	(-29)	405	7.5
1991	51	13	456	8.5
1992	45	(-12)	501	7.5
1993	31	(-31)	532	5.1
1994	25	(-19)	557	4.1
1995	18	(-28)	575	3.0

1996	28	56	603	4.6
TOTAL	**603**		**603**	**100**

SOURCE: Survey Results 1999

Column 3 in Table 3 shows that the number of appeal cases rise and fall almost alternately year by year from 1976 up to 1985. From 1985 to 1989 there is a sustained increase from 23 up to 63 cases (See Fig 1). It is followed by a sustained fall from 1991 to 1995 i.e. from 51 down to 18 cases. Fig 2 attempts to capture the fluctuations, enumerated in column 3 of Table 3 diagrammatically, where it illustrates the sharpness of change from one year to the other based on the previous year. The peaks and troughs that resulted mirror the mood of developers and possibly the ever-changing economic fortunes (to be explained later in this passage). The fluctuations also



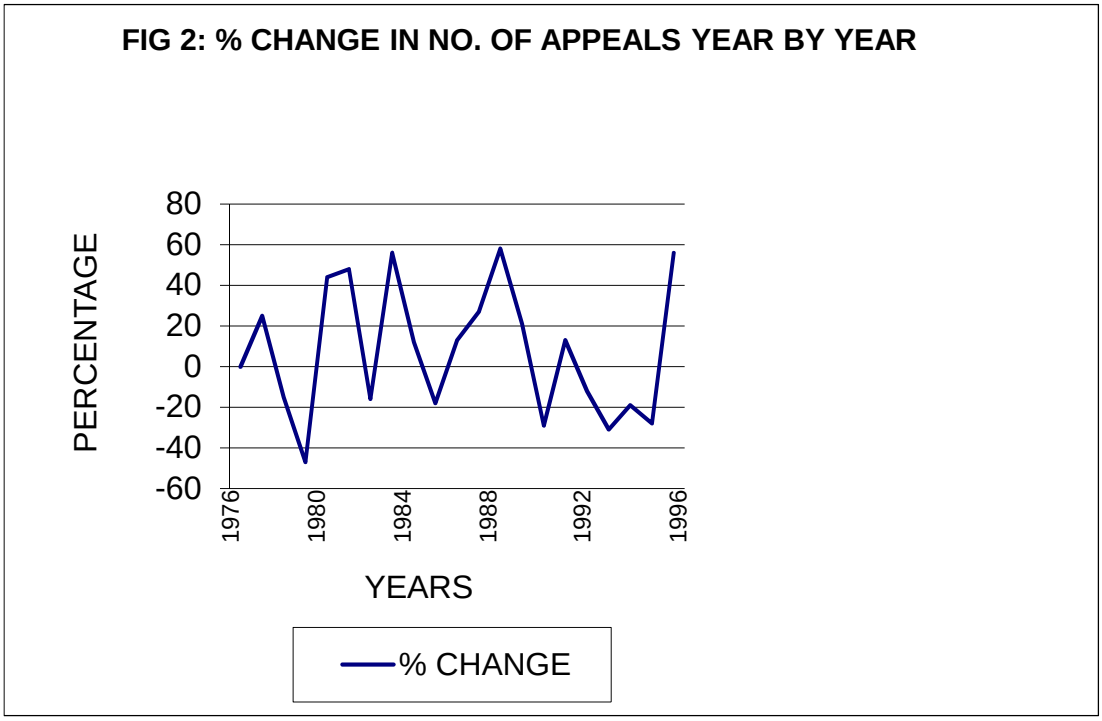
demonstrate the individuality of each year that the number of appeals in one year does not necessarily influence the number of appeals in the next year.

Source: Thesis Research 2001

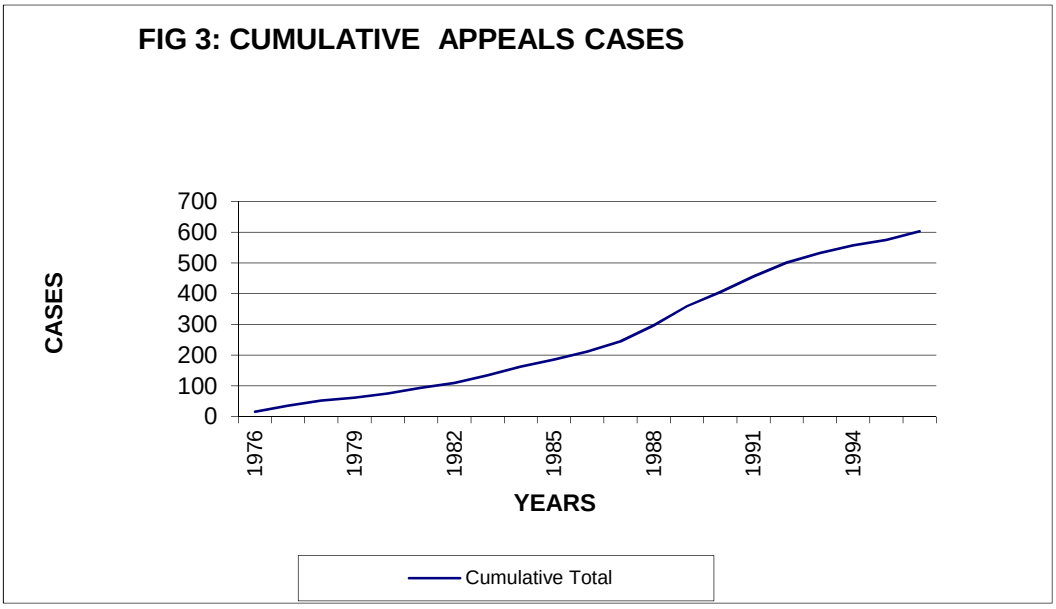
Fig 3 shows cumulatively that there is a gradual increase in planning appeals from 1976 up to 1982. The gradual rise deepened between 1982 and 1985 becoming a relatively rapid increase

from 1986 to 1990 (as the monetary policy began to bite as explained in Chapter 5 (passage 5.6). After 1991 the relatively steep rise tapers of.

The 5-year period table was prepared to reduce fluctuations in the number of cases coming before the court and to determine sustained trends (See Table 4). The table

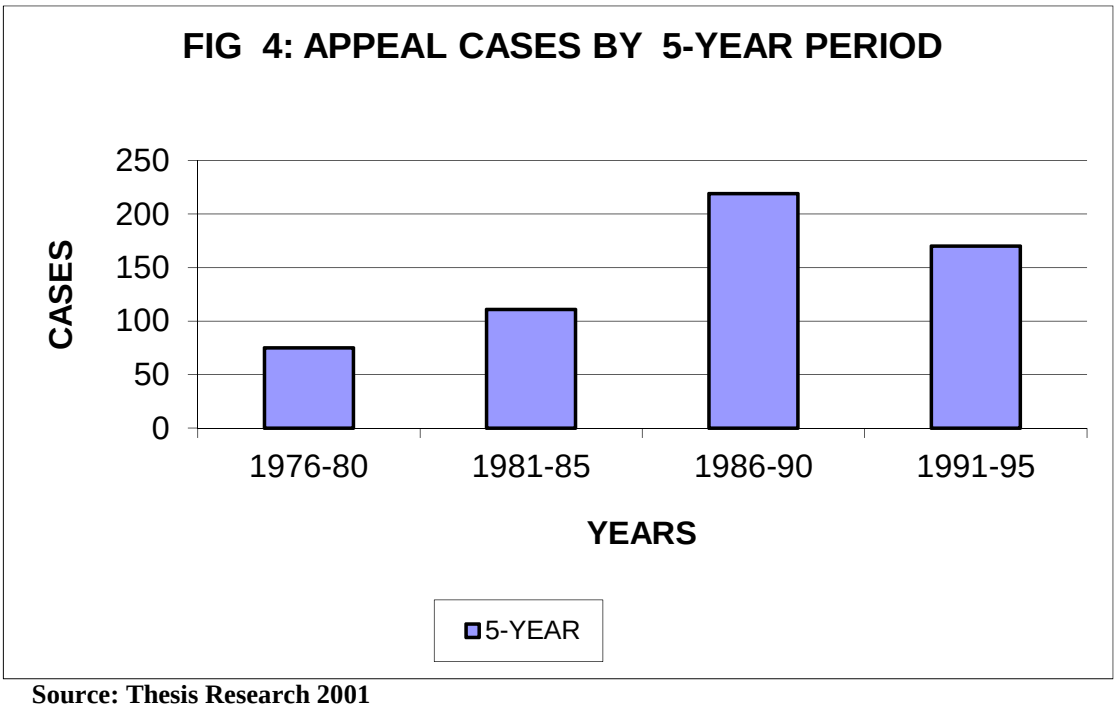


Source: Thesis Research 2001



Source: Thesis Research 2001

reveals that, the lodging of planning appeals per 5-year period peaked between 2986 and 1990. Fig. 4 is a diagrammatic representation of the rise in number of cases up to 1989 and a steady fall to 1995. The 1986-1990 period accounts for 38% of the cases that were brought to court in the 20 years from 1976 to 1995. In the following period 1991 to 1995, there was a significant drop in appeal cases. The least number of appeals was lodged in the period between 1976 and 1980. What may have influenced the trends outlined above?



Source: Thesis Research 2001

There are a number of *possible causes to the fluctuations* in the planning appeal cases statistics. 1978 to 1980 were politically very difficult years. They were years of economic, social and political uncertainties. The period coincides with the transitional government to Zimbabwe's independence in 1980. There may have been limited enthusiasm to embark on development hence a lull in appeals.

1979 is the year when the liberation war became very intense whilst at the same time a political settlement was being negotiated by the UK and Zimbabwe. There was a lot of uncertainty. On the other hand 1989 is the year the economy bottomed up with every economic aspect having gone wrong. Life was difficult too.

Net migration was high (See Appendix 8). Since migration was mostly by whites it meant existing property was available for purchase or market demand was low. The CSO Statistical Digest of 1985 says the movement of blacks started being recorded in 1981. Therefore, it can be concluded that the movement before then, was for the "haves" in the context of the history of Zimbabwe.

TABLE 4: COURT CASES BY 5-YEAR PERIODS: ADMINISTRATIVE COURT

PERIOD (YEARS)	NUMBER	% OF TOTAL POPULATION
1976-80	75	13
1981-85	111	19
1986-90	219	38
1991-95	170	30
TOTAL	**575 (exclude 1996)**	**100**

SOURCE: Survey Results 1999

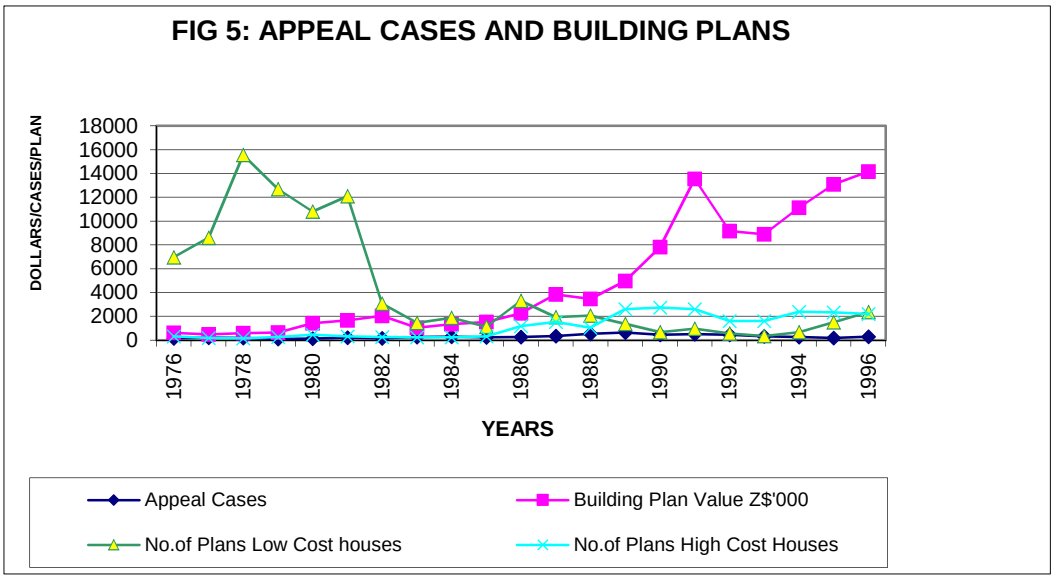
The five-year period was adopted to see whether there was an increase or decrease in the number of cases lodged with the Administrative Court. It shows that there was a significant increase up to 1990. Thereafter the numbers decreased.

Furthermore, after independence from 1980 to 1989, there are two minor falls (minor based on percentage change of rates). Generally, the economy was expanding, at least up to 1986 before price controls were introduced. Developers may have been encouraged to pursue their investment plans because there was hope for good returns. However, in the late 1980s Zimbabwe's command economy started to falter leading to economic hardships. The rate of investment was reduced. On the other hand LPAs came under sustained pressure to liberalise laws and regulations governing development control, which Wekwete (1989) said were seen as a colonial relic. The increase in negative economic pressure is directly related to the rise in out of court settlement and lapsed appeal cases, which is discussed further hereunder (See Table 6). The pressure from applicants to get through subdivisions of land, for example, ties in with the observation that during hard times landlords may survive by increasing lesees or selling part of their land. It forced the government in the early 1990s to introduce the Economic Structural Adjustment Programme (ESAP) discussed in Chapter Five passage 5.6 as a solution to the economic and political quagmire the government found itself in.

Unlike the other groups of years discussed immediately above 1988 to 1991 experienced a sustained high number of planning appeals year by year. An explanation for this could not be found during a perusal of the Administrative Court files. However, an analysis of data collected

from City of Harare and subdivision applications in Mashonaland East Province during this study period corresponds with an increase in applications for planning permission. Subdivision applications in the City of Harare increased from 125 in 1988 to 216 per year in 1991 whilst special consent applications increased from 84 to 116 and subdivision applications in Mashonaland East increased from 21 to 32 over the

Source: Thesis Research 2001



DOLLARS: Stands for value in Zimbabwe dollars in thousands i.e. Z$'000.

CASES: Stands for planning appeal cases

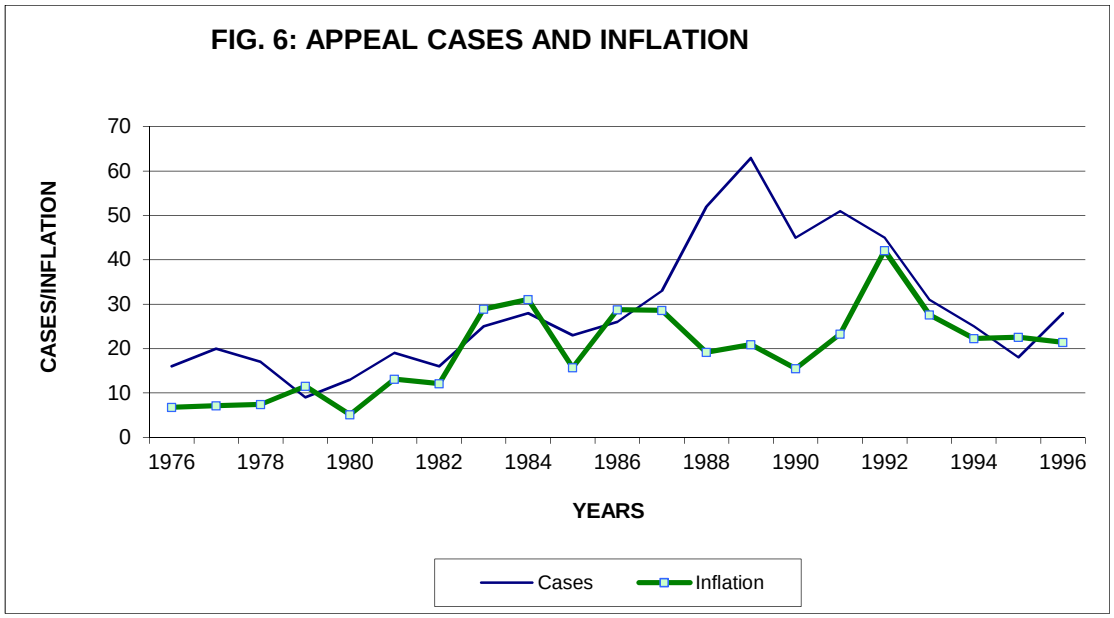
PLANS: Stands for number of building plans that were approved.

same period. Also it may be because of the gradual economic decline related to policy changes and the need for capital through selling land. The decline may be looked at in the light of indigenisation discussed in Chapter Five passage 5.6, change in planning attitudes, change in policy outlined in passage 5.6, diversity of activity or pressure to relax development control from partners in development. One has to study planning permission application trends at LPAs to get an idea of the reasons for the steady increase to 1989 and steady decline to 1996. Data at LPAs in general is not readily available. The purposive sample from City of Harare for special consent and subdivision and Mash East subdivision applications is not enough to enable one to draw a general

conclusion. The figures are just indicative.

Planning appeal cases may be interpreted using number of building plans and building value (See Appendix 6). Building plans show a building value of Z$60m in 1976 going down to Z$46m and Z$58m the following 2 years, respectively. It shoots up to Z$140m by 1980 and Z$204m by 1982. The building value dips in 1983 and 1984 before resuming a steady rise up to 1991. The dip in building value is related to the fall in the construction of Low Cost Housing and Flats from 12000 units in 1979 to 1124 units in 1985 (See Fig 5 above). Most of these low-cost housing units were implemented as council projects on council land. Generally, there are no planning permission hassles with such type of housing delivery. The statistics also show that the static trend in the construction of High Cost Housing and Flats of around 250 units per year from 1976 to 1984 picks an upward trend in 1985. It increased from 1161 units in 1980 to 2737 units by 1990. It can be argued that there is a positive relationship between the sustained increase in planning appeals from 1985 to 1989 and the continuous increase in the number of High Cost Housing and Flat units under construction between 1983 and 1990 (See Fig 5). The history of development control in Zimbabwe, discussed in Chapter Five, has shown that most planning permission applications emanated from the High Cost and Low Density Residential areas than the Low Cost and High Density Residential areas because the RTCP Act was selectively applied by area. Furthermore, the plots/stands in High Cost and Low-Density areas are created through subdivision (Section 40), because the plots are privately owned. For this 1976 to 1996 period there is a direct relationship (all increasing with time) between High Cost and Low Density Housing and Flats, Building Value and Number of Appeal Cases.

There is no clear-cut relationship between the number of appeals lodged and the inflation graph (See Fig 6) below (also see Appendix 6). However, one can discern that there is a delayed effect in that a rise in inflation is followed by a delayed fall in appeal cases and vice versa. It may be explained by the fact that the impact of high inflation to the development industry is not immediately felt.



Source: Thesis Research 2001

6.2.2 Pattern of Planning Appeals 1976-1996

An analysis of the appeal cases by province is revealed in Table 5. Zimbabwe was once divided into five (5) provinces, before the present eight (8) were delimited. The number of provinces is determined by central government mainly in the context of creating efficient and effective administrative units. Also the 8 were created in 1987 and there was a transition period of over 4 years. It means the provinces became fully functional about 15 years into the study period. This research makes use of the five provinces for ease of reference and in line with the way records were grouped. The Mashonaland Province accounts for 78% of all cases during the period under study, followed by

Matebeleland at 11% and Manicaland at 6%. The pattern seems to fit well with the distribution of urban centres as well as smallholding townships and the commercial farms (see passage 5.4 in Chapter Five on history of development control above). Harare (in Mashonaland) has an added advantage in that the Administrative Court is located in Harare where interaction between the court, the appellants and the respondents is easy.

In general, the lodging of planning appeals reveals a certain pattern where the largest number of appeals in all provinces is in the urban areas (See Table 5) and the lowest number is in the communal lands. Commercial farms form the middle tier. The pattern of planning appeals is directly related to the density of urban settlement and distribution of commercial farms. Historically, those on titled land, e.g. Vumba area in Mutare District and the Kensington area in Bulawayo, benefited more from the RTCP Act than those on communal land in terms of development control practices.

The emerging pattern of planning appeals can be discussed under five categories which are urban areas, peri-urban areas, commercial farming areas, communal areas and tourist areas. These groupings are discussed in the context of what predominant appeals are, why such a pattern and how it happened? In the *first* category, planning appeals are concentrated in urban areas e.g. Mutare, Harare and Bulawayo. Urban areas experience a lot of Section 26(3) applications. These centres are economic hubs where different land uses compete for space. The pursuing of profit from industrial and commercial activity is a driving force in the setting up of business. Because urban areas are a microcosm of the state, they also experience appeals based on Sections 26(1) and 40. Ordinary planning permission applications are for all various forms of land use. Similarly, applications for subdivision for residential, industrial or commercial purposes are submitted. Section 49, change of reservation, appeals as shown in Table 5 are almost experienced exclusively in urban settlements. Land reservations generally are the product of scheme plans which by design cover urban and peri-urban areas the idea being to rationalise the use of the invaluable land. In such a competitive environment the possibility of challenging an unfavourable LPA decision is high.

Peri-urban areas, the *second* category, are zones of transition from urban to rural. Major peri-urban areas in Table 5 are Goromonzi, Harare incorporating Harare South and Harare West, Bulawayo environs, Mutare and Gweru. This zone is characterised mainly by Sections 26(3) and 40 applications. Special consent (Section 26(3)) is needed because master plans, schemes and LDPs covering the peri-urban areas produced fixed zones but in some cases they specifically propose that planning permission applications be processed through special consent. Peri-urban

areas are also characterised by high demand for plots/stands because they are cheap compared to those in town. They are the belts where peri-urban townships are found e.g. Twentydales in Harare and Daylesford in Gweru (See Appendix 10). As a result there is a lot of subdivision activity (Section 40) in peri-urban areas for residential/smallholding, intensive agriculture, second homes and a host of tertiary industries such as Truckers Inn, Tourist Lodges and Recreational Facilities. The policy on controlled peri-urban settlements partly accounts for the clearly defined urban boundaries since it stemmed urban sprawl through zoning of land uses. Furthermore, this policy saw to it that the ministry responsible for roads is specifically mentioned in the RTCP Act to ensure that road services in peri-urban areas are reasonable.

Commercial farms form the *third* category. Commercial farming was encouraged through the protection of commercial farmland. This was achieved by discouraging unnecessary subdivision or the setting up of non-farming activities as discussed under passage 5.4.8 in Chapter Five. This policy meant loss of economic opportunities for some in the business community, which was fought against through the Administrative Court. Districts dominated by commercial farming areas such as Goromonzi, Nyanga and Marondera are predominant under Section 40 i.e. subdivision and consolidation applications (See Tables 5 & 6). Ranch-lands like the Midlands and parts of Masvingo and Matebeleland are sparsely populated and their type of farming does not encourage fragmentation of land from an economic point of view. This is why in Tables 5 and 6 the two provinces do not feature much on subdivisions in the commercial farming areas. The importance of protecting the farm environment was strengthened by the establishment of Intensive Conservation Area Committees (ICAs), which are still operational to this day. At the end of the day the policy encouraging large scale commercial farming and estate farming made Zimbabwe a leading international agricultural producer of quality farm produce. From this perspective the minister of agriculture has been and is an important partner in the processing of subdivision applications.

In the *fourth* category, communal lands like Gutu, Buhera and Makoni appear mainly under Section 26(1) ordinary and preliminary planning permission applications. This is explained by the land tenure system (See Chapter Two) where no title to land is allowed. Land is leased in perpetuity with little conditions for trading, therefore, the most utilised form of planning

permission is for ordinary development through Section 26(1). It is also explained by the administrative framework (See passage 5.4) District Commissioners (DC) administered a portion of the RTCP Act up to 1982. Authority was shifted from the DC to the newly constituted District Councils who became LPAs on matters of development control, and therefore responsible for Section 26(1).

In the fifth and final category, tourism, tourist areas (Table 5) show an irregular pattern. This may be explained by the varied nature of tourism in given areas. Tourist areas and areas of scenic beauty such as Nyanga, Chimanimani, Kariba and Victoria Falls experience varied demand for plots and related developments which can be provided through subdivision (See Table 5 and Fig 9 The Map of Zimbabwe). Nyanga is a commercial farming area, which ties in with the comments made under commercial farms subdivision appeals out of Section 40 are relatively high. There is demand too for second/company homes in these areas of scenic beauty which, just like in peri-urban areas, could be delivered through Section 26(3) special consent or Section 26(1) ordinary applications for planning permission. In Nyanga and Mutare, for example, where lodges and chalets are two of the forms of tourist accommodation in addition to the demand for second homes or company houses, special consent applications (Section 26(3)) complement subdivision applications. Kariba Town being an urban tourist centre on the shores of Lake Kariba and within a national park is under pressure to provide tourist services. This partly accounts for the Section 26(3) appeals. The distinctiveness of this tourism category is capped by the involvement of the Ministry of Environment and Tourism as a partner to the Minister of Local Government in development control.

The pattern of planning appeals can also be commented upon from the angle of utilisation of the various sections of the RTCP Act. The first group is of appeals based on the RTCP Act sections that create the statutory framework for development i.e. Sections 14 and 17.

TABLE 5: COURT CASES BY PLACE OF ORIGIN BY SECTION OF RTCP ACT

PROVINCE	DISTRICT	19	26 (1)	26 (3)	29	30	31	32	35	40	49	50	RDS	PER	N/C	TC	NP	NS	SUM	%
MASVINGO	Chiredzi	--	--	--	--	--	--	--	--	1	--	--	--	1	--	1	--	--	3	0.50
	Gutu	--	1	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	2	0.33
	Masvingo (Urban)	--	1	2	--	--	--	--	--	3	1	--	--	--	1	--	--	--	8	1.33
	Mwenezi	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Ndanga	--	--	--	--	--	--	--	--	2	--	--	--	--	--	--	--	--	2	0.33
	SUBTOTAL	--	2	2	--	--	--	--	--	7	1	1	--	1	1	1	--	--	16	2.66
MANICALAND	Buhera	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.17
	Chimanimani	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.17
	Chipinge	--	--	--	--	--	--	--	--	2	--	--	--	--	--	--	--	--	2	0.33
	Makoni	--	1	1	--	--	---	--	--	1	--	--	--	--	--	--	--	--	3	0.50
	Mutare (Urban)	--	7	8	--	--	--	2	--	2	1	--	1	--	--	--	--	--	21	3.48
	Nyanga (Tourist)	--	1	--	--	--	--	1	--	4	--	--	--	--	4	--	--	--	10	1.66
	SUBTOTAL	--	11	9	--	--	--	3	--	9	1	--	1	--	4	--	--	--	38	6.31
MASHONALAND	Banket	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	1	0.17
	Bindura	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Chegutu	--	--	--	--	--	--	--	--	3	--	--	--	--	--	--	--	--	3	0.50
	Glendale	--	--	--	--	--	--	1	--	--	1	--	--	--	--	--	--	--	2	0.33
	Goromonzi (Peri-urban 40km)	--	3	3	--	--	--	5	--	15	--	--	--	--	3	--	2	--	31	5.14
	Harare (Urban/Peri-Urban 40km)	6	64	120	2	1	1	104	3	35	14	--	3	3	43	5	--	--	404	67.00
	Kadoma	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Kariba (Tourist)	--	3	1	--	--	--	--	--	1	--	--	--	--	--	--	--	--	5	0.83
	Makonde	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Marondera	--	1	1	--	--	--	--	--	4	--	--	--	--	--	--	--	--	6	1.00
	Mazowe	--	--	--	--	--	--	--	--	3	--	--	--	--	1	--	--	--	4	0.66
	Mutoko	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Mvurwi	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	1	0.17
	Norton	--	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.17
	Nyaminyami	--	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	0.17
	Ruwa (Peri-urban)	--	2	1	--	--	--	--	--	--	--	--	--	--	2	--	--	--	5	0.83
	Shamva	--	--	--	--	--	--	--	--	1	--	--	--	--	1	--	--	--	2	0.83
	SUBTOTAL	6	73	128	2	1	1	110	3	66	15	--	3	3	52	5	2	--	470	77.98
MIDLANDS	Gweru (Urban)	--	3	--	--	--	--	--	--	2	1	--	--	--	--	--	--	--	6	1.00
	Kwekwe	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Shurugwi	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	--	--	1	0.17
	SUBTOTAL	--	3	--	--	--	--	1	--	3	1	--	--	--	--	--	--	--	8	1.34
MATABELELAND	Beitbridge	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	1	0.17
	Bulawayo (Urban)	--	20	8	--	--	--	9	--	4	1	--	1	--	10	3	--	--	56	9.29
	Bulilimamangwe	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Gwanda	--	--	--	--	--	--	--	--	1	--	--	--	--	2	--	--	--	3	0.50
	Lupane	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--	--	--	1	0.17
	Matobo (Tourist)	--	--	--	--	--	--	--	--	2	--	--	--	--	--	--	--	--	2	0.33
	Umzingane	--	--	--	--	--	--	--	--	--	--	--	--	--	2	--	--	--	2	0.33

	Vic. Falls (Tourist)	--	--	--	--	--	--	--	--	1	1	--	--	--	--	--	--	--	2	0.33
	SUBTOTAL	--	20	8	--	--	--	9	--	10	2	--	1	--	15	3	--	--	68	11.29
Not Specified	Not Specified																	3	3	0.50
ALL PROVINCES	**GRANT TOTAL**	6	109	147	2	1	1	123	3	95	20	1	5	4	72	9	2	3	603	100

SOURCE: Survey Results 1999

RDS For Roads **PER** Permit Condition **N/C** for Not Clear **TC** Title Condition **NP** for not Planning Issue **NS** for Not Specified

The second group is on sections that release land for development i.e. Sections 40 and 49 whilst sections that allow development of land i.e. Sections 26(1) and 26(3) form the third group. The fourth group, Sections 30 and 31, encourages the protection of the environment and finally, Section 32 is used to enforce LPA decisions or operative statutory framework (See Table 6).

TABLE 6: CLASSIFICATION OF THE APPPEAL CASES BY SECTIONS OF THE REGIONAL TOWN AND COUNTRY PLANNING ACT BY PROVINCE

PROVINCE	**MANICA LAND**		**MASVI-NGO**		**MASHO-NALAND**		**MID-LANDS**		**MATABE-LELAND**		**NO. OF CASES**	**DETER-MINED**	**DETER-MINED**
SECTION	No	Det	No	Det	No	Det	No	Det	No	Det	TOTAL	TOTAL	**AS %**
Section 19	0	0	0	0	6	4	0	0	0	0	6	4	67
Section 26 (1)	11	0	2	0	73	29	3	0	20	4	109	33	30
Section 26 (3)	9	4	2	0	128	80	0	0	8	2	147	86	59
Section 29	0	0	0	0	2	2	0	0	0	0	2	2	100
Section 30	0	0	0	0	1	1	0	0	0	0	1	1	100
Section 31	0	0	0	0	1	0	0	0	0	0	1	0	0
Section 32	3	2	0	0	110	30	1	0	9	3	123	35	28
Section 35	0	0	0	0	3	1	0	0	0	0	3	1	33
Section 40	9	0	7	3	66	35	3	0	10	4	95	42	44
Section 49	1	0	1	0	15	7	1	1	2	1	20	9	45
Section 50	0	0	1	1	0	0	0	0	0	0	1	1	100
Roads	1	0	0	0	3	2	0	0	1	1	5	3	60
Permit Condition	0	0	1	1	3	0	0	0	0	0	4	1	25
Not Clear	4	0	1	0	52	6	0	0	15	0	72	6	8
Title Condition	0	0	1	1	5	2	0	0	3	0	9	6	67
Not Planning	0	0	0	0	2	0	0	0	0	0	2	2	0
Not Specific	3										3	0	0
Total	**38**	**6**	**16**	**6**	**470**	**199**	**8**	**1**	**68**	**18**	**603**	**230**	**38**

SOURCE: Survey Results 1999

Key To Table 6

THE NOTES BELOW ARE AN ELABORATION OF THE ABRIDGED ROW-COLLUMN HEADINGS IN TABLE 6F.

No means Number of appeal cases in a given province

Det means appeal cases determined out of the **No** stated

Roads: relates to vesting of roads, closure and redevelopment of an area

Permit condition: an appeal against a condition inserted in the permit

Not clear: it is not clear what happened to the cases

Not planning: the Administrative Court did not have powers to hear the appeal

Not specific: there is no information about the case to allow meaningful classification

Title condition: a condition to be removed from the title deed

Using absolute values of Cases by RTCP Act sections by Province an analysis was carried out to see which sections raised the most appeals (See Table 6). This resulted in Sections 26(3), special consent and 32, enforcement orders, raising the most. The highest number of appeal cases lodged with the Administrative Court was on Section 26(3) with 147 cases. This was followed by Section 32 with 123 cases; Section 26(1), normal and preliminary planning permission applications with 109 cases and Section 40, subdivision and consolidation with 95 cases and Section 49 with 20 cases just to mention the significant sections in terms of this study.

Unlike in the paragraph above where the number of appeals lodged are expressed in absolute values, the number of cases determined is expressed as percentages to enable comparison as the passage develops. Referring to Table 6 and focusing on the more commonly used RTCP Act sections, Section 26(3) which is for special consent has a 59% determination record (heard by the courts). Section 49 for change of reservation shows 45% against 44% for Section 40 (subdivision and consolidation) and Section 26(1) for normal and preliminary applications with 30% of the cases determined.

It can be argued that Sections 14 and 17, *first group,* raise very few appeal cases possibly because they allow discourse among stakeholders. This participatory approach, though limited, reduces the need to appeal. During this period under study, Section 19 appeals emanating from Section 17 were made in Harare only. All the appeals were from the high-income areas. Historically, people

in the high income areas have been exposed to planning for a long time compared to those in the low income areas. In fact the RTCP Act did not apply to the low-income areas until 1982. The high-income people have strong views about what their neighbourhood should look like.

Six appeals were lodged for master and local plans (Sections 15 & 19, Table 6), all from Harare. It is important to note that as discussed in Chapter Five passage 5.4 most LPAs operate without forward plans. Schemes that are in operation in such towns as Harare, Bulawayo, Kwekwe and Marondera were prepared before 1976. Although the Regional Town and Country Planning Act No. 22 of 1976 (RTCP Act) eased the procedural requirements for preparing statutory framework for spatial planning, one can tick off LPAs which have ventured into preparing forward plans that became operative between 1976 and 1996 on the fingers of one hand e.g. Harare, Bulawayo and Masvingo. Such little activity in producing statutory forward plans may explain the few appeal cases. Since they are all from Harare, the other reason may be Harare's primacy in relation to other towns and settlements, the pressure for residential and industrial land as exemplified by the Lochnivar LDP appeal case. LDP appeals have a high rate of determination of 67% because they affect the "haves". In terms of literature review in Chapter 2 the propertied value the right to use their property as they so wish. So they are keen to know what zone they fall in and argue for better value where possible.

Appeals in Sections 40 and 49, *second group,* are moderate in number (in the context of all appeals tabulated in Table 5) because land for development can be made available by the state in terms of Section 43 of the RTCP Act or by Council (LA) in terms of Section 205 of the Urban Councils Act. Layout plans prepared under these two sections cater for all forms of land use i.e. residential, commercial, industrial, institutional etc. Section 40 is used to subdivide private owned land and that is why it is predominant in commercial farming and peri-urban areas. In urban areas Section 40 is overshadowed by others e.g. Section 26(3) because the creation of the right sized stands is done mostly through layout plans thereby reducing the need for subdivision applications.

On the other hand, Section 49 is used to change reservation of land for development other than what it was zoned for. The reservation normally would have been made in a scheme, master plan, LDP or during the creation of a smallholding township. Since, as discussed in Chapter Five

passage 5.4.7, very few areas are covered by statutory documents the scope for utilising section 49 is limited hence its use is mostly in urban areas where statutory documents have been put in place. The need for change of reservation is also prompted by a high rate of development and pressure for the release of more land for uses not catered for in the plan.

In Sections 26(1) and 26(3), *third group,* permission for physical development is sought by developers. The land on which that development is to take place is partly governed by sections 14, 17 and 49. Because Zimbabwe's development control system is based on zoning similar to that of Germany or the USA unlike the discretionary system of the UK or New Zealand, discussed in Chapter 2 passage 2.6.1, land use is specified and procedures and processes to get planning permission are given. The dominance of appeals in terms of Sections 26(1) and 26(3) signifies their importance to developers. These sections are frequently used because they concern the last steps in the planning process where the developer makes or loses it. On this score the resolve to appeal at this stage is relatively high at 42% of all appeals.
Under the sections on schemes and the setting up of LPAs, Chapter 5, LPAs increased in number from 10 to 30 and later 80 over a period of 70 years. It is only a few areas that are covered by schemes or master plans. In such circumstances planning permission applications are lodged under Section 26(1).

Sections 30 and 31, *fourth group,* which deal with the preservation of buildings and trees, respectively, raised a few appeal cases i.e. one each.
Government policy and the law are such that if one cuts trees (section 31) the person should be arrested and charged. The application of the RTCP Act is rare since there is a faster way of dealing with tree preservation.

Section 32, *fifth group,* for Enforcement Orders is used regularly because of economic pressures to develop quickly. With an appeal caseload of 123 cases it is second to Section 26(3). Out of ignorance or knowingly developers put up development without planning permission only to fall foul of planning law. Local planning authorities stay vigilant because they need money from development application fees as well as to protect the existing properties from chaotic development.

The strictness with which development control has been implemented leaves some prospective developers with no option but to break the law in the hope that they will get a reprieve from the LPA and get a permit through the back door.

Developers for Section 26(3) and 32 are those who are determined to develop on the basis of need or have already developed illegally and would like to defend their investment.

The high determination rate of 59% for special consent applications is indicative of the need for the proposed developments and what developers think. On the other hand, the high withdrawal rate of appeals against enforcement orders, with only 28% being heard, demonstrates the correct interpretation of the laws and regulations by the LPAs. These findings are in line with UK findings. With a 67% determination rate for Section 19 it would appear objectors saw them through. The way master and local plans are prepared, involving the public, means fewer objections.

In dealing with the percentage rates in appeal cases that were actually heard in the court one notices that there is no clear-cut relationship between the absolute number of cases and percentage of cases determined. This can be attributed to demand, need and policy.

The terms “permit condition” and “title condition” are brought about due to the way the 1945 Town and Country Act and the 1976 RTCP Act were drafted.

6.2.3 Propensity to Appeal

The 603 cases were grouped by the “type of decision made” on each case. Nine (9) categories were drawn up (See Tables 7 & 8). They show that 19% of the appeals were granted/allowed/upheld and another 19% were refused/not allowed. This gives us a total of 230 cases or 38% of the appeal cases as having been “determined” by the courts. The other categories worth noting are cases that lapsed, 44 (7%); cases that were withdrawn, 196 (33%) and cases that are not clear what happened, 109 (18%). Generally, it means of the 603 cases 60% percent fell by

the wayside for one reason or another before being heard by the Administrative Court. An attempt is made to explain the 60% withdrawal of cases before a hearing.

TABLE 7: TYPE OF DECISION IN ANY PARTICULAR YEAR

YEAR	GRANT	REFUSE	POST	SETTLE	SUPP	LAPSE	WITH	NOT/CL	N/PLG	**TOTAL**
1976	5	4	0	0	0	0	7	0	0	**16**
1977	5	7	0	1	1	1	5	0	0	**20**
1978	4	4	0	0	1	0	8	0	0	**17**
1979	1	2	0	1	0	0	5	0	0	**9**
1980	4	4	0	1	0	0	4	0	0	**13**
1981	3	5	0	1	0	1	7	2	0	**19**
1982	3	6	0	1	0	2	4	0	0	**16**
1983	6	3	0	0	0	3	13	0	0	**25**
1984	4	7	1	0	0	4	11	1	0	**28**
1985	2	8	0	0	0	0	13	0	0	**23**
1986	4	4	0	1	0	1	15	1	0	**26**
1987	4	4	2	1	0	1	18	2	1	**33**
1988	10	10	3	0	0	10	15	4	0	**52**
1989	14	14	1	0	0	8	16	9	1	**63**
1990	3	9	0	0	0	6	18	9	0	**45**
1991	12	10	0	0	0	1	11	17	0	**51**
1992	9	5	1	2	0	2	11	15	0	**45**
1993	6	4	0	1	0	1	5	14	0	**31**
1994	3	2	0	0	0	1	4	15	0	**25**
1995	7	0	0	0	0	0	0	11	0	**18**
1996	6	3	1	1	0	2	6	9	0	**28**
TOTAL	**115**	**115**	**9**	**11**	**2**	**44**	**196**	**109**	**2**	**603**

SOURCE: Survey Results 1999

KEY TO TABLE 8

Grant	-Appeal Granted	Refuse	-Appeal Refused
Post	-Case Postponed Sine Die	Settle	-Out of Court Settlement
Supp	-Supplementary Order	Lapse	-Case Lapsed

With -Case Withdrawn Not/Cl -Decision Not Clear
N/Plg -Not a planning issue

Case "Withdrawal" and "Not Clear" Columns Table 7

The number of cases that were withdrawn is very large at 196 out of 603 i.e. 33%. It makes one inquisitive as to why an applicant would lodge an appeal and weeks or months later withdraw the appeal. Under propensity to appeal it was established that for all planning appeals 10 in 13 fail at the Administrative Court. This statistic compared to the other that 1 in 3 are withdrawn (Table 7) makes it imperative to account for this high withdrawal/failure rate. Some of the reasons for this are outlined below.

(a) In three cases the applicants realised that the appeal did not have a chance. In these situations they withdrew. For example, case number T1462, Sunrise Syndicate (Pvt) Ltd Vs. City of Salisbury, February 1979, an Enforcement Order was served on a property in Malbereign Township 2, Harare. In this case there was an illegal occupation of a building. It had plenty of graffiti and evidence of vandalism. The City Council wanted it demolished, but the Appellant did not. The matter was brought to court but appellant admitted that he did not have enough funds to renovate the building. He, therefore, withdrew the case.

(b) There is a case where the owner/applicant died before the case was concluded. Those who inherited the property shelved the application. This happened on an appeal against the refusal to subdivide Observatory Farm in the Mt Hampden area. When the owner died, the children withdrew the case.

TABLE 8: HOW EACH CASE WAS FINALISED: DECISION

TYPE OF DECISION	NUMBER OF APPEAL CASES	% OF TOTAL POPULATION
Appeal Granted	115	19.1
Appeal Refused	115	19.1

Case Postponed Sine Die	9	1.5
Out of Court Settlement	11	1.8
Supplementary Order	2	0.3
Case Lapsed	44	7.3
Case Withdrawn	196	32.5
Not Clear What Happened	109	18.1
High Court/Not Planning	2	0.3
TOTAL	**603**	**100**

SOURCE: Survey Results 1999

Cases in the row *Not Clear What Happened* were certainly not determined.

Please note that in some cases the decision is not categorically stated but the paper has tried as much as possible to outline it as given in the record books without interpretations.

(c) The majority of the 196 just withdrew the court action but did not give any reasons. Others adopted an attitude of resignation. This attitude may be related to lapsing of court cases as well. This may be explained by the propensity to appeal – a gut reaction. After the applicant had examined the decision closely he would find that there was nothing to appeal against and withdrew the court case. This may also be linked to the argument stated earlier in the literature review (Chapter 2) that the 28 days within which to note an appeal may be too short to allow for a comprehensive decision on the part of the applicant. The following statement is seen in 31 withdrawal letters, "Please note that after reconsideration we have withdrawn our appeal". They never explained what had been reconsidered.

(d) The Respondent saw that the chances of winning the case were slim. For example, Case Number T1475, in Meadows Farm (Pvt) Ltd versus Bromley Ruwa Council and Mr D J Cooper, 1981. Mr Cooper applied for permission to build a church on the Remaining Extent of Mashonganyika in Goromonzi District. A neighbour objected but the Council granted a permit. The neighbour lodged an appeal with the court against the granting of a permit. But on second thoughts Mr D J Cooper withdrew his respondent's case. The following is an extract from the agreement "…on the basis that the parties all agree that they will respectively bear their costs (save

for contribution by the additional respondent) and will take effect on the date which we are able to file this letter on behalf of appellant." The church was not built.

(e) Court actions are also withdrawn if new schemes or local development plans or master plans or draft national and regional policies offer an opportunity to resubmit the same application and gain approval. It may be delayed but less expensive and will achieve what the court action may have been intended for. This is best illustrated by the case of Riseholm Farm versus the Minister of Local Government, Rural and Urban Development. The owners of Riseholm had been refused a subdivision application. They lodged an appeal but when it became clear that the Goromonzi Rural Master Plan and the Arcturus Local Development Plan that were under preparation would allow the proposed subdivision the case was withdrawn.

(f) Out of court settlement: In situations where out of court discussions took place, for example with regard to an onerous condition, once this is removed or a permit is modified or refusal notice is reversed and a permit issued, a court case may be withdrawn. For example, in the matter between the owner of Elphida and the Minister of Local Government, on a subdivision application for Elphida and Subdivision A of Lichfield of Willsden Farm, it was withdrawn because he was issued a permit through a ministerial directive citing national interest. Initially, the application for a permit had been refused because the resultant properties were not agriculturally viable.

(g) An application was lodged in terms of section 49(3) with the City of Harare to change an open space on Subdivision J and Subdivision 61 of Helensvale Township to residential purposes and subdivide the land into residential stands. The residents of the area objected to this. Council in the beginning did not bother to adequately answer most of the objectors' concerns. The main area of disagreement was the non-disclosure by council of the minimum building value and the fact that a proposed 15m road was being superimposed on a narrow existing road servitude that could not accommodate the 15m road. When the case, T1940, was at the court the council then met the objectors. After the meeting, council withdrew on 11 February 1994 when the case was set down for 17 February and declared a no contest. The proposed change of use and subdivision was abandoned.

(h) Relatives of the owner/applicant, mostly children, or business associates may have a different view. They brought pressure to bear on the applicant to abandon the action and implement other ideas. This happened in the Goromonzi area.

(i) In some cases court action has been withdrawn because developers resubmitted the application taking in to account the planning aspects pointed out when it was refused. They re-designed the proposed activity and altered the business proposals.

In Table 7 there are 109 cases under the column "not clear" what happened. In the Administrative Court register, files at the Department of Physical Planning and files at the National Archives the form of decision made on these cases could have been withdrawn, lapsed, settled outside the court or postponed sine die. It is worth noting that the high number of cases under "not clear" what happened between 1991 and 1996 corresponds with a low number of cases that "lapsed", were "granted" or "refused". One may conclude that on these cases that are "not clear what happened" developers may have continued with whatever form of development they were engaged in. This is so because with the introduction of ESAP and the indigenisation process (discussed in Chapter Five) LPAs were put under pressure to relax development control and let development take place even outside the set parameters.

Examples of Propensity to Appeal

It is admitted that Table 5 above would have been more meaningful had it captured the total number of planning permission applications by district. The propensity to appeal can be calculated by dividing the relevant total number of planning permission applications by the corresponding total number of appeals lodged. Or the total number of appeals divided by the total number of refused appeals. However, data on the number of planning permission applications in LPAs is incomplete or is not reliable. The reasons are (From Boards of Enquiries and Audit Reports on LAs):-

a) LPA boundaries have not been constant. Under the history of development control in Chapter Five, it has been pointed out that LPAs in the 1960s were 10, increasing to 30 and

later to over 100 in 1985. In 1993 they were reduced to 80 after the amalgamation of District Councils and Rural Councils.

b) Some LPAs do not have established file registry systems leading to poor records.

c) The high turn over of staff in the LAs has meant lack of consistency.

d) LPAs' desire not to have up to date records on planning permission applications is also related to manipulations to favour certain applicants.

Three scenarios on propensity to appeal are given below. *Firstly*, the general propensity to appeal can be expressed as:

Total Number of Planning Appeals 1976-1996	=	603	=	1,3	or	13
Total Number of Appeals Unsuccessful 1976-1996		477		1		10

Ten in thirteen fail.

Secondly, propensity to appeal is dealt with comparatively by using figures from the Administrative Court on RTCP Act sections 26(1), 26(3), 40 and 49 countrywide. The sections relate to planning permission appeals which are the subject of the sample study.

Total Section 26(1) Planning Permission Appeals	=	109	=	1,3	or	13
Total Section 26(1) Appeals Unsuccessful		87		1		10

Ten in 13 fail.

Total Section 26(3) Planning Permission Appeals	=	147	=	1,4	or	14
Total Section 26(3) Appeals Unsuccessful		107		1		10

Ten in fourteen fail.

Total Section 40 Planning Permission Appeals	=	95	=	1,4	or	14
Total Section 40 Appeals Unsuccessful		66		1		10

Ten in 14 fail.

Total Section 49 Planning Permission Appeals	=	20	=	1,3	or	13
Total Section 49 Appeals Unsuccessful		16		1		10

Ten in thirteen fail.

Total Sections 26(1&3), 40, 49 Planning Permission Appeals =	371	=1,3	or 13
Total Section 26(1&3), 40, 49 Appeals Unsuccessful	276	1	10

Ten in thirteen fail at appeal.

Third and lastly, the propensity to appeal is dealt with through the case study on Harare City Council.

a) On subdivisions Harare City:

Total Planning Permission Applications	=	2000	=	57
Total Planning Permission Appeals		35		1

One out of fifty seven LPA decisions are appealed against.

The propensity to appeal is based on calculations on Sections 26(1), 26(3), 40 and 49 of the RTCP Act is distorted by the number of cases which are "not clear" what happened to them and "not specified" as seen in Table 7. The four sections were singled out for detailed analysis because the study focuses on planning permission applications. The aim is to show which section succeed more than the others on appeal to the Administrative Court (See Table 9). Analysis by section shows that Section 26(1) appeals succeed more compared to Section 26(3) cases. It is because of the special consideration aspect.

Determined Cases

This Part One of the analysis focused on the general characteristics of the appeal cases. The research paper narrows in on determined cases which are 230 in number. This small passage briefly deals with the determined cases in preparation for Part Two of the analysis chapter.

Focusing on the determined cases, 230 of them, the most successful (granted/allowed) appeals were the applications for subdivision and consolidations, Section 40, with the ones being granted being 8% higher than they refused (See Tables 8 & 9). They were followed by Section 26(1),

application for a normal planning permit with a 3% margin for granted above the refused. The most unsuccessful cases were the enforcement orders, Section 32, with the refused being 7% higher than the allowed. They were followed by the special consent appeals, Section 26(3), with 3%. In simple terms it means that Section 26(3) and Section 32 appeals had a greater chance of failing. They fail because special consent, Section 26(3), is for developments that are not ordinarily allowed in the zone. For it to be allowed one has to prove need. Section 32 enforcement orders are issued against development done illegally. Such development is not easily regularised since it may have been done knowing that it would not get planning permission.

TABLE 9: FOCUS ON APPEAL CASES THAT WERE GRANTED OR REFUSED BY THE ADMINISTRATIVE COURT

TYPE OF CASE	CASES GRANTED (NUMBERS)	CASES REFUSED (NUMBERS)	CASES GRANTED %	CASES REFUSED %
Section 19/Supplementary Order	2	2	0.87	0.87
Section 26 (1)	22	11	9.58	4.78
Section 26 (3)	40	46	17.39	20.00
Section 29	2	0	0.87	0
Section 30	0	1	0	0.43
Section 31	0	0	0	0
Section 32	10	25	4.35	10.87
Section 36	1	0	0.43	0
Section 40	29	13	12.61	5.65
Section 49	4	5	1.74	2.17
Roads	1	2	0.43	0.87
Permit Conditions	1	0	0.43	0
Not Clear	1	5	0.43	2.17
Title Conditions	2	4	0.87	1.74
Section 50	0	1	0	0.43
TOTAL	**115**	**115**	**50**	**50**
TOTAL	**230**		**100**	

SOURCE: Survey Results 1999

Refer to Table 6 for Key to Table 9

In the Mashonaland Province the level of determined cases was high with 42 out of 100 of cases being determined (heard in court) whilst Midlands had the least with 13 out of 100 being determined. As discussed elsewhere above, Mashonaland has the advantage of having the Administrative Court in its area thereby being easily accessible compared to other provinces.

6.2.4 Conclusion on Part One of Chapter Six

The statistical analysis of the planning appeals population has shown that the intensity of planning appeals is closely related to urban settlements of high activity like Harare, Bulawayo and Mutare. It also revealed that planning appeals from rural areas emanate mostly from peri-urban and large-scale commercial farming areas. Because of that, rural planning appeals are concentrated around Harare, Bulawayo, Mutare and Gweru.

There is a 50-50 balance in the number of cases determined having been dismissed or upheld. According to the English Best Planning Practice code less than 40% of the planning appeals brought before the court should be upheld. But one may argue that if the number of withdrawn cases is included, which equal the number of cases determined, then less than a quarter of the appeal cases succeeded (or were upheld). The LPAs therefore, made the correct decisions.

On trend, the number of cases brought before the court has decreased from 1991. General statements have been made by those involved in development and development control that the number of planning court cases has been on the increase. This is only true up to 1989.

An observation is that appeals are in low density and commercial/industrial areas mostly if not only. This can be explained by the level of affluence and the way residents cherish the environment in relation to poverty stricken high density areas.

PART TWO (Chapter Six)

6.3 THE ASPECT OF DELAY AND RELATED CHARACTERISTICS OF THE SAMPLED PLANNING PERMISSION APPEAL CASES

Part Two of this Chapter focuses on how the planning permission appeals were processed. The study looks at planning permission appeals in a holistic approach in comparing the statutory process and set deadlines with the actual process as documented in the court files and registers. The issue of time taken to process the appeals is analysed and commented upon. Time is of essence in the processing of planning permission applications and planning permission appeals. Because of the evaluation aspect of the study, it is necessary to understand how much time those appeal cases took at the planning permission application stage as regards the national sample of 74 cases. It is in this vein that a case study of planning permission applications in Harare was undertaken to enhance the commentary on the appeal cases. The aim here is to address the study problem i.e. to investigate, explain and comment bearing in mind the objective which states the need "to ascertain whether delays occur in the exercise of development control" (Chapter One, passage 1.2.4). Part Three of this chapter will relate the delay time period to indicators of change in development costs or lost earnings.

6.3.1 Analysis of Time Taken to Process Planning Permission Applications and Determine the Planning Permission Appeals (The Sample of 74 Cases)

This passage provides explanatory remarks to the whole of Part Two of Chapter Six. It sets out the statutory time periods within which LPAs are expected to process planning permission applications and appeals giving the basis for comparative analysis with actual time periods in practice. The data analysis that is done under this Part Two takes cognisance of the fact that:

- A Section 26(1) ordinary planning permission application should take 92 days or three months to finalise.

- A Section 26(3) special consent application should take 92 days or three months to finalise
- A Section 40 subdivision and consolidation application should take four months or 122 days to finalise.
- A Section 49 change of reservation application should take four months for the LPA to decide (has no clear statutorily defined time limit within which it should be processed.
- This Part Two analyses the sample of 74 appeal cases. The sample was drawn up using stratified and random systematic sampling as discussed in Chapter Four, passage 4.5. In that passage, 4.5, Tables 1 and 2 show how the representative sample was worked out to yield 17 cases under Section 26(1), 35 under Section 26(3), 18 under Section 40 and 4 under Section 49 of the RTCP Act.
- "N" per section of the RTCP Act per aspect under analysis varies in line with the number of "valid" cases at that particular juncture. Therefore, N (valid) appeal cases for each of the tables in this Part Two of Chapter Six are determined by relevant data availability for the particular RTCP Act section under analysis.

The sample was tabulated by Date of Acknowledgement, Date of Expiry and Actual Decision Date of the LPA on the planning permission application. This was followed by columns on Date of Notice of Appeal, Date of Appellants' Case, Date of Respondent's Case, Set Down Date and Date of Court Judgement on the sampled cases. (See passage on Court Sitting below). These dates cover the time period of processing and hearing the appeal at the Administrative Court.

This was followed by yet another set of columns showing the difference in number of days of delay between:

-Expiry Date for processing the planning permission application and Date the Application was Acknowledged by the Local Planning Authority,

-Actual Decision Date and Date the Application Expired in terms of statutory time,

-Date of Notice of Appeal and Actual Decision Date,

-Date Appeal Case was lodged and Date of Notice of Appeal,

-Date of Respondent's Case and Date of Appellant's Case,

-Date of Appellant's Reply and Date of Respondent's Case,

-Date of Set Down and Date of Respondent's Case, and

-Judgement Date and Set Down Date.

In addition the aspect of set down was analysed in detail separately to capture more information relating to the act of condonation.

6.3.2 Time Taken to Process Planning Permission Applications at the LPA

Using the sample of 74 appeal cases, the manner in which the planning permission applications were handled is analysed in the context of statutory time periods and the actual time period. It gives a background to the relationship between time delays at LPA level and Administrative Court level. Statistics show that, in general half the planning permission applications of what became planning permission appeal cases were decided outside the regulation time. This means some developers are prejudiced since their applications take long to decide.

6.3.2.1 Setting Decision Making Time Periods, the Regulations

TABLE 10: Expiry Date Minus Acknowledgement Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	92 Days	92 Days	122 Days
Lowest	89	89	92
Highest	455	93	138
Total	1394	2096	1175
N (valid)	11	23	10
Mean	127	91	118
Median	91	91	122

Source: Survey Results 1999

KEY TO TABLE 10

STATUTORY TIME: The number of days within which the LPA should decide a planning permission application.

LOWEST: The least number of days within which a LPA set itself to decide a planning

permission application.

HIGHEST: The highest number of days within which a LPA set itself to decide a planning permission application.

N: Number of applications used in the analysis.

On the whole, Table 10 shows that the lowest number of days allocated to an application before a decision by the LPA is made is 89 days. The highest is 455 days for one of the applications. However, the planning permission applications under scrutiny can only be decided on within 92 days or 122 days. The 89 days appear under Sections 26(1) and 26(3). It means the applicants were put at an advantage by a possible 3-day early decision. Similarly, under Section 40 the shortest decision-making period is 92 days. Some applicants were promised a decision a whole month (30 days) earlier than is stipulated in the regulations. Unfortunately, for Section 26(1) the LPA allowed itself 455 days within which to make a decision on one of the applications, 365 days more than is legal (statutory time period). This was repeated under Section 40 where the decision period was set at 138 days, 16 days more than is legal. It should be noted that the decision period could only be extended if a decision date falls on a weekend or a public holiday to which the immediate next working day becomes the legal decision-making date. Please note that this paragraph is dealing with sound recording of dates and calculated time periods, for decision-making dates, in the LPAs planning permission application registers. From this angle it is pleasing to note that if one uses the median instead of the mean, the regulations set decision periods (statutory time frame) of 92 days for Sections 26(1) and 26(3), and 122 days for Section 40 are confirmed. LA officials, although they make one or two mistakes (See Table 10), adhere to the rules and regulations on setting themselves decision-making periods. This recording of correct time should not be confused with the actual processing time in practice discussed in the passage immediately below.

6.3.2.2 LPA Actual Decision Date Subtract Expiry Date

The passage immediately above discussed the regulatory decision-making periods (Set by the RTCP Act) and the decision-making periods the LPAs set for themselves (Stated in the LPA

planning register). In this passage the discussion shifts to the decision-making periods the LPAs set for themselves vis-a-vis the actual periods it took them to make the decisions (See Table 11). In other words this section discusses the real situation. From Table 11 some of the applications under Section 26(1) were decided 62 days in advance of the expiry date or 30 days after the application was made instead of the regulatory 92 days. Under Section 40 some applications were decided within 93 days of making an application instead of the regulatory 122 days. On the other hand in some applications it took the LPAs 266 days more under Section 26(1), 1072 days more under Section 26(3) and 305 days more under Section 40 to decide the applications.

TABLE 11.: Actual Decision Date Minus Expiry Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	92 Days (± Extension)	92 Days (± Extension)	122 Days (± Extension)
Lowest	(-62)	(-44)	(-29)
Highest	266	1072	305
Total	647	2657	875
N (valid)	11	21	9
Mean	59	127	97
Median	15	59	78

Source: Survey Results 1999

KEY TO TABLE 11

STATUTORY TIME: The number of days within which the LPA should decide a planning permission application including requests for extension.

LOWEST: The least number of days within which a LPA set itself to decide a planning permission application.

HIGHEST: The highest number of days within which a LPA set itself to decide a planning permission application.

N: Number of applications used in the analysis.

Some of the applications were controversial or poorly done, in the process they were acknowledged whilst they were incomplete.

On mean average Section 26(1) applications were decided on 59 days after decision date, Section 26(3), 127 days and Section 40, 97 days. The median average put some reality into the statistics. For Section 26(1) using the median half the number of applications were decided within 15 days late, half Section 26(3) applications within 59 days late and half the Section 40 applications within 78 days late. This means there are few late decided applications that are extreme. Extremely late decisions cause the mean-average to sharply rise above the median-average. The delay on Section 26(3), special consent, applications is explained mainly by the need to advertise. This takes time and money. Also Section 26(3) applications are deliberated and decided on using need and other material considerations instead of the development plan. Section 26(1) applications, which are mainly in the context of the development plan, have a median just 15 days above the expected 92 days. The delay on section 40, subdivision and consolidation applications is related to the time needed by the Ministry of Agriculture to test economic viability of the proposed property. Because of the workload and procedure followed in assessing farm viability, a lot of time is lost thereby delaying decision-making by three months (97 days).

6.3.3 Time Spent between LPA Decision on Planning Permission Applications and Lodging of Notices of Appeal

After deciding on an application, the LPA notifies the applicant of its decision. It also indicates to the applicant the channels to follow if s/he wishes to appeal, at his/her own risk of course. How much time does the applicant take before lodging a Notice of Appeal? The appellant is supposed to make an application within one month, in terms of the RTCP Act Sections 38(1)(a) and 44(1)(a), of the LPA deciding his/her application unfavourably (See Table 12). The actual decision-making date instead of the statutory set decision-making date was used because an appeal is lodged in accordance with the actual day a decision was made. There is a situation where the notice of appeal was lodged within 1 day of receiving the refusal notice and another where it took 936 days to do so. For the applicant to appeal within one day, it is not hinted in the papers why so. However, the applicant was resident in Harare where the Administrative Court is. The instantaneous appeal was because he was convinced that council would grant a permit. He could not believe it on

receiving a refusal notice. For the applicant who unbelievably took 936 days to lodge an appeal, his claim was that (he did not understand the procedure) the consultant handling his case had not informed him about the outcome. Other reasons given by applicants for failure to make appeals within deadlines are that the appellants did not know the procedures; that they did not have money to launch an appeal; that they were following the lawyer's advice or that after initially deciding not to pursue the matter, they changed their minds. Since the judges granted condonation, they found the reasons plausible although in Chapter Two it was noted that judges tended to be lenient with appellants or respondents who failed to meet deadlines.

TABLE 12.: Appeal Notice Date Minus Actual Decision Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	28 Days	28 Days	28 Days
Lowest	22	1	5
Highest	564	118	936
Total	1318	1099	1296
N (valid)	18	31	13
Mean	73	36	100
Median	31	28	28

Source: Survey Results 1999

KEY TO TABLE 12

STATUTORY TIME: The number of days within which the appellant should lodge a Notice of Appeal after LPA decision on planning permission application.

LOWEST: The least number of days within which an appellant submitted a Notice of Appeal.

HIGHEST: The highest number of days within which an appellant submitted a Notice of Appeal.

N: Number of applications used in the analysis.

The median of 28 days indicates that at least half the appellants for Sections 26(3) and 40 made their appeals within the statutory time. However, the mean-average of 100 days indicates that

Section 40 has extreme cases of late submission of Notice of appeal. Section 40 concerns agricultural subdivisions, which are out of town. Communication is not easy, it partly accounts for the late submission of Notice of Appeal. For Section 26(1) just a quarter lodge Notices of Appeal on time (See pattern under passage 6.2.2). Section 26(1) is determined by development plans and/or development orders in place and by the permitted development in a given area. When an applicant's application is determined unfavourably, the applicant turned appellant will think twice before lodging a Notice of Appeal.

6.3.4 Time Taken to Determine Planning Appeals at the Administrative Court

This passage looks at the time period it takes an appellant to make an appeal from the time an appellant lodges a Notice of Appeal to the time a decision is made by the court on the appeal. It analyses the performance of the appellant, the respondent and the court against the various deadlines on lodging a Notice of Appeal, submitting Appellant's Case, submitting Respondent's Case, replying to the Respondent's Case and the Sitting of the court. Thereafter the matter is set down. Rough calculations indicate that within 4 to 5 months a simple case could be finalised in the administrative court.

6.3.4.1 Period between placing of Notice of Appeal and Lodging of Appeal Case

The regulations state that the appellant should lodge his or her heads of argument within 28 days of placing a notice of appeal. The shortest period within which appellant's case was submitted to the Registrar of the Administrative Court is 3 days (See Table 13). The longest period is 365 days. Using the median-average generally it took the appellant 28 days to lodge an appeal under Section 26(1), 32 days under Section 26(3) and 61 days for Section 40. The long time periods of 365 days for Section 26(3) and 113 days for Section 40, as stated immediately above are partly explained by some appellants' thinking that the Notice of Appeal is the same as or is adequate as the Appellants' Case .

In some cases the Notice of Appeal and Appellant's Case were combined.

Others even argued that they expected the Registrar to give direction. (See passage 6.3.7)

Whilst in the years up to 1985-86 the Registrar used to make written follow ups, this is not evident from 1986 onwards. There is increasingly little recorded correspondence as year 1996 is approach 1996.

A comparative analysis of these figures shows that in practice subdivision (Section 40) appeals are always late by one month. In other words the 28-day appeal period is not workable.

Turning to specific sections of the RTCP Act, in Part One of Chapter Six, a statistical analysis of all appeal cases between 1976 and 1996 showed that most appeal cases for Sections 26(1) and 26(3) were from Greater Harare and most Section 40 (subdivisions) appeals were from the commercial farms of Mashonaland. Bearing this in mind and measuring distance to the Administrative Court in time, it partly explains why Section 40 papers are filed late.

TABLE 13.: Appellant's Case Date Minus Appeal Notice Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	28 Days	28 Days	28 Days
Lowest	3	13	20
Highest	74	365	113
Total	390	1239	588
N (valid)	13	22	10
Mean	30	56	59
Median	28	32	61

Source: Survey results 1999

KEY TO TABLE 13

STATUTORY TIME: The number of days within which the appellant should lodge Appellant's Case with the Administrative Court.

LOWEST: The least number of days within which an appellant submitted Appellant's Case.

HIGHEST: The highest number of days within which an appellant submitted Appellant's Case.

N: Number of applications used in the analysis.

6.3.4.2 Date of Respondent's Case Subtract Date of Appellant's Case

Statutory time for the respondent to lodge the Respondent's Case in response to the Appellant's Case is 28 days. The respondent is expected to logically argue his/her case in light of the appellant's case in a wholesome manner in line with what is stipulated in the Town Planning Court Rules of 1971. An analysis based on the median shows that, in general, Sections 26(1) and 26(3) Respondent's Cases were submitted on time as demonstrated by median average values of 27days and 28 days, respectively (See Table 14).

On the other hand Section 40 respondents took a mean average of five months to respond to the Appellant's Case. Even the median-average shows that half of section 40 appellant's cases were responded to after 120 days, which is more than fourfold the 28-day statutory time.

TABLE 14.: Respondent's Heads Date Minus Appellant's Case Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	28 Days	28 Days	28 Days
Lowest	9	6	6
Highest	68	138	459
Total	363	1037	2395
N (valid)	12	27	14
Mean	30	38	171
Median	27	28	152

Source: Survey Results 1999

KEY TO TABLE 14

STATUTORY TIME: The number of days within which the respondent should lodge Respondent's Case after receiving Appellant's Case.

LOWEST: The least number of days within which a respondent submitted a Respondent's Case.

HIGHEST: The highest number of days within which a respondent submitted a Respondent's Case.

N: Number of applications used in the analysis.

6.3.4.3 Period between Set Down Date and Date Respondents' Case was Submitted

TABLE 15: Set Down Date Minus Respondent's Case Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	None	None	None
Lowest	8	7	7
Highest	211	238	145
Total	1589	3253	671
N (valid)	16	32	13
Mean	99	102	52
Median	93	79	42

Source: Survey Results 1999

KEY TO TABLE 15

STATUTORY TIME: The number of days within which an appeal should be set down.

LOWEST: The least number of days within which an appeal should be Set Down.

HIGHEST: The highest number of days within which an appeal should be Set Down..

N: Number of applications used in the analysis.

As required by the Rule 26 of the Town Planning Court Rules of 1971, when all the relevant information has been gathered by the Registrar, the Registrar is expected to set a hearing date. The time within which such a request should be made is open. The RTCP Act does not set the time period the Administrative Court must have heard a town planning appeal after the Respondent's Case or Reply to Respondent's Case has been submitted. The set down date is negotiated on the instigation of the appellant. So in this paragraph the Administrative Court has all the information needed for an appeal to be heard. How long does it take for an appeal to be heard the moment the court is furnished with all the required information? It ranges from 7 days to 238 days. Using the median-average, half of Section 26(1) appeals are heard within 93 days of having a complete

appeal case document, 79 days for Section 26(3) and 42 days for Section 40 (See Table15). Using the mean-average it takes 92 days (3 months) for a complete appeal case document on Sections 26(1), 26(3) and 40 to be placed before the court.

There are a number of implications emanating from this late sitting and determination by the administrative court. The tight deadlines are good for investors who aim at minimising costs. The appellant and the respondent work within a tight time framework (of which deadlines are overshot) and hope for a quick end to their woes. But that does not happen. It can be argued that the set down date is the responsibility of the appellant. However, this depends on what is at stake, i.e. benefits from the court judgement. The appellant may be pretty aware that he/she has got no chance of winning but leaves the court case in suspense to use it as leverage to keep council on its toes. This delay in hearing the case also contributes to the escalating costs or delay in revenue earned of the projects as discussed in Part Three of Chapter Six below.

6.3.4.4 The issue of Condonation

Condonation is an act of the court to grant the respondent or appellant the indulgence of filing his/her case out of time. The decision to condone a non-compliance with its Rules is arrived at after the court has taken into account broad factors which include:

a) that the delay involved was not inordinate, having regard to the circumstances of the case;
b) that there is a reasonable explanation for the delay;
c) that the prospects of the appeal succeeding should the application be granted are good;
d) and the possible prejudice to the other party should the application be granted."

Each case must however be decided on its own particular facts, the prospects of success being in general an important, though not decisive consideration, Gubbay in Director of Civil Aviation **Vs** Hall (1990)(2) ZLR 354. Through granting permission to file late Notices of Appeal, Respondent's Case or Appellant's Case, appeal cases which would have been thrown out on account of not meeting deadlines are heard.

It also allows for justice to be seen to done.

Basing on the sampled 74 cases 23% of appellants applied for condonation for late lodging of the Notice of Appeal (See Table 16). At the stage of filing the Appeal Case 22% applied for condonation. 23% of the Respondents applied for condonation for late filing of Respondent's Case. Combined condonation for late filing of Cases on the lodging of Notice of Appeal and Appellant's Case stands at 38% of appeal cases. The Court's view on application for condonation has been very liberal rejecting only one (1) such case because the Court thought it was hopeless (please note that records are not very clear where condonation is not part of the judgement).

TABLE 16: Condonation

ACTION	CONDONATION ON NOTICE OF APPEAL		CONDONATION ON APPELLANT'S CASE		CONDONATION ON RESPONDENT'S CASE	
	Number	%	Number	%	Number	%
Applied for Condonation	17	23	16	22	17	23
Did not Apply for Condonation	56	76	55	74	54	73
Action Taken not Clear	1	1	3	4	3	4
TOTAL	74	100	74	100	74	100

Source: Survey Results 1999

What do these figures of 23%, 22%, the combined figure of 38% and 23% mean? They mean that the action of appealing is impulsive, only to think about it after lodging the appeal. Or the time set aside for one to appeal is too short (See passage on propensity to appeal). This is further compounded by the fact that in 32% of the cases the 'set down dates' were changed/postponed.

6.3.4.5 Date of Court Sitting Minus Set Down Date

When an appeal has been set down it is assumed it will be heard on that particular date. This is not always the case as there are some intervening reasons. The aspects of adjournment and postponement come in. With adjournment, an appeal is set down and the hearing begins. However, due to various reasons such as the need to gather more information or other commitments by the assessors and lawyers, the court is adjourned to another day. With postponement, a set down date is agreed. On the appointed day or just before the date due to various reasons such as illness and none availability of a lawyer due to other emergency engagements the sitting does not take place. This demonstrates that even after the arrival of the date of hearing hitches still abound resulting in further delays and therefore more costs. For all RTCP Act sections under scrutiny the median is zero (o) days (See Table 17). Most cases were decided on the appointed date. On those that were decided late the reasons are discussed further below. There are cases where the Set Down Date was brought forward hence a minus two (2) days meaning it was heard two days earlier than was planned for.

TABLE 17: Judgement Date Minus Set Down Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
STATUTORY TIME	Appointed Day	Appointed Day	Appointed Day
Lowest	(-2)	0	0
Highest	147	384	32
Total	299	1104	33
N (valid)	18	34	13
Mean	17	33	3
Median	0	0	0

Source: Survey results 1999

KEY TO TABLE 17

STATUTORY TIME: The agreed date on which the court should sit.

LOWEST: The least number of days it took the Administrative Court to sit before or after Set Down Date.

HIGHEST: The highest number of days it took the Administrative Court to sit after Set Down Date.

N: Number of applications used in the analysis.

TABLE 18: The Issue of Adjournment

ACTION	ADJOURNMENT TO NEXT DAY (out of 74)		ADJOURNMENT TO ANOTHER DAY (out of 74)		COMBINED NEXT AND ANOTHER DAY (out of 74)	
	Number	%	Number	%	Number	%
Case Hearing	8	11	13	18	20	27

Source: Survey Results 1999

Total for cases adjourned is 20 and not 21 because one case T1477 was adjourned to the next day as well as to another day.

An analysis of Table 18 shows that cases that were determined over two days, if considered independently, constitute 11% of the sample. On the other hand, cases that were set down and heard but postponed to another day (not the next day) constitute 18% of the sample. If the two are combined, say cases that were heard in more than one day (sitting), only one under "heard next day" and "heard another day" coincide. Thus 27% of the cases were heard in more than one day.

TABLE 19: The Issue of Postponement

NUMBER OF SET DOWNS	Initial Set Down	One Postponement	Two Postponements	Three Postponements	Four Postponements	NOT Indicated	TOTAL
NUMBER OF CASES (SAMPLE)	49	14	7	2	1	1	74
CASES AS %ge OF SAMPLE	66	19	9	3	1	1	100

Source: Survey results 1999

Table 19 above shows that in 66% of the cases after a Set Down the case was decided on. 19% of the cases had the Set Down postponed once, with twice in 9% of the cases and thrice in 3% of the cases. Generally, the courts did not delay the determination of cases. Please refer to the reasons for the delay in determining cases in passage 3.6.7 below.

6.3.5 Cumulative Time Taken to Process and Determine an Application

Cumulative time is considered in two situations. The first situation is where cumulative time is the time it took to determine (conclude) a planning permission application from the day an appeal was lodged to the day it was determined by the Administrative Court. From Table 20 it took between 48 days and 641 days to determine a case. The mean average time taken to decide a case was 166, 185 and 249 days for Sections 26(1), 26(3) and 40, respectively. For subdivisions (Section 40) it was two months at the earliest and twenty-one months at the latest. For development applications (Section 26(1)) it was two months at the earliest and ten months at the latest. For special consent applications (Section 26(3)) it was two months at the earliest and fifteen months at the latest. For Section 49(3) change of use or reservation it was five months at the earliest and fifteen months at the latest. The median average value of 158 for Section 26(1), 168 for Section 26(3) and 228 for Section 40 for the 4 RTCP Act sections under consideration are very close to the mean average meaning there were no extreme cases of early or late determination by the Administrative Court. The distribution of the number of cases determined over time assumes a normal curve.

The second situation is where cumulative time covers the whole planning permission application process from the time an application for planning permission is submitted to the LPA to the time a case is determined at the Administrative Court. This is done to get a full picture of the length of time a prospective developer waits for a final decision on his/her proposed development.

TABLE 20.: Judgement Date Minus Notice of Appeal Date

RTCP ACT/ No. OF DAYS	SECTION 26(1)	SECTION 26(3)	SECTION 40
Lowest	48	52	48
Highest	278	465	641
Total	2994	5906	3492
N (valid)	18	32	14

Mean	166	185	249
Median	158	168	228

Source: Survey Results 1999

One may argue that the reasonable time for a LPA to make a decision is four months for section 26(1) and 26(3), and five months for section 40 applications. The statutory time to make a decision on sections 26(1) and 26(3) planning permission application is three months whilst that for section 40 is four months. The additional one month is for the LPA to put together its response in the form of a permit or a refusal notice. Furthermore, one can argue that the courts should be able to determine a case within four months of an appeal being lodged.

6.3.6 Date of Court Sittings and the Passing of Written Judgements

An analysis of the date of court sittings and the date written judgements were delivered shows a time period delay that raises debate. Data on this variable is hard to come by. However, a few cases were analysed through taking note of the sitting dates on the 1st page of the judgement and the date on the letter accompanying the judgement. In cases where there was no letter accompanying the judgement the Date Stamp date of the receiving office was used in the calculations. Delay in delivering the written judgement ranges from one month to five months. Therefore, the judgement date stated in the court register does not reflect the "actual" delivery of judgement since judgement is reserved after the hearing. This can be clear if one attempts to relate court sitting (judgement) dates to dates on which appeals were made to the Supreme Court, dates on letters of enquiry and dates on letters asking for clarification. However, part of this is beyond the scope of this study. One can argue that delivering judgement after five months is too long a wait when one looks at development costs.

It may be relevant at this juncture, in the light of the statements made above, to look at the reasons for delay at the courts as outlined in some examples below.

6.3.7 Factors Contributing To Late Determination of Cases at the Administrative Court

The time taken to decide cases at the Administrative Court is at times discussed as an issue by appellants and respondents. This depends on whom between the respondent and the appellant thinks he has been unfairly treated. This study, since one of its objectives is to evaluate the system, attempts to outline the situations in which the determination of cases is delayed. The examples given are not exhaustive but illustrate the point/factor.

(a) During the 1970s there was the struggle for the independence of Zimbabwe. Personnel in various work fields were stretched as government fought to stave off the liberation movement. For example, in case T1421, Archbishop of Archdiocese of Salisbury Vs. the City of Salisbury, February 1977, one of the key persons involved in the appellant's case was assigned to military duties. The case was postponed for 3 months. It was finalised on his return. 3% of the case were affected this way.

(b) The court also postponed 3% of the cases where the respondent or applicant was involved in other genuine business. In case T1479, Perfecto Dry Cleaners (Pvt)Ltd Vs. City of Salisbury, February 1981, the principal witness was out the country on business. The principal witness had to be waited for from 13 November 1980 to 4 February 1981 the day the case was finalised.

(c) About 7% of the cases were affected by circumstances related to the availability of lawyers. In one situation the appellant made a late notice of appeal to the refusal by City of Harare to grant special consent for a crèche. He claimed he did not know that he had the right to appeal, although that right was pointed out in the last paragraph of the refusal notice. The application for condonation was dealt within 3 months after issuance of refusal notice. The case was postponed 2 times after being set down. In the first instance it was because the lawyers for the appellant were not ready. In the other instance the postponement was because the appellant wanted to produce a petition by those who needed the creche. The case, T1423, C Milne Vs the City of Salisbury, March 1977, was concluded 14 months after date of refusal notice.

(d) There are situations (3% of the cases) where a case was set down, but with the passage of time an assessor who had agreed to be available for one reason or another became unavailable. Beause of the need to have assessors with a planning background, it took some time to find another suitable date. In one example a case, which was set down for January 17 1978, was postponed to February 27 1978.

(e) There are a few times (3%) when the postponement of a case was caused by the non-availability of the President of the court. In case T1470, Terreskane Hotel Vs City of Salisbury, July 1980, the President of the Administrative Court had other urgent issues to attend to and was away on the "set down" date. In another case the president of the court had to attend the funeral of a close relative.

(f) In a number of cases (4%) the postponement of the hearing was by "mutual agreement". It is not elaborated as to what it stands for or why the mutual agreement was necessary e.g. case T1477, Southgate and Bancroft Vs City of Salisbury, August 1982, which was postponed from August 15 to 19 1980.

(g) In 7% of cases lawyers were approached late by appellants or respondents who needed the services of lawyers. The lawyers would then ask for time to study the papers and put together their arguments. An example is case T1668, Glecom Investment PL Vs. City of Harare and Valuation Officer of the Ministry of Public Works and National Housing, where the case was set down for 8 September 1988 but was postponed to December 15 1988. Unfortunately, due to other problems, not mentioned, the case was finally heard on September 19, 1989.

(h) There are a number of cases (4%) that were not actioned by both the Court and the Appellant for a long time. The cases stayed for several months before being revived. The records do not contain enough detail.

(i) In 8% of the cases both the respondent and appellant asked for time to go and work out some form of agreement and come back later. This happened mostly where permit refusal was reversed and a permit issued with conditions attached. An example is case T1542, Medical

Investments (Ltd) Vs. the City of Harare, January 1984, which was postponed from January 5 to March 19 1984.

(j) 3% cases also got postponed because there was no one to take down minutes in short hand. This was before the making of records through taping of proceedings as happens these days. However, machine failure these days is still a cause for adjournment of cases.

(k) The Administrative Court's procedures and standards are partly governed by the Town Planning Court Rules of 1971. Appellants in 9% of the cases delivered the Notice of Appeal and Appellant's Case in a format that was not acceptable to the court. In other cases the Notice of Appeal and the Appellant's Case were delivered together without indicating so. This meant the court would not action the Appellant's Case. Appellants in some case delivered the Notice of Appeal and/or the Appellant's case together. This led to non-action. The processing of the application is delayed.

(l) Transport problems, though to less extent, a minute 1%, also played a part in delaying decisions on cases. In one case, T1798, S.C. Mountford Vs. City of Bulawayo, June 1992, the vehicle of the appellant's lawyer broke down and the court did not proceed.

(m) In 2 cases, the respondent asked for postponement in order to get additional respondents enlisted and for him to prepare. Additional Respondents are a feature where a developer sues a LPA for issuing a permit to another developer after objections as in case T1882, W.L. Mashford and Son PL t/a Joseph and Sampson Vs. City of Harare, October 1992.

(n) In case T1918, Mavuradonha Lodge (Pvt)Ltd Vs. Minister of Local Government Rural and Urban Development, the delay in finalising the case was caused by lawyers who were trying to engage the services of a Town Planner. The lawyers felt issues at hand needed the expertise of a Town Planner. That took them some weeks. As soon as they got a planner the case was finalised.

In concluding this passage on factors contributing to the late determination of cases one may point out that it is difficult to quantify. It is difficult because of the way records are made and kept.

However, based on the general trend from the SAMPLED cases, the most common reasons for the delay are:

i) the notice of appeal or appellant's case or respondent's case did not meet the planning court rules;

ii) mutual agreement to postpone;

iii) lawyers busy on other engagements;

iv) failure to understand the law mostly by the appellant

6.3.8 The Case Study of the City of Harare's Planning Permission Applications

This case study was done to give a clearer picture about what goes on at local planning authorities. This will be related to the passage above based on the nation-wide sample of 74 appeal cases titled "Time taken to Process Planning Permission Applications". What picture comes out of comparing the sample of 74 with the Harare City case study findings? What does it mean? This passage also includes enforcement orders as explanatory statements.

Time periods in the Processing of Section 26(3) Applications: City of Harare

Table 22 : Special Consent: City of Harare

STATUS	TIME 1	TIME 2	TIME 3	TIME 4
STATUTORY TIME	14 Days	None	None	92 Days
Lowest (days)	2	4	31	49
Highest	383	134	497	322
N (valid)	26	24	24	21
Total	815	1013	3478	3574
Mean	31.3	42.2	144.9	170.2
Median	16.5	29.5	132.5	172

Source: Survey Results 1999

Key to Table 22

TIME 1: Date of Acknowledgement minus Date Application was First received

TIME 2: Date of Advertising Application minus Date Application was Acknowledged

TIME 3: Date of Decision on Application minus Date Application was Advertised
TIME 4: Date of Decision on Application minus Date of Acknowledgement

The sampling technique used was random systematic (refer to Chapter Four, passage 4.6). The first thing was to study the Section 26(3) Register of the City Council and have a general understanding of its contents. The time span of the records was taken note of. Information available covered 1991 to 1996 (5 years). Applications for special consent totalled 509. The sample was to pick every 15th record. This gave a sample representative of 6.8%, which is above the generally agreed sample limit of 5%. So the first 15 were marked and assigned numbers 01 to 15. At a drop of a finger on the Random Numbers Table, a starting point was selected. The first double number from the starting point that fell within 01 to 15 was matched with the corresponding application for special consent (Section 26{3}). From there onwards every 15th record was made part of the sample. There are two or three cases where a chosen record was very doubtful as to its accuracy. In such cases the 14th or 13th record or the 16th record was used. It is observed that this did not impact on the general statistics of the special consent applications data.

As pointed out above the available data covered 1991 to 1996 which is a quarter of the period under study, 1976 to 1996. It was indicated that some of the past records were lost during the Commission of Inquiry into the City of Harare Council in 1999. The 1980 to 1989 special consent data analysed by Manyere (1989) is used to bolster the study. Therefore, in this section a comparative study reflect on Manyere's (1989) findings by way of picking on some aspects of her findings and co-joining them to the 1991 to 1996 findings. It is relevant to note that of the sample of 34 cases that were analysed 27 (61.8%) were granted special consent and 7 (20.6%) were refused special consent. The remainder were withdrawn with the exception of one that was sent to the Minister. The City Council was permissive to applications bearing in mind that 11.8% were withdrawn.

The data time period was analysed in five categories:

- Time period between date application was received and date application was acknowledged,
- Time period between date application was acknowledged and date application was first advertised,
- Time period between date application was first advertised and decision-making date,

- Time period between date application was acknowledged and decision making-date and
- Time period between date application was received and decision-making date.

On the time period between Date Application was Received and Date Application was Acknowledged one would expect acknowledgement to be done within 2 weeks. However, as shown in Table 22 only half (50%) of the applications were acknowledged within 2 weeks. Although there was no attempt to quantify the reasons for this late acknowledgement one of the main reasons is that applicants did not submit adequate information. It took long to submit the required information. In some cases there were negotiations to get the application to be in line with schemes or local development plan or master plans. In so doing the 2 weeks period within which to reply was not adhered to. There was delay.

The second time period aspect is the time between Date of Acknowledgement and Date of First Advertisement. (Two identical advertisements are made separated by at least 7 days). This time period shows the time an applicant delayed his/her application. This delay pushes back decision making time, which, generally, is reflected as LPA delay in decision-making. After being advised to advertise the lowest number of days an applicant took to advertise is four (4). The slow applicant took 134 days (four and a half months) to advertise and yet the application was supposed to be decided within 3 months. This application should have been a deemed refusal but it is one of the late advertisements that are let to stand by the LPA. In some of the situations the LPA asks for extension of time. On the whole half the applicants took up to 29. 5 days to advertise. It may be safely said that those who advertised within 30 days (29.5 days) did not contribute to the LPA making a late decision since they allowed the LPA 30 days to determine the application after furnishing the results of the advertisement. This could be accommodated in the monthly meetings of the Planning and Works Committee.

The third delay aspect is demonstrated by the time period Date Decision was Made subtract Date of First Advertisement. The fastest decision was made on the 31st day after an application had been advertised, just one day after closure of the advertisement period. Unfortunately only 25%

of the applications were decided within 90 days of the application having been advertised. The mean-average time for the applications basing on the dates they were advertised is 145 days. It was a big delay.

The fourth aspect of delay is based on the time period between Decision-Making Date and Date of Acknowledgement. The fastest application was decided on within 49 days of acknowledgement, 43 days earlier than the 92-day period allowed. Unfortunately as well (See paragraph above), only 16.7% of the applications were decided within the 92 day period. The rest were decided over a 100 days after acknowledgement. This delay is a attributable to the LPA because general statistics on the 509 special consent applications indicated that only 15.3 % of the advertisements were objected to. This does not correspond with the 83.3% applications that were decided on late. It shows that other factors are at play in the making of late decisions on planning permission applications. Lateness caused by advertising is small.

The time periods for processing special consent applications for the City of Harare show interesting figures. The time between the acknowledgement of an application and the time it was received ranges from 2 days to 383 days. Half the applications were decided within 17 days (16.5 days). In other words half the applications were not acknowledged within the mandatory two weeks. The LPA went on to decide the applications within a period ranging from 49 days to 322 days with half the cases being decided within 172 days (See Table 23). It means well over half the cases were decided after the mandatory 3 months.

Time periods in the Processing of Section 40 Applications: City of Harare

A study was carried out on the subdivisions and consolidations applications (Section 40) made to the City of Harare. The period is 1976 to 1992. The number of subdivision applications recorded in the council register is 1 400. The Register for 1993 to 1996

Table 23 : Subdivisions and Consolidations: City of Harare

STATUS	TIME 1	TIME 2	TIME 3	TIME 4
STATUTORY TIME	14 Days	None	122 Days	None
Lowest (days)	0	0	1	2
Highest	51	123	898	906
N (valid)	45	49	117	119
Total	209	380	10451	12976
Mean	4.6	7.8	89.3	109.0
Median	0	2	59	72

Source: Survey Results 1999

Key to Table 23

Time 1: Date Complete Application was received minus Date Application was Initially submitted

Time 2: Date of Acknowledgement minus Date Application was received

Time 3: Date Decision was made minus Date of Acknowledgement

Time 4: Date Decision was made minus Date Application was Initially submitted

applications could not be found. A sample of 137 applications was drawn up which is 9.8% of the established applications. This sample was drawn using the random systematic sampling method as explained under special consent applications, the section immediately above. However, in this case every 10^{th} record was made part of the sample.

The first time period to be analysed is that concerning the period between Date Complete Application was received and Date Initial Application letter was submitted. Using the median value of 73.3% the applications were submitted complete. This is so because the median value is 0 days between Date of Initial Application and Date of Complete Application. Only 26.7% have had further information furnished.

The second nature of time period to be scrutinised is the period between Date of Acknowledgement and Date of Complete application. The mandatory time to acknowledge a complete application s 2 weeks (14 days). Half (50%) of the applications were acknowledged within 2 days of receipt of a complete application. Furthermore, 93.9% of the applications were acknowledged within the mandatory 14 days. The City Council observed the law.

The third nature of time period concerns the period between Date of Acknowledgement and Decision-Making Date on applications. Half the applications were decided within 59 days whilst 82.1% of the applications were decided within the regulation 122 days (4 months). The City Council observed the law.

The time period for processing subdivision and consolidations for the City of Harare reveal an astonishing pattern. The time between the submission of a complete application and acknowledgement ranges from 0 days to 123 days. Please, note that an application is supposed to be acknowledged within 2 weeks. Despite this extreme time period of 123 days the median shows that half the applications were acknowledged within 2 days. Applications were decided within a range of 1 to 898 days with half of them being decided within 59 days. These statistics show that subdivision and consolidation applications from 1976 to 1992 were processed well before the mandatory time period of 4 months.

Cases that were brought before the administrative court indicate that subdivisions were decided early at the LPA. Whilst the median for the time period at the LPA is 59 days at the administrative court it is 122 days. This indicates that cases which came before the court would have taken longer to process at the LPA than those which do not. However, we should bear in mind that subdivisions in the court include subdivisions processed by the Minister of Local Government.

6.3.9 Conclusion on Part Two

Delay in the processing of applications for planning permission and planning appeals is manifested in various ways. There is delay by the applicant who, after the LPA has handed a decision on the application, takes his/her time to lodge a Notice of Appeal instead of within 28 days. The applicant turned appellant further delays his/her project by not submitting the Appellant's Case within the stipulated time period of 28 days. In this situation one finds that the lawyers may have other engagements, witnesses may not turn up, appellant does not request for a set down date, problems

may arise in co-ordinating co-appellants, appellant may follow the wrong procedure or appellant may be away genuinely.

The respondent does not help matters either as he/she delays in submitting the Respondent's Case overshooting the 28 days deadline. The respondent may delay because his /her lawyers are on other engagements, witnesses don't turn up or are busy elsewhere, additional respondents are not available or are not prepared, he/she has followed the wrong procedure or he/she is on other engagements. Over one half of the respondents and the appellants alike delay the finalization of the appeal cases.

The fourth way delay manifests itself is through activities at the court. After set down date 27% of the court cases are adjourned whilst 37% are postponed. In such cases delay may be due to the non-availability of assessors, non-availability of the President, assessors attending to military service, the Registrar failing to execute his duties properly or delay in passing judgement after the court sitting. This contributes to the escalating cost of or loss of revenue from a project. All these accumulate and compound the problem of delay.

There is delay that is built into the appeal system. Delay may result from the movement of papers from appellants to respondent, from respondent to appellant, from appellant to respondent as each side tries to present its arguments before set down. How long should the President take before passing judgement after concluding hearing a case? Also appellant is given very little information on how to appeal and makes a lot of mistakes in the process leading to unnecessary delay.

There is delay because the Administrative Court handles a variety of administrative cases. In addition to Town Planning cases it handles Water Rights cases, Rent Board cases and Land Disputes cases. Therefore, the management system, work allocation and time allotment, and spacing of cases to be heard becomes an issue. The court has for a time long been staffed with one Administrative Court President siting in Harare. It was only in 1995 that the provision for siting in Bulawayo was made but no judge was appointed for that post then. In 1998 three Presidents were appointed to the court with one being specifically for Bulawayo.

The Harare case study was included more as a control, to get an understanding of the situation on planning permission applications from an urban council and put delay in perspective at the LPA level. It showed that LPAs adhere to the statutory time periods when recording and outlining the time an application may take to process. However, the actual processing is fraught with delay, which is caused by administrative errors, professional mistakes, large-volumes of work and bungling by both applicants/appellants and LPAs. It substantiates the complaints raised by applicants, that the development control process is cumbersome. This case study of Harare City, as discussed above, proved that cases that go to the Administrative Court are delayed longer at the LPA level than those that do not.

Delay does occur in the processing of planning permission applications and planning permission appeals. This increases the cost of doing business as discussed below in Part Three of Chapter Six.

PART THREE (Chapter Six)

6.4 The Case Study on Development Costs and Change in Development Costs

The purpose of the section is to relate time delay to costs. To enable this comparison data on economic indicators for years corresponding to the study period was collected. It was tabulated as shown above.

The material used here was gathered form the Herald Newspaper 1976 to 1996. The method used to select the newspapers from which information was extracted is outlined in Chapter Four above. In collecting the information, data could not be found for a few

TABLE 24: PERCENTAGE CHANGE IN PRICES/COSTS YEAR BY YEAR

YEAR	TWO BED-ROOMED FLATS **% Change**	HOUSE THREE BEDROOM **% Change**	PLOT AND THREE BED-ROOMED HOUSE **% Change**	FARMS 500Ha TO 1000Ha **% Change**	RENT INDUSTRY 700-1500sq.m **% Change**
1996	29.2	108.7	18.1	0	53.8
1995	0	8.5	58.8	81.8	0
1994	0.02	6.0	14.3	(-63.3)	0
1993	0.07	(-15.3)	0	150.0	(-7.1)
1992	20.0	11.3	300.0	0	0
1991	0	17.8	45.8	140.0	0
1990	0.02	38.5	60.0	66.7	483.3
1989	275.0	66.7	400.0	15.4	0
1988	47.8	105.3	(-40.0)	0	400.0
1987	31.4	5.6	53.8	62.5	300.0
1986	169.2	5.9	0	45.5	0
1985	(-45.8)	102.4	0	0	0
1984	26.3	(-41.7)	38.5	175.0	200.0
1983	58.3	(-4.0)	33.3	(-50.0)	(-58.3)
1982	0	56.3	25.0	(-36.0)	(-20.0)
1981	0	6.7	(-44.2)	25.0	0
1980	14.3	140.0	72.0	42.9	252.9
1979	(-34.4)	(-17.3)	(-24.0)	0	112.5
1978	33.3	(-4.3)	24.0	180.0	(-66.7)
1977	**	(-20.7)	25.0	**	42.9
1976	**	**	**	**	**
Simple percentage change over the past 21 years					
1976 TO 1996	**3400**	**5117.4**	**7400.0**	**7900.0**	**2281.0**

EXPLANATION TO TABLE 24 is on next page

a) ** Means data was not available for that particular year. Or calculations could not be done because of lack of data in another column/row cell.

b) 2-Bedroomed Flats under consideration are those in Avondale and the Avenues areas. The figures in this column are based on prices of flats averaged from prices found in the Herald Newspaper.

c) The houses referred to are those in the Borrowdale, Chisipite and Highlands areas.

d) Data was presented as found. There was no attempt to use statistical methods to moderate it or fill in the information gaps. Percentages were calculated using cells with figures.

e) The purpose of these tables is to show percentage change in the cost of items. It is admitted that using Newspaper price quotations is only one of the methods. This method was chosen because it provides raw data which is not yet moderated or statistically manipulated. It indicates what the market thought about prices or costs of given items. Data was generally easily available.

of the years (See Appendix 7). However, this does not affect the overall picture that the data and statistics derived from it present. This is so in that statistical trends under the given items being subjected to analysis are reasonably pointing in one direction. To give more weight to the information collected from newspapers a sample of data was collected form the Central Statistical Office (CSO). The CSO presents moderated, through weighting, and statistical manipulated data. The economic trends for the CSO and Newspaper gathered data are generally agreeing. Table 24 shows that from 1976 to 1996 the increase in prices of flats was 3400%, 5117% for houses, 7400% for plots and 7900.0% for farms.

TABLE 25: PERCENTAGE CHANGE WITHIN 5-YEAR PERIODS

YEARS	TWO BED-ROOMED FLATS	HOUSE THREE BEDROOM	PLOT AND THREE BED-ROOMED HOUSE	FARMS 500Ha TO 1000Ha	RENT INDUSTRY 700-1500sq.m
1991 TO 1995	30.0	8.5	625.7	66.7	(-7.1)
1986 TO 1990	614.3	400.0	84.6	212.5	366.7
1981 TO 1985	8.3	77.1	170.8	(-12.0)	25.0
1976 TO 1980	0	55.2	115	300	257

Source: Survey Results 1999

On a five-year basis the data indicate that from 1976 to 1980, 1981 to 1985, 1986 to 1990 and 1991 to 1995 the increase in prices/costs fluctuated by wide margins. Flats and houses increased in prices faster than plots and farms. It is only in the later part of the study period that plots and farms significantly increased in prices/costs. The fast change in house and flat prices is mainly due to the opening up of the housing market as Blacks moved into the previously White only low-

density areas. There was also reduced political uncertainty towards the end of the study period whilst the opening up of new housing estates was limited.

Across all data spectrum 1979 to 1982 were depressed years whilst 1988 to 1990 saw astronomical increases in prices/costs. This coincides with increased court cases as indicated in Part One of this chapter.

Year by year percentage change in the cost of houses, rent, plots and farms shows irregular ups and dips with a general rise in prices/costs. The slow change in 1993 to 1995 can be linked to the drought of 1992/93 farming season and the increasing effect of ESAP. The drought caused havoc throughout most of the country with the southern provinces of Masvingo, Matebeleland South and part of the Midlands harvesting very little. With ESAP, the way business was conducted changed from protectionist economic policies to liberal policies. Some companies folded.

The slump in price/cost growth in 1985 to 1986 may be explained by the civil strife and the "politically motivated dissident-menace of local rebels" which plunged the Matebeleland Region and the Midlands Province into chaos. The political turmoil meant uncertainties in the business field. Things changed for the better after the 1987 Unity Accord, although this was soon to be affected by the introduction of ESAP in 1991.

The negative price/cost growth before 1980 can be explained by the intensified war of liberation. The political uncertainty meant reduced investment in property and business. This period saw unusual outward migration. There was also disinvestment in some of the economic sectors.

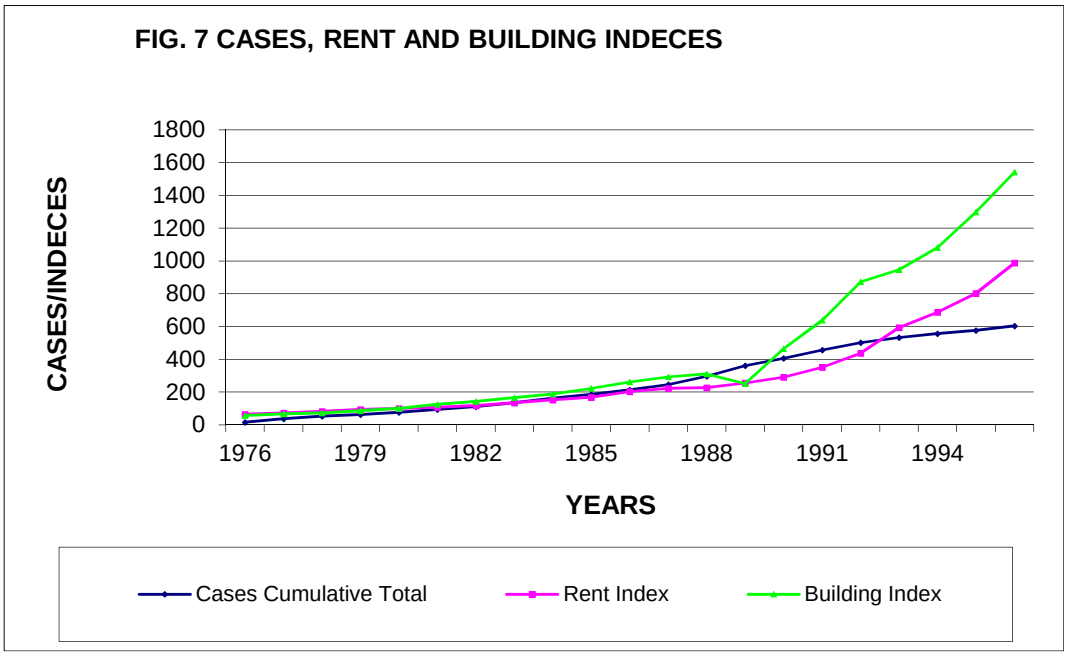
1980-85 high rise in plot costs related to resettlement after independence from Britain in 1980. There was a general high demand for plots. Under subdivisions, if Mashonaland East is taken as an example subdivision applications increased from 15 per year in mid 1980s to 36 per year in 1996.

How does the economic and political information relate to development control and planning appeals? Despite the ups and dips in year by year percentage change:-

a) Just before independence there was uncertainty about what the future held
b) A year or two into independence the resettlement programme was introduced.
c) 1985/86 and the 1987 Unity Accord. There was civil strife which stalled development. Later the Unity Accord brought political stability.
d) Realisation that the command economy does not work, the crumbling of the Soviet Union and the fall of socialism led to the thawing of the cold war. Skewed macro-economic policies of the 1980s further put pressure on the government to change.
e) ESAP was introduced in the early 1990s leading to liberalisation and partial deregulation of the economy.
f) 1992/93 and 1993/94 there was drought and drought after effects which weighed down the economy.
g) 1994+ there was full steam liberalisation and decentralisation in general and in planning in particular. e.g.(relate planning appeals rise and fall into this)

The development control practice is influenced by a host of factors as Curl pointed out.

A comparison of cumulative rent index, building index and appeal cases show that the building index rises steeply compared to the other two (See Appendix 6). It became more costly to put up a building after 1990. Similarly, revenue to be accrued from renting out responded positively to increased building costs. Delayed planning permission meant loss of rent revenue of facing increased construction costs.



Source: Thesis Research 2001

Taking 1980 as the 100% index rent rose by 989% and the building index rose by 1541% in 15 years. Those who faced 1 or 2 year delay in the mid 1980s to 1996 saw construction costs rising by 50% within the 2 year period. This agrees with Manyere's 1989 findings on the issue of special consent in her Harare City studies.

C H A P T E R SEVEN

7.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

7.1 Reflecting on Sub-problems, Objectives and the Hypotheses

Since the study paper is coming to an end, it is necessary to reflect on what was set out as the task ahead in Chapter One.

One of the *sub-problems* in this study is to look at how the body of planning law that governs development in Zimbabwe today has evolved. It is believed the study has amply given a critical outline of the history of development control and planning appeals in Chapter Five. This outline attempted to show how development control parameters were gradually and systematically drafted. The laws and regulations governing development were continuously under scrutiny. Pragmatism was the overriding factor in policy drafting and pronouncements e.g. the work of the Capewell Commission of 1949 and the decision to move development control from the Ministry of Health to a new department in the Ministry of Local Government in 1933. The accumulation of a body of policies and scattered legislation on the physical environment eventually led to a planning law statute of 1933 the Town Planning Act. This watershed legislation triggered a flurry of activities in developing a body of planning law and development control procedures as well as the refinement of the planning appeals law and procedures. Chapter Five puts the planning appeals process in context. It is this accumulated material, including case law, and customs in planning law that influence decisions at the Administrative Court.

The *second sub-problem* relates to providing a statistical analysis of the planning appeals. The manner in which data on planning appeals was gathered and processed is discussed in Chapter Four. The Chapter shows how the relevant planning appeals register of 603 cases was prepared (See Appendices 3 & 4). The characteristics of that data are then analysed in Chapter Six to answer the second sub-problem. The various analytical tables and diagrams take cognisance of the given data characteristics in the methodological sections of Chapter Four and are in the context of the overall objective of the Study, which is “to improve the understanding of the laws pertaining to

development control policies and procedures and the manner in which decisions are arrived at through an analysis of planning appeals…". It is put forward that Chapter Six provides the desired statistical analysis for a better understanding of planning appeals.

Having reflected on the sub-problems, the next logical step is to reflect on the set objectives. The *first objective* is to explain and comment on the evaluation of the development control process and procedures. Chapter Five attempted to outline and discuss the various aspects of development control and how they came into being e.g. the thinking behind the setting of plot sizes and the use of zones as set in master plans or schemes. These various planning standards have been the subject of court appeals.

On the *second objective,* "to explain planning appeal cases population statistics from 1976 to 1996", this was done in Chapter Six Part One. It was noted that planning appeals are influenced by socio-political-economic factors. An economic down turn, for example, leads to increased subdivisions of land for sale to make ends meet. On the other hand mass migration during the politically unstable 1980s dampened property value. It was also noted that the number of planning appeals is related to the type of land tenure i.e. communal land, small-scale commercial farming land, large scale-commercial farming land and urban land. Furthermore, planning appeals can be explained by the propensity to appeal. The users and consumers of development control at times do not easily accept decisions made by the LPA and think the LPA is acting unfairly. A closer look at the reasons for appeal, pattern of appeals, rate of appeals per particular RTCP Act section and the push for a decision at the Administrative Court points to inadequate or old government laws and policies and procedures.

The hypothesis that planning appeals are increasing is only true up to 1989. From 1990 to 1996 planning appeals have gradually declined as shown in Table 3. Therefore the *first hypothesis* is false.

The *third objective* is mostly about determining the nature of delay in and evaluating the planning permission application process. In Chapter Four, a description of how this is to be done is given. Because of the required detailed analysis, a sample of 74 appeal cases was drawn. This sample

was subjected to various statistical manipulations the results of which are discussed in Chapter Six Part Two. Has the analysis of the sampled appeal cases provided a conclusive insight? The *second hypothesis* is that there is delay in processing planning permission applications both at the LPA level and at the Administrative Court. Chapter Six Part Two established that there is delay. This hypothesis is true. The causes of delay at the Administrative Court are many and are attributable to various players. They can be put into five broad groups as outlined in the conclusion of Chapter Six Part Two.

The subsidiary hypothesis, to the *second hypothesis,* on delay is that applications for planning permission that come to the administrative court are delayed longer at LA level than those that do not come to the court. This hypothesis is true as a comparative analysis of planning permission applications for Harare City vis-à-vis the national sample of 74 case at the LPA level show i.e. in Chapter Six Part Two.

The *fourth objective* that relates to the turn around time for planning permission applications to indicators of change in development costs ties in with the *third hypothesis* that the delay in finalising planning permission applications burdens the applicants with increased development costs because the system is slow and expensive. There is delay in the processing of planning permission applications as demonstrated in Chapter Six Part Two. The change in costs and loss of revenue had been discussed in Chapter Six Part Three. The economic environment from 1976 to 1996 was characterised by a declining economy up to 1989-1990 and a stable economy from 1990 to 1996. There were inflationary pressures and accompanying devaluation of the Zimbabwe dollar. The compounded result was a rise in development costs (See Appendices 6 to 8).

-time frame range

-devaluation range

-cost changes range

The *third hypothesis* that delay in finalising planning permission applications burdens the investor with increased cost or loss of revenue is true.

The *fourth hypothesis* points out that new thinking on development control and planning appeals is not being taken on board. This is partly true and partly false.

In Chapter Five the ZIRUP Annual School papers have revolved around a number of topics that meant to facilitate economic development. In 1993 the Annual School discussed how to liberalise the development control process to make it more permissive. The Annual Schol in 1992 and 1996 also discussed economics and spatial planning and how land use planning can be used to promote enterprenuership. Some of the main themes running through the Annual Schools from 1991 to 1996 were mixing of land uses relaxing the use of zones in planning and encouraging public participation.

From these records there has been reluctance in the planning profession to accommodate change. The slowness is attributed to political thinking, professionalism, staff shortages and experience. Politically, those in positions of influence want the rigid zoning of land uses to remain. Also the command economy associated with the socialist era in Zimbabwe is still affecting the way of doing business even after reintroducing capitalism. Professionally, planners feel it is their duty to promote orderly development that augurs well for amenity and health. Staff shortages in government have been caused by the Public Service commission's freezing of posts made vacant due to death, retirement, promotion or resignation. Remuneration is also low such that the turnover of planners in government and local authorities is high hence the lack of experienced planners.

In 1994 Statutory Instrument 216 Regional Town and Country Planning (Regulations) was gazetted but ignored (soon after awards) at the same time. There was no follow up as to how it was to be implemented. Some LPAs utilised it others left it on the shelves to gather dust.

The last objective "to identify shortcomings in the planning system and recommend corrective action" is tackled immediately below.

7.2 Shortcomings

Shortcomings can be grouped into categories such as institutional capacity, provision and recording of data, competence of those involved, the legal framework for development control and management.

Legal Framework

The legal framework as discussed in Chapter 5 has been near static since 1976. Before 1976 there was continuos review of the planning act and accompanying regulations. It is also worth noting that scheme plans that are in use today in urban areas such as Harare, Kwekwe and Mutare were prepared before 1976. Marondera Town's master plan is over 20 years old. With such key instruments of development control not being updated it is not surprising that the development control system is being challenged in the courts.

Competence of those involved

It touches on the professional side. Under Chapter Six Part Two it was noted that some lawyers/Appellants had to come to court first before realising that they needed the services of a planner. It has also been observed that from 1989 onwards correspondence from the Registrar of the Administrative Court to interested parties dwindled e.g. on set down dates or advice on the next step if too long a time elapsed. It is also noted that the index to the town planning court cases was last updated in 1976. Therefore, it is not possible to peruse past town planning court cases for knowledge. One has to read the actual court judgements for information.

Management and Institutional Capacity

In so many cases one finds that the letters signed by Acting Registrar, Acting Provincial Planning Officer or statements such as the City of Harare had to source legal advice from outside fill the files. To a great extent this indicates the manpower problem in the organisations dealing with development control. When this is combined with the competence factor, in terms of experience, delays are bound to happen and procedures are not followed.

The fact that the Administrative Court is centralised in Harare inadvertently implies a disadvantage to those in out lying areas e.g. Masvingo and Mutare. The only other town that has provision for an Administrative Court is Bulawayo. They cannot open other offices because of financial constraints. Bearing in mind that the Administrative Court has 20 other functions e.g. rent appeals, property valuation appeals and water rights appeals its capacity is limited.

There is no management system put in place by the government to ensure that records on the

planning appeals are captured centrally. There seem to be no officer at DPP tasked with capturing data including planning appeals.

Provision of Data

As discussed in Chapter 4 records on planning appeals are incomplete be it at the Administrative Court, Physical Planning or city of Harare. Worse still some of the records have been lost or misplaced. Furthermore, as discussed in chapter 2 and chapter 6 part one, government has not centralised the capture of planning permission data which makes it difficult to analyse planning appeals data. Such a scenario implies that the government arms involved in town planning appeals do not seriously question their actions in development control since that can only be done by critically analysing actions taken.

Procedure and Process

The problem may have arisen because of the disbandment of research officers in DPP. The files compiled by these officers as evidenced by stock in the DPP library, is educating and interesting. The issue of research and/or research officers may need a revisit. Possibly it explains the limited and slow pace in policy formulation activities. Of course lack of financial resources may have contributed to the problem. The writing of guidelines soon after policy pronouncements or issuance of regulations may help speed up decision making at application for permit level and reduce the need to appeal. This applies for example to statutory instrument 216 of 1994 which reduced use class groups from 9 to 6 in number. Because no serious reviews of actions taken are done, procedures like how to determine the viability of a farm have remained static.

7.3 Issues

ISSUES ON DELAY

a) There are times when the LPAs set themselves incredibly long decision-making periods e.g. 455 days for a Section 26(1) application instead of 92 days.

b) Using the median on average applications took 15 days more for section 26(1), 59 days more for Section 26(3) and 78 days more for Section 40 with an overall average delay in decision-making of 59 days.

c) There is a discussion to reduce the period for determining an application at LPA level from 3 or 4 months to about 2 months. However, there is a problem in that some planning committees sit once per 2 months. This also raises the issue of delegation.

d) Subdivision appeal cases on the basis of a comparative analysis of the mean and the median as average time periods are always filed one month late possibly because most of the objectors are rural based.

e) On some subdivision planning permission applications, City of Harare made the mistake of setting a decision-making period of three months. However, the applications were decided within the three months.

f) Section 40, subdivisions, respondents took an average 5 months instead of one month to respond to appellant's case. It is unbelievable that they (Respondents) make such a huge contribution to delay at the courts.

ISSUES OF PROCEDURE/PROCESS

a) Appellants have had problems in distinguishing between a Notice of Appeal and Appellant's Case. There seem to be no available literature clarifying these phrases for use by appellants. Although the legal instruments in planning boldly state that an appellant can represent him/herself central government has not visibly facilitated this. As a result most appellants end up engaging lawyers because the law is too difficult for them. There are a number of cases where the appellant had sought the services of a lawyer at the last minute as confirmed by correspondence.

b) Judges seem to have unlimited time to actually pass judgement. It is acknowledged that speed may not necessarily mean justice. However, a reasonable time guideline may help. How do we handle the postponement of hearings at the administrative court and for how long can a postponement be sine die by default?

c) Section 3, Part II, of the Town Planning Court Rules, 1971, states "within the period prescribed by the Act, or where no period is so prescribed, within twenty eight days of the making of a decision, appeal……". Sections 38 and 44 of the RTCP Act, 1996, "…. may within one month of the notification of such decision….. or such longer period as the President of the Administrative Court may grant in writing authorise appeal…". Whilst going through the Administrative Court cases it came out that there is a lot of emphasis on the 28 days and yet the Town Planning Court Rules note the superiority of the RTCP Act. The 28 days cannot apply to sections 26(1) & (3) and 40. RGN No. 924 of 1976, RTCP (Subdivision and Consolidation) Regulations, in Section 14 also allows one month "…. Appeal to the Planning Appeals Board within one month….".
In short some of the applications for condonation were not necessary.

ISSUES ARISING FROM ECONOMIC AND POLITICAL ENVIRONMENT

a) Limited attempts to relate macro/micro economic factors to fluctuations in planning permission appeals are done in the courts. The problem stems from the fact that there has been no deliberate policy to accumulate data on all kinds of planning permission applications. Each LPA has been left to do what it sees fit. There is no deliberate opinion gathering as to what users and consumers of development control think. At least this is not evident in literature found during literature review.

b) There is urgent need to redefine the role of the planning profession in the globalised economy, market driven and backed by human rights law. The solution might be in a move away from development control persee to increased resource management in the context of space allocation.

ISSUES OF OUTDATED PLANNING FRAMEWORK

a) The planning framework has been static for a long time. Issues of farm viability have become a major bottleneck in development because the viability criteria are outdated. As such agricultural viability is contested a lot at the courts. There is the issue of new farming technologies to be looked into. There is scope for a clear-cut criteria for peri-urban subdivision so that time is not wasted in lengthy consultations except where necessary.

ISSUES OF PROJECT VIABILITY AFFECTED BY DELAY

Planning permission delays and procedural delays are causing investors to foot extra project costs.

7.4 Recommendations

RECOMMENDATIONS ON DELAY

a) General set down dates: On receiving no interest to reply to respondent's heads of argument the Registrar should set possible dates.
Legal decision date: Should be the date when council siting as full council endorses decision of planning and Works Committee and not the date when Officers write the applicant on council's decision. (Please, note that with the way planning appeals are being handled this may disadvantage developers).

b) There is need for a re-look at the rules and regulations governing the processing of subdivisions with a view to reduce the turn around time or to adjust regulations to suit reality. The time periods set for the various stages of processing subdivision applications may not be realistic.
Set in place a code of conduct, best practice, and enclose same with all application forms. The cost for the code should be included in the application cost. Effort should be made to encourage LPAs to make decisions on time.

c) The problem of respondents taking an average 5 months to respond to subdivision Appellants' Cases seems to be deep seated and needs a deeper understanding for a sound recommendation. This is an area that may need further studies including auditing of LPA planning systems. How comparable is the degree of late actioning of appeals by LPAs and appellants?

d) There may be need to have a closer look at this situation (the consistent filing of subdivision appeals one month late) with a view to increasing the time one can submit appellant's case to 60 days. If this happens, judges may have to be stricter on the granting of condonation (See section on the aspect of condonation in Chapter Six).

e) The period within which an application for subdivision in urban areas is processed be set at three months instead of the current four months in the regulations. It has been accidentally shown that it is possible. Urban subdivisions unlike rural subdivisions are straightforward and less involving. A best practice document can informally make urban LAs reduce turn around time on subdivision applications.

RECOMMENDATIONS ON PROCEDURE AND PROCESS

a) On dispatching a refusal notice or permit the LPA should be legally bound to enclose a copy of the Town Planning Court Rules for the applicant's use. A simple planning appeal procedure table as outlined by Hamilton (1991) should be attached to every refusal notice.

b) Time to submit a Notice of Appeal and the Appellant's Case is recommended for 2 months. This is based on condonation applications.

c) Statutory undertakers and LAs should be allowed to appeal against the Minister's decision in some cases. It should be explicit in what circumstances the LA can be able to sue Minister and the Minister can be able to sue LA . The call in powers of the Minster have to be clarified further both for plan preparation and development permits by way of statutory instrument.

d) On set down date - the moment the appeal is properly lodged a hearing date should be set so that officers work with a target date. This means the procedure for an appeal has to be revised. Differentiate i) appeal against condition in permit (4 months)

ii) refusal of development permit/enforcement (6 months)

iii) Subdivision applications (6 months)

iv) Supreme Court (1 to 2 years)

e) Admittedly, judges need time to write sound judgements. However, if periods by which time they should have passed judgement are to be discussed it should be borne in mind that not all cases take one or two days to hear. Some take a week and others weeks, such circumstances should be factored in. However, a best practice document for Administrative Court judges on town planning cases may be necessary.

RECOMMENDATIONS ON RECORD KEEPING

a) A format of keeping records at the administrative court and at LAs should be put in place and monitored. Management should be encouraged to supervise this exercise.

b) Creating a comprehensive case register at the court:

Columns are suggested as given below.

Case number

District/Place

Province

Nature of appeal (Section of Act)

Nature of Development

Date Appeal was lodged

Decision Date

Time period Taken

Nature of Decision

Information Location

Immediately after the conclusion of a case records should be updated by officials responsible.

RECOMMENDATIONS ON MANAGEMENT

a) The advent of the "African City" in Zimbabwe is just around the corner as urbanisation increases pace coupled with the march of the indigenization process and physical planning is likely to be significantly affected. The high standards of urban development being enjoyed currently are not sustainable especially after the economy has continued to nose dive for the past decade. There is a case for revising planning standards.
There is need to review planning standards with a view to come up with affordable standards otherwise physical planning will become irrelevant.

b) The statistics on planning permission applications are not readily available. Local authorities should be asked to make returns to the Minister through the Department of Physical Planning. The DPP should prepare a database on planning permission applications. The database can be used for comparative analysis and policy formulation. Since the Central Statistical Office collates some data on the building industry and plan approval, the two departments can share notes.

c) There should be officers in DPP tasked with research that is specific for a given period at any one time (officers can rotate). It is such officers who would help in developing database in development control and providing possible solutions to some of the development control issues.

d) On registers local authorities should introduce or reintroduce the column "Date Complete Application Received" for easy of comparison and monitoring when put against "Date of Acknowledgement" and "Date Decision Made".
That immediately after the conclusion of a case records should be updated.

e) Time to establish a local Government ombudsman's or expand Administrative Court to Provinces and widen its scope of which planning will be one of the matters to be considered.

RECOMMENDATION ON PROJECT VIABILITY/ECONOMICS

Government should take into consideration the cost caused by delays in planning and try to accommodate the investors by implementing best practice and public participation. Economic planning issues should be seriously considered in planning permission decisions and at the courts.

PLANNING FRAMEWORK

Planning instruments should always be up to date, which implies that the manpower situation should be audited as well for the employment of enough manpower.

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APPENDIX 1

ACTS OF PARLIAMENT AND STATUTORY INSTRUMENTS IN PLANNING

Regional Town and Country Planning Act Chapter 29:12, Revised addition 1996

Statutory Instrument 53 of 1996 Regional, Town and Country Planning (Development) (Amendment) Regulations, 1996 (No. 3) (Act 22 of 76)

Statutory Instrument 271 of 1994 Regional, Town and Country Planning (Subdivision and Consolidation) (Amendment) Regulations, 1994 (No. 2) (Act 22 of 76)

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Rhodesia Government Notice No. 925 of 1976. Regional, Town and Country Planning (General Development) Order, 1976 (Act 22/76)

Rhodesia Government Notice No. 924 of 1976. Regional, Town and Country Planning (Subdivision and Consolidation) Regulations, 1976 (Act 22/76)

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Southern Rhodesia Government Notice No. 397 of 1961. Town and Country Planning (General) (Amendment) Regulations, 1961 (N0. 1)

Southern Rhodesia Government Notice No. 104 of 1960. Town and Country Planning (General) (Amendment) Regulations, 1960

Southern Rhodesia Government Notice No. 465 of 1958. Town and Country Planning (Supplementary Orders) Regulations, 1958

The Town and Country Planning Act Chapter 213 of 1945

Town and Country Planning Act Chapter 133 of 1933

These acts and regulations form the basis for development control. They are the most used. They are referred to in Chapter One.

APPENDIX 2

ACTS OF PARLIAMENT WHICH REQUIRE EXAMINATION IN AS FAR AS DETERMINING WHETHER THEY STIFLE DEVELOPMENT OR NOT: DEREGULATION COMMITTEE

Control of Goods Act (Chapter 14:05)

Traditional Beer Act (Chapter 14:24)

Shop Licence Act (Chapter 14:17)

Shop Hours Act (No. 7 1975)

Regional Town and Country Planning Act (Chapter 29:12)

Urban Councils Act

Rural District Councils Act (Chapter 29:13)

Labour Relations Act No. (Chapter 28:01)

Road Motor Transport Act (Chapter 13:10)

Customs and Excise Act (Chapter 23:02)

Income Tax Act

Exchange Control Act (Chapter 22:05)

Liquor Act (Chapter 14:12)

Deed Registries Act (Chapter 20:05)

Land Survey Act (Chapter 20:12)

Companies Act (Chapter 24:03)

Water Act (Chapter 20:22)

Parks and Wildlife Act (Chapter 20:14)

The Deregulation Committee was tasked with analysing the laws and regulations of Zimbabwe and make specific recommendations on those that needed amendment in order to promote economic development. These Acts are touched on in Chapter Two passage 2.4 and in Chapter Five passage 5.6. The RTCP Act was one among many acts that were considered by the Deregulation Committee.

APPENDICES 3 AND 4 NOTES/KEY

a) T1410 or T1736 refers to court case number in the Court Register

b) LOCAL AUTHORITIES/DISTRICTS

Sal	-Salisbury/Harare
Sal W	-Salisbury Rural
Sal C	-Salisbury City
Harare W	-Harare West Rural Council
Harare C	-Harare City
Goro	-Goromonzi
Masvi	-Masvingo
Umzin	-Umzingwane
Byo	-Bulawayo
Maro	-Marondera/Marandellas
Chimani	-Chimanimani/Melsetter
Bulilimam	-Bulilimamangwe
Lomagu	-Lomagundi/Makonde
Nyami	-Nyaminyami

c) PROVINCES

MC	-Mashonaland Central
MW	-Mashonaland West
ME	-Mashonaland East
MN	-Manicaland
MTN	-Matebeleland North
MS	-Masvingo/Victoria
MID	-Midlands
MTS	-Matebeleland South

c) SECTION OF RTCP ACT/TYPE

Enforce	-Enforcement Order
N	-Section not known
Use C	-Change of use/Special Consent
Perm Con	-Permit Condition
Title Con	-Title Condition
Sec 40	-Section 40 or 26 or49 etc of RTCP Act
Scheme	-Town and Country Planning Scheme
Road Wide	-Application to Widen Road
Road Accs	-Application to Create Road Access
Storm Drai	-Creating a Storm Drain
Road V	-Question on Vesting of the Road
High Cou	-Application referred to High Court

d) DECISION

With	-Withdrawn
Order	-Court Order
Sup Order	-Supplementary Order
Not Pl Iss	-Not a Planning Issue
Post	-Postponed Sine Die

The above are abbreviations for the information found in the Court Register Tables below. The abridged court register was included as Appendix 3 because the register is manageable and makes it ease for reference as given in the thesis. The sample Appendix 4 is also included to enable one to check on the analyses.

APPENDIX 3: TOWN PLANNING COURT REGISTER

CASE	DISTRICT	PROVINCE	TYPE	DATE LODGED	DATE FINALISE	TIME DAYS	DECISION
T1410	Sal	ME	Perm Con	1/6/76	3/4/76	58	With
T1411	Sal	ME	Title Con	1/14/76	3/15/76	61	With
T1412	Byo	MTN	Use C	4/29/76	8/2/76	95	With
T1413	Victoria	MS	Town	2/16/76	6/9/76	114	With
T1414	Sal C	ME	Sec 32	2/23/76	5/11/76	78	With
T1415	Sal	ME	Use C	2/9/76	6/22/76	134	Grant
T1416	Sal	ME	Title Con	5/5/76	7/19/76	75	Refuse
T1417	Sal	ME	Perm Con	5/24/76	6/29/76	36	With
T1418	Byo	MTN	Title Con	6/10/76	4/14/77	308	Grant
T1419	Sal	ME	Title Con	7/1/76	8/12/76	42	With
T1420	Chiredzi	MS	Title Con	7/1/76	8/25/76	55	Refuse
T1421	Sal C	ME	Use C	7/1/76	2/25/77	239	Refuse
T1422	Byo	MTN	Title Con	7/8/76	9/24/76	78	Refuse
T1423	Sal C	ME	Use C	7/21/76	7/7/77	351	Grant Con
T1424	Sal C	ME	Title Con	11/5/76	2/8/77	95	Grant
T1425	Sal C	ME	Use C	11/12/76	7/20/77	250	Grant
T1426	Byo C	MTN	Title Con	1/14/77	6/23/77	160	Refuse
T1427	Sal C	ME	Title Con	3/7/77	11/10/77	248	With
T1428	Sal	ME	Scheme	3/11/77	5/5/77	55	Refuse
T1429	Sal C	ME	Use C	3/25/77	2/23/78	335	Refuse
T1430	Sal C	ME	Use C	3/17/77	11/21/77	249	Lapse
T1431	Sal	ME	N	5/4/77	7/3/78	425	Refuse
T1432	Sal	ME	Enforce	5/16/77	4/20/78	339	Order
T1433	Byo	MTN	N	4/27/77	7/22/77	86	With
T1434	Sal C	ME	Sec 40	6/2/77	9/20/78	475	Grant
T1435	Chiredzi	MS	Perm Con	6/16/77	5/30/78	348	Grant
T1436	Byo	MTN	Sec 26	6/23/77	3/15/78	265	Grant
T1437	Sal C	ME	Sec 26	6/27/77	7/25/77	28	With
T1438	Sal C	ME	Enforce	7/22/77	12/9/77	140	With
T1439	Sal C	ME	Use C	9/9/77	4/19/78	222	Refuse
T1440	Sal C	ME	Road Wide	9/25/77	1/22/79	484	Refuse
T1441	Maro	ME	Sec 40	10/4/77	9/27/78	358	Refuse
T1443	Sal	ME	Sup Order	11/4/77	2/15/79	468	Sup Order
T1444	Sal C	ME	Enforce	11/7/77	1/23/78	77	With
T1445	Sal	ME	Use C	11/22/77	7/13/78	233	Grant
T1446	Mutare	MN	Enforce	11/23/77	10/28/78	339	Grant
T1447	Sal W	ME	Sec 26	1/5/78	11/22/78	321	With
T1448	Sal	ME	Sec 26	1/3/78	6/27/78	175	Grant
T1449	Sal	ME	Sec 40	3/13/78	7/18/78	127	Refuse
T1450	Sal	ME	Sec 26	3/16/78	7/24/78	130	Grant
T1451	Byo	MTN	Sec 26	3/16/78	4/10/78	25	With
T1452	Sal	ME	Use C	4/24/78	1/7/80	623	With
T1453	Sal C	ME	Sec 26	4/5/78	10/30/78	208	With
T1454	Sal	ME	Sec 26	5/8/78	9/28/78	143	Grant
T1455	Sal	ME	Sup Order	5/17/78	11/7/78	174	Sup Order
T1456	Sal	ME	Enforce	7/27/78	11/29/78	125	With
T1457	Byo	MTN	Enforce	8/11/78	1/26/79	168	Refuse
T1458	Sal	ME	Sec 26	9/1/78	11/16/78	76	With
T1459	Sal C	ME	Sec 40	9/27/78	2/15/79	141	Refuse
T1460	Sal	ME	Rd Accs	10/17/78	7/16/80	638	Refuse

T1461	Chiredzi	MS	Sec 40	11/6/78	3/5/79	119 Grant
T1462	Sal	ME	Sec 35	11/28/78	2/2/79	66 With
T1463	Sal	ME	High Cou	12/18/78	3/22/79	94 With
T1464	Sal	ME	N	2/23/79	2/22/80	364 Order
T1465	Byo	MTN	Enforce	4/9/79	8/26/80	505 With
T1466	Sal	ME	Sec 26	4/19/79	11/21/79	216 Grant
T1467	Sal	ME	Use C	4/23/79	8/17/79	116 With
T1468	Sal	ME	N	5/24/79		-28999 With
T1469	Makoni	MN	Sec 26	6/25/79	2/11/80	231 With
T1470	Sal	ME	Use C	12/11/79	7/15/80	217 Refuse
T1471	Sal	ME	N		1/2/80	29222 Refuse
T1472	Sal	ME	Use C		6/26/80	29398 Refuse
T1473	Sal	ME	Use C	2/21/80	7/22/80	152 Grant
T1474	Sal	ME	Sec 26	3/19/80	9/11/80	176 With
T1475	Sal	ME	Sec 26	2/21/80	10/27/80	249 With
T1476	Sal	ME	Enforce	3/12/80	5/11/82	790 Grant
T1477	Sal	ME	Use C	5/19/80	8/19/82	822 Refuse
T1478	Byo	MTN	Use C	4/17/80	3/16/81	333 Refuse
T1479	Sal	ME	Use C	1/11/80	2/2/81	388 Order
T1480	Sal	ME	N	11/19/79	1/15/80	57 With
T1481	Sal	ME	Sec 26	2/18/80	3/11/80	22 With
T1482	Sal	ME	Use C	7/3/80	4/27/81	298 Refuse
T1483	Sal	ME	Use C	7/2/80	12/3/80	154 Grant
T1484	Sal	ME	Use C	7/2/80	12/17/80	168 Grant
T1485	Sal	ME	Enforce	7/2/80	4/6/81	278 With
T1486	Sal	ME	Use C	3/12/81	8/15/81	156 With
T1487	Byo	MTN	Road V	3/17/81	5/12/82	421 Grant
T1488	Sal	ME	Enforce	4/28/81	7/24/81	87 Refuse
T1489	Sal	ME	Sec 40	4/23/81	5/12/81	19 With
T1490	Sal	ME	Sec 32	4/15/81	10/1/81	169 Order
T1491	Sal	ME	Use C	5/29/81	8/17/81	80 Refuse
T1492	Sal	ME	Sec 40	6/19/81	8/6/81	48 Refuse
T1493	Sal	ME	Use C	7/27/81	11/19/81	115 Grant
T1494	Sal	ME	Sec 30	7/20/81	2/9/82	204 Refuse
T1495	Sal	ME	Sec 40	8/3/81	10/22/81	80 With
T1496	Sal	ME	Use C	8/5/81	9/28/81	54 Refuse
T1497	Byo	ME	Sec 26	8/5/81	11/2/81	89 With
T1498	Sal	ME	LDP	8/6/81	10/6/81	61 Grant
T1499	Byo	MTN	Sec 26	8/27/81	10/6/81	40 Lapse
T1500	Sal C	ME	Use C	10/15/81	8/5/82	294 With
T1501	Sal	ME	Sec 26	10/19/81	1/5/82	78 With
T1502	Sal	ME	Enforce	10/23/81		-29882 None
T1503	Sal C	ME	Use C	12/16/81	1/18/82	33 With
T1504	Sal	ME	N	12/24/81		-29944 None
T1505	Sal C	ME	Enforce	1/6/82	2/26/82	51 Refuse
T1506	Sal	ME	Enforce	2/2/82	10/21/82	261 Order
T1507	Sal C	ME	Use C	2/23/82	6/29/82	126 Grant
T1509	Harare C	ME	Enforce	3/3/82	6/4/82	93 Grant
T1510	Harare W	ME	Use C	4/2/82	11/3/82	215 With
T1511	Harare	ME	Enforce	4/26/82	7/5/82	70 With
T1512	Harare	ME	Use C	5/27/82	8/24/82	89 Refuse
T1513	Harare	ME	Sec 26	5/28/82	9/1/82	96 With
T1514	Harare	ME	Use C	6/23/82	8/3/82	41 Refuse
T1515	Harare	ME	Use C	6/24/82	9/23/82	91 Refuse
T1516	Harare	ME	Use C	8/3/82	9/13/82	41 Grant

T1517	Harare	ME	Sec 26	5/8/82	10/15/82	160 With
T1518	Goro	ME	Enforce	8/5/82	1/25/83	173 Lapse
T1519	Masvi	MS	Use C	8/19/82	1/4/83	138 Lapse
T1520	Harare	ME	Enforce	12/10/82	4/26/83	137 Refuse
T1521	Byo	MTN	Enforce	12/23/82	4/28/83	126 Refuse
T1522	Harare	ME	Sec 26	1/18/83	3/1/83	42 Grant
T1523	Kwekwe	MID	Sec 40	1/18/83	3/16/83	57 With
T1524	Byo	MTN	Sec 26	1/18/83	5/12/83	114 Lapse
T1525	Harare	ME	Sec 26	1/18/83	3/8/83	49 With
T1526	Byo	MTN	Sec 26	2/2/83	7/25/83	173 Refuse
T1527	Harare	ME	Sec 26	5/20/83		-30456 Grant
T1528	Mutare	MN	Sec 26	6/1/83	10/31/83	152 Lapsed
T1529	Harare C	ME	Use C	6/9/83	11/14/83	158 Grant
T1530	Harare	ME	Enforce	6/22/83	11/28/83	159 With
T1531	Harare	ME	Enforce	7/21/83	11/7/83	109 With
T1532	Harare	ME	Use C	7/21/83	9/20/83	61 With
T1533	Harare	ME	N	7/22/83	10/31/83	101 With
T1534	Harare C	ME	Enforce	7/25/83	11/4/83	102 With
T1535	Harare	ME	Enforce	7/25/83	11/4/83	102 With
T1536	Harare	ME	Enforce	7/25/83	11/4/83	102 With
T1537	Harare	ME	Enforce	7/25/83	11/4/83	102 With
T1538	Harare	ME	Use C	8/22/83	7/9/84	322 Refuse
T1539	Mutare	MN	Sec 26	9/5/83	1/13/84	130 With
T1540	Harare	ME	Use C	9/14/83	5/18/84	247 With
T1541	Harare	ME	Use C	9/19/83	2/17/84	151 With
T1542	Harare	ME	Use C	9/19/83	1/18/84	121 Grant
T1543	Harare	ME	N	11/17/83	3/27/84	131 Refuse
T1544	Harare	ME	Use C	12/6/83	5/28/84	174 Grant
T1545	Byo	MTN	Use C	12/20/83	4/24/84	126 Grant
T1546	Matobo	MTS	Sec 40	12/29/83	3/26/84	88 Lapse
T1547	Harare	ME	Sec 26	1/6/84	2/23/84	48 Lapse
T1548	Gutu	MS	Sec 50	2/2/84	3/22/84	49 Refuse
T1549	Nyanga	MN	Enforce	3/6/84	3/20/84	14 With
T1550	Harare	ME	Enforce	3/9/84	7/24/84	137 Refuse
T1552	Harare	ME	Use C	4/2/84	6/18/84	77 Refuse
T1553	Harare	ME	Use C	4/5/84	7/18/84	104 Grant
T1554	Harare	ME	N	4/5/84	11/7/84	216 With
T1555	Harare	ME	Sec 26	4/8/84	7/11/84	94 Grant
T1556	Masvi R	MS	Sec 26	6/12/84	8/27/84	76 With
T1557	Harare	ME	Enforce	4/2/84	11/2/84	214 With
T1558	Harare	ME	Use C	7/30/84	1/18/85	172 Lapse
T1559	Harare	ME	Sec 26	8/3/84	12/11/84	130 Grant
T1560	Harare	ME	Sec 26	8/10/84	11/19/84	101 With
T1561	Byo	MTN	Sec 26	9/18/84	1/8/85	112 Lapse
T1562	Harare	ME	Sec 26	9/24/84	6/4/85	253 Post
T1563	Harare	ME	N	9/26/84	5/7/85	223 With
T1564	Harare	ME	Use C	10/11/84	12/5/84	55 Grant
T1565	Harare	ME	Use C	10/15/84	2/15/85	123 With
T1566	Harare	ME	Sec 26	10/16/84	3/22/85	157 With
T1567	Harare	ME	Enforce	10/16/84	12/4/84	49 Lapse
T1568	Harare	ME	N	10/19/84	3/22/85	154 With
T1569	Harare	ME	N	10/19/84		-30974 Refuse
T1570	Harare	ME	Use C	8/9/84	11/27/84	84 Refuse
T1571	Gweru	MID	Sec 26	11/16/84	2/22/85	98 With
T1572	Harare	ME	Use C	12/6/84	2/15/85	71 Refuse

T1573	Harare	ME	Use C	12/6/84	2/13/85	69 With
T1574	Umzin	MTN	N	12/17/84		-31033 None
T1575	Harare	ME	Sec 40	1/2/85	4/2/85	90 Grant
T1576	Maro	ME	Sec 40	1/2/85	6/6/85	155 Refuse
T1577	Harare	ME	Use C	1/11/85	9/5/85	237 Refuse
T1578	Harare W	ME	Use C	12/19/84	6/2/85	165 Refuse
T1579	Harare	ME	Sec 26	1/30/85	2/19/85	20 With
T1580	Harare	ME	Sec 40	2/12/85	7/22/85	160 With
T1581	Harare C	ME	Enforce	2/21/85	6/3/85	102 With
T1582	Byo	MTN	Sec 40	3/11/85	10/4/85	207 With
T1583	Glendale	MC	Enforce	4/1/85	9/16/85	168 With
T1584	Byo	MTN	Sec 26	4/2/85	5/23/85	51 With
T1585	Harare	ME	Use C	5/9/85	7/15/85	67 With
T1586	Harare	ME	Enforce	5/27/85	7/16/85	50 Refuse
T1587	Harare	ME	Use C	5/29/85	8/15/85	78 Refuse
T1588	Byo	MTN	Enforce	6/5/85	9/3/85	90 With
T1589	Harare	ME	Use C	6/6/85	8/28/85	83 Grant
T1590	Harare	ME	Sec 40	7/4/85	10/25/85	113 With
T1591	Harare	ME	Use C	8/14/85	2/24/86	194 Refuse
T1592	Harare	ME	Sec 49	8/26/85	9/17/85	22 Refuse
T1593	Harare	ME	Use C	11/25/85	3/24/86	119 Refuse
T1594	Harare	ME	Use C	10/29/85	2/4/86	98 Refuse
T1595	Harare	ME	Enforce	11/18/85	12/13/85	25 With
T1596	Harare	ME	Use C	11/22/85	2/17/86	87 With
T1597	Harare	ME	Sec 26	12/11/85	6/11/86	182 With
T1598	Harare	ME	Use C	12/12/85	6/21/86	191 With
T1599	Mutare	MN	Use C	1/22/86	3/14/86	51 With
T1600	Makoni	MN	Use C	1/30/86	6/17/86	138 Refuse
T1601	Harare C	ME	Use C	1/30/86	7/24/86	175 Grant
T1602	Mutare	MN	Sec 26	2/7/86	4/7/86	59 With
T1603	Harare	ME	Use C	2/14/86	7/1/86	137 Refuse
T1604	Harare	ME	Enforce	3/10/86	5/30/86	81 With
T1605	Mutare	MN	Sec 49	3/18/86	4/28/86	41 With
T1606	Harare	ME	Enforce	4/24/86	6/23/86	60 With
T1607	Harare	ME	Enforce	6/9/86	7/10/86	31 With
T1608	Mazoe	MC	Sec 40	7/17/86	1/29/87	196 Refuse
T1609	Harare	ME	Use C	8/1/86	11/20/86	111 Refuse
T1610	Byo	MTN	Enforce	8/25/86	9/24/86	30 Grant
T1611	Harare	ME	Sec 35	8/28/86	9/11/86	14 With
T1612	Harare	ME	Sec 49	9/18/86	11/25/86	68 With
T1613	Mutare	MN	Sec 26	10/3/86	10/15/86	12 With
T1614	Harare	ME	Use C	10/6/86	10/9/86	3 With
T1615	Harare	ME	Sec 26	10/16/86	2/25/87	132 With
T1616	Harare	ME	Sec 26	10/20/86		-31705 None
T1617	Mutare	MN	Sec 26	8/28/86	12/10/86	104 Lapse
T1618	Mutare	MN	Use C	10/24/86	2/27/87	126 With
T1619	Harare	ME	Use C	10/27/86	6/1/88	583 Grant
T1620	Harare	ME	Use C	11/13/86	4/1/87	139 With
T1621	Masvi	MS	N	12/2/86	1/14/88	408 With
T1622	Goro	ME	Sec 40	12/9/86	3/18/87	99 Grant
T1623	Harare	ME	Enforce	12/24/86	4/1/87	98 With
T1624	Masvi	MS	Sec 49	12/1/86	4/7/87	127 Order
T1625	Harare	ME	Sec 26	1/8/87	4/27/87	109 With
T1626	Byo	MTN	Sec 49	1/13/87	7/2/87	170 With
T1627	Gweru	MID	Sec 40	1/14/87	2/6/90	1119 With

T1628	Harare	ME	Use C	2/5/87	4/8/87	62 With
T1629	Harare	ME	Sec 26	2/13/87		-31821 None
T1630	Harare	ME	Storm Drai	2/16/87	5/19/87	92 With
T1631	Harare	ME	N	2/23/87		-31831 None
T1632	Goro	ME	Sec 26	3/5/87	8/17/87	165 With
T1633	Harare	ME	Sec 40	4/2/87	8/25/88	511 Order
T1634	Goro	ME	Enforce	4/2/87	7/24/87	113 With
T1635	Harare	ME	Sec 40	4/22/87	8/25/88	491 Grant
T1636	Harare	ME	Sec 40	4/23/87	6/8/87	46 With
T1637	Harare	ME	Use C	4/29/87	9/30/87	154 With
T1638	Harare	ME	Use C	5/15/87	3/29/88	319 High Cou
T1639	Harare	ME	Sec 49	5/20/87	7/9/87	50 Refuse
T1640	Harare	ME	Sec 40	5/20/87	7/31/87	72 Grant
T1641	Harare	ME	Use C	5/29/87	9/7/87	101 Refuse
T1642	Chimani	MN	Sec 26	7/13/87	11/9/87	119 With
T1643	Harare	ME	Enforce	7/21/87	12/14/87	146 With
T1644	Harare	ME	Enforce	7/23/87	2/23/90	946 Refuse
T1645	Harare	ME	Sec 26	7/22/87	8/20/87	29 With
T1646	Harare	ME	N	7/31/87	10/18/87	79 With
T1647	Harare	ME	Enforce	9/1/87	12/16/87	106 Post
T1648	Harare	ME	Sec 26	9/1/87	2/26/88	178 Grant
T1649	Harare	ME	Enforce	9/7/87	11/9/88	429 Lapse
T1650	Byo	MTN	N	10/9/87	1/29/88	112 With
T1651	Byo	MTN	Sec 26	11/3/87	12/28/87	55 With
T1652	Harare	ME	Sec 26	11/6/87	7/28/88	265 Grant
T1653	Harare	ME	Use C	11/6/87	6/24/88	231 With
T1654	Harare	ME	Enforce	11/23/87	8/30/88	281 Refuse
T1655	Harare	ME	Enforce	12/1/87	8/22/88	265 With
T1656	Mazowe	MC	N	2/17/87	1/11/88	328 With
T1657	Harare	ME	Enforce	12/18/87	12/13/88	361 Post
T1658	Harare	ME	Enforce	1/4/88	3/9/88	65 With
T1659	Harare	ME	Use C	1/8/88	5/16/88	129 With
T1660	Harare	ME	Enforce	1/13/88	9/1/88	232 Refuse
T1661	Harare	ME	Use C	1/15/88	7/22/88	189 Grant
T1662	Harare	ME	Use C	1/20/88	3/18/88	58 With
T1663	Harare	ME	Enforce	1/29/88		-32171 Lapse
T1664	Byo	MTN	Sec 26	1/29/88	12/2/88	308 With
T1665	Gutu	MS	Sec 26	2/3/88	8/24/88	203 Post
T1666	Harare	ME	Enforce	2/5/88	11/8/88	277 Lapse
T1667	Harare	ME	Sec 40	2/11/88	12/9/88	302 Post
T1668	Harare	ME	Sec 40	2/18/88	10/19/88	244 Grant
T1669	Harare	ME	N	2/26/88	11/8/88	256 Lapse
T1670	Harare	ME	Sec 29	3/10/88	2/3/89	330 Grant
T1671	Harare	ME	Use C	3/23/88	4/7/89	380 Grant
T1672	Harare	ME	Use C	3/23/88		-32225 None
T1673	Harare	ME	Use C	3/23/88	1/30/90	678 With
T1674	Harare	ME	Use C	3/23/88	8/2/88	132 Grant
T1675	Kariba	MW	Sec 26	3/30/88	9/20/88	174 Refuse
T1676	Kariba	MW	Sec 26	4/8/88	1/12/90	644 With
T1677	Harare	ME	Enforce	4/11/88	10/22/90	924 With
T1678	Harare	ME	Enforce	4/11/88	7/15/88	95 With
T1679	Harare	ME	Enforce	4/11/88	11/8/88	211 Lapse
T1680	Harare	ME	Enforce	4/20/88	11/8/88	202 Lapse
T1681	Harare	ME	Enforce	4/20/88	11/8/88	202 Lapse
T1682	Harare	ME	Enforce	4/20/88	11/9/88	203 Lapse

T1683	Harare	ME	Use C	4/20/88	7/25/88	96 Grant
T1684	Harare	ME	Use C	4/25/88	10/31/88	189 Grant
T1685	Goro	ME	Lease	4/25/88		-32258 None
T1686	Byo	MTN	Enforce	4/25/88	5/12/88	17 With
T1687	Byo	MTN	Enforce	5/5/88	7/8/88	64 With
T1688	Harare	ME	Sec 26	5/9/88	10/3/88	147 Refuse
T1689	Harare C	ME	Use C	5/9/88		-32272 None
T1690	Harare	ME	Enforce	5/12/88	10/24/90	895 With
T1691	Harare	ME	Use C	5/12/88	10/10/88	151 Refuse
T1692	Harare C	ME	Sec 26	6/22/88	2/16/89	239 Refuse
T1693	Goro	ME	Trade	7/6/88	11/8/88	125 Lapse
T1694	Byo	MTN	Sec 26	7/6/88	7/31/90	755 Grant
T1695	Harare	ME	Sec 26	7/18/88	6/7/89	324 Refuse
T1696	Mazowe	MC	Sec 40	8/9/88	8/31/89	387 With
T1697	Harare C	ME	Use C	8/16/88	12/6/88	112 Refuse
T1698	Harare C	ME	Use C	8/31/88	2/17/89	170 Grant
T1699	Harare	ME	Sec 40	9/26/88	5/10/89	226 With
T1700	Harare	ME	Enforce	10/10/88	8/22/89	316 With
T1701	Harare	ME	Use C	10/17/88	2/3/89	109 Refuse
T1702	Gweru C	MID	Sec 26	10/19/88		-32435 Lapse
T1703	Harare	ME	Enforce	10/24/88		-32440 None
T1704	Mutare	MN	Use C	10/24/88	8/30/89	310 Refuse
T1705	Harare	ME	Enforce	11/4/88	10/10/89	340 Post
T1706	Harare	ME	Sec 26	11/9/88	5/30/89	202 Grant
T1707	Harare	ME	Enforce	11/25/88	12/28/88	33 Lapse
T1708	Harare	ME	Enforce	11/29/88	12/8/89	374 Refuse
T1709	Harare	ME	Enforce	12/1/88	2/2/90	428 With
T1710	Harare	ME	N	1/9/89	9/21/90	620 Lapse
T1711	Harare	ME	Enforce	1/10/89	4/23/90	468 Grant
T1712	Harare	ME	Enforce	1/10/89	9/19/89	252 With
T1713	Harare	ME	Sec 40	1/19/89	10/3/89	257 Refuse
T1714	Harare	ME	Use C	1/19/89	4/5/89	76 Refuse
T1715	Harare	ME	Use C	1/19/89	7/12/89	174 Grant
T1716	Byo	MTN	Sec 26	1/20/89	5/3/89	103 With
T1717	Byo	MTN	Sec 26	1/26/89		-32534 None
T1718	Lupane	MTN	Sec 40	2/1/89	3/29/91	786 With
T1719	Harare	ME	Sec 26	2/8/89	6/23/89	135 Refuse
T1720	Harare	ME	N	2/28/89		-32567 None
T1721	Harare	ME	Zoning	3/15/89	4/12/90	393 Refuse
T1722	Harare	ME	N	3/20/89	10/31/89	225 Refuse
T1723	Byo	MTN	Sec 40	3/22/89	5/9/90	413 Post
T1724	Harare	ME	Enforce	3/23/89	8/18/89	148 With
T1725	Harare	ME	Sec 40	3/20/89	9/13/89	177 With
T1726	Harare	ME	N	3/31/89	5/19/89	49 Lapse
T1727	Harare C	ME	Enforce	4/11/89	6/28/89	78 With
T1728	Harare	ME	Enforce	4/11/89	1/9/90	273 None
T1729	Harare	ME	Use C	4/11/89	5/10/91	759 Refuse
T1730	Harare	ME	Use C	4/14/89	12/21/89	251 Grant
T1731	Harare	ME	Enforce	4/14/89		-32612 Lapse
T1732	Harare	ME	Gen Plan	5/2/89		-32630 Not Pl Iss
T1733	Byo	MTN	N	5/4/89	6/19/89	46 With
T1734	Gwanda	MTS	Sec 40	5/18/89	9/22/89	127 Grant
T1735	Ndanga	MS	Sec 40	5/22/89	8/5/89	75 Refuse
T1736	Harare	ME	Sec 49	6/14/89	7/26/89	42 With
T1737	Maro	ME	Sec 40	7/12/89	9/25/89	75 Lapse

T1738	Harare C	ME	Enforce	7/12/89	12/21/90	527 With
T1739	Harare	ME	Use C	7/12/89	12/14/89	155 Refuse
T1740	Harare	ME	N	7/12/89		-32701 None
T1741	Harare C	ME	Enforce	7/12/89	7/16/90	369 Grant
T1742	Harare	ME	Sec 26	7/25/89	9/1/89	38 Grant
T1743	Harare	ME	Enforce	7/25/89	2/2/90	192 Refuse
T1744	Harare	ME	Enforce	8/22/89	1/23/90	154 Grant
T1745	Goro	ME	Enforce	8/22/89	4/25/90	246 With
T1746	Harare	ME	Sec 26	8/22/89	8/1/90	344 Grant
T1747	Harare	ME	Sec 26	8/22/89	3/8/90	198 With
T1748	Harare	ME	Enforce	8/22/89	5/30/90	281 Refuse
T1749	Harare	ME	Use C	8/22/89	9/20/90	394 With
T1750	Harare	ME	N	8/25/89		-32745 None
T1751	Mutare	MN	Sec 26	9/7/89	2/13/90	159 With
T1752	Harare	ME	N	9/11/89		-32762 None
T1753	Ndanga	MS	Sec 40	9/13/89	9/14/90	366 Grant
T1754	Harare	ME	Enforce	9/14/89	2/14/90	153 Refuse
T1755	Byo	MTN	Sec 26	9/15/89	2/15/90	153 With
T1756	Mutare C	MN	Use C	9/22/89		-32773 None
T1757	Harare	ME	Sec 30	9/25/89	3/26/90	182 Grant
T1758	Harare	ME	Enforce	9/27/89	6/19/90	265 Grant
T1759	Harare	ME	N	9/27/89		-32778 None
T1760	Harare C	ME	Enforce	9/28/89	2/20/90	145 With
T1761	Harare C	ME	Enforce	9/29/89	6/21/90	265 Grant
T1762	Harare C	ME	Enforce	10/10/89	4/6/90	178 Refuse
T1763	Harare	ME	Enforce	10/11/89	3/12/90	152 Lapse
T1764	Harare	ME	Use C	10/11/89	4/10/90	181 Refuse
T1765	Harare C	ME	Enforce	10/20/89	5/4/90	196 Lapse
T1766	Harare	ME	Sec 26	10/25/89		-32806 None
T1767	Harare	ME	Use C	11/14/89	12/2/91	748 Refuse
T1768	Harare	ME	Enforce	11/23/89		-32835 Lapse
T1769	Harare	ME	Sec 40	11/23/89	4/24/90	152 Grant
T1770	Harare	ME	Enforce	12/13/89	4/3/91	476 With
T1771	Harare	ME	Use C	12/19/89	6/13/90	176 Grant
T1772	Goro	ME	Sec 40	12/19/89	1/18/90	30 Lapse
T1773	Harare	ME	Enforce	1/12/90	6/12/90	151 Refuse
T1774	Kariba	MW	Sec 40	1/12/90		-32885 Lapse
T1775	Harare C	ME	Enforce	1/12/90	8/30/90	230 With
T1776	Goro	ME	Sec 40	1/22/90		-32895 None
T1777				1/22/90		-32895 None
T1778	Harare	ME	Enforce	1/30/90	7/18/90	169 Refuse
T1779	Gwanda	MTS	N	3/26/90		-32958 None
T1780	Harare	ME	Enforce	3/26/90	7/17/90	113 Refuse
T1781	Harare	ME	Sec 40	3/26/90	5/10/90	45 With
T1782	Harare	ME	Enforce	3/26/90	7/5/90	101 Refuse
T1783	Harare	ME	Sec 26	4/4/90	10/23/90	202 With
T1784	Harare	ME	Sec 26	4/4/90	12/12/90	252 Grant
T1785	Harare	ME	Enforce	5/11/90	10/24/90	166 With
T1786	Harare	ME	N	5/17/90	2/18/91	277 With
T1787	Harare	ME	Sec 26	5/17/90	6/6/91	385 Grant
T1788	Harare	ME	Sec 26	5/28/90	10/10/90	135 With
T1789	Harare	ME	Enforce	6/11/90		-33035 With
T1790	Harare	ME	Sec 26	6/20/90	2/8/91	233 Lapse
T1791	Goro	ME	Sec 40	7/12/90	4/10/91	272 Refuse
T1792	Gweru	MID	Sec 26	7/25/90		-33079 Lapse

T1793	Harare	ME	Enforce	8/21/90		-33106	None
T1794	Harare	ME	Enforce	8/22/90		-33107	None
T1795	Mutare	MN	Use C	9/11/90	12/12/90	92	Refuse
T1796	Harare	ME	Use C	11/28/90	3/5/91	97	Refuse
T1797	Chipinge	MN	Sec 40	11/10/90	4/14/92	521	With
T1798	Byo	MTN	Sec 26	10/11/90	6/26/92	624	Refuse
T1799	Nyanga	MN	Sec 26	10/29/90	12/7/92	770	With
T1800	Goro	ME	Use C	10/31/90	4/2/91	153	With
T1801	Byo	MTN	Use C	11/1/90		-33178	None
T1802	Goro	ME	Sec 26	11/6/90		-33183	Lapse
T1803	Harare	ME	Use C	11/6/90	2/17/93	834	With
T1804	Harare	ME	Use C	11/6/90	2/17/93	834	With
T1805	Harare	ME	Use C	11/6/90		-33183	None
T1806	Harare	ME	Sec 26	11/6/90	12/4/90	28	With
T1807	Shamva	MC	Sec 40	11/8/90		-33185	Grant
T1808	Maro	ME	Sec 26	11/20/90		-33197	None
T1809	Masvi	MS	Sec 40	11/26/90		-33203	Lapse
T1810	Harare	ME	Enforce	11/26/90	6/17/91	203	With
T1811	Harare	ME	Enforce	11/26/90	4/5/91	130	With
T1812	Harare	ME		11/28/90	12/13/90	15	With
T1813	Harare	ME	Use C	12/17/90	1/30/91	44	With
T1814	Harare	ME	Sec 26	12/17/90		-33224	None
T1815	Nyanga	MN	Sec 40	12/21/90	4/10/91	110	With
T1816	Mutare	MN	Enforce	12/28/90	5/14/91	137	Refuse
T1817	Harare	ME	Enforce	12/28/90		-33235	Lapse
T1818	Harare	ME	Enforce	1/4/91		-33242	None
T1819	Harare	ME	Sec 49	1/22/91	3/1/91	38	Grant
T1820	Byo	MTN	Use C	1/22/91	1/25/95	1464	With
T1821	Harare	ME	Sec 26	1/22/91		-33260	None
T1822	Harare	ME	Enforce	1/22/91	10/11/91	262	Refuse
T1823	Harare	ME	Enforce	2/25/91		-33294	None
T1824	Harare	ME	Sec 40	2/26/91	7/28/91	152	Refuse
T1825	Harare	ME	Sec 49	3/1/91	8/28/91	180	With
T1826	Mutare	MN	Rd Close	3/6/91		-33303	None
T1827	Chegutu	MW	Sec 40	3/13/91	12/16/91	278	Grant
T1828	Byo	MTN	Use C	3/30/91		-33327	None
T1829	Harare	ME	N	4/8/91		-33336	None
T1830	Buhera	MN	Sec 26	4/30/91		-33358	None
T1831	Harare	ME	Enforce	4/30/91	12/12/91	226	Refuse
T1832	Mutare	MN	Sec 40	4/30/91		-33358	None
T1833	Harare	ME	Use C	5/10/91	12/4/91	208	Grant
T1834	Goro	ME	Use C	5/20/91	1/14/92	239	Grant
T1835	Goro	ME	Sec 26	5/20/91	1/14/92	239	Grant
T1836	Harare	ME	Enforce	5/23/91	12/18/91	209	Refuse
T1837	Harare	ME	Sec 26	5/23/91	9/8/94	1204	With
T1838	Nuanetsi	MS	Sec 40	5/28/91	1/17/92	234	With
T1839	Harare	ME	Enforce	5/29/91		-33387	None
T1840	Harare	ME	Use C	6/5/91	11/7/91	155	Grant
T1841	Harare	ME	Use C	6/6/91		-33395	None
T1842	Goro	ME	Sec 40	6/6/91		-33395	Grant
T1843	Harare C	ME	Enforce	7/8/91	4/30/92	297	Refuse
T1844	Harare	ME	Sec 40	7/19/91	2/6/92	202	Refuse
T1845	Harare	ME	Enforce	7/24/91	2/26/92	217	Lapse
T1846	Harare	ME	Enforce	7/26/91		-33445	None
T1847	Harare	ME	Enforce	7/25/91		-33444	None

T1848	Harare	ME	Use C	8/7/91	3/4/92	210 Refuse
T1849	Harare	ME	Use C	8/7/91	12/23/91	138 Refuse
T1850	Goro	ME	Sec 40	8/7/91		-33457 With
T1851	Harare C	ME	Sec 26	8/7/91	1/21/93	533 With
T1852	Goro	ME	Sec 40	8/7/91	9/10/91	34 With
T1853	Harare	ME	Sec 40	8/13/91	9/2/92	386 Grant
T1854	Goro	ME	Sec 40	8/13/91	11/28/91	107 With
T1855	Mvurwi	MC	N	8/23/91		-33473 None
T1856	Harare C	ME	Use C	8/26/91	3/31/92	218 With
T1857	Harare	ME	Sec 40	9/5/91	3/2/93	544 Refuse
T1858	Goro	ME	Sec 40	9/6/91		-33487 None
T1859	Gweru	MID	Sec 49	9/5/91	1/9/92	126 Grant
T1861	Bindura	MC	Sec 40	10/10/91	12/4/91	55 With
T1862	Ruwa	ME	Sec 26	10/31/91		-33542 None
T1863	Harare	ME	Use C	11/12/91	6/5/92	206 Grant
T1864	Harare	ME	Enforce	11/20/91		-33562 None
T1865	Norton	MW	Use C	11/26/91	8/28/92	276 Refuse
T1866	Harare	ME	Sec 26	11/28/91	7/8/92	223 With
T1867	Byo	MTN	Sec 26	12/3/91		-33575 None
T1868	Harare	ME	Use C	3/12/91	5/28/93	808 Grant
T1869	Byo	MTN	Sec 40	12/23/91	7/22/92	212 Grant
T1870	Harare	ME	Sec 19	1/2/92	11/11/92	314 Grant
T1871	Harare	ME	Enforce	1/15/92	3/24/92	69 With
T1872	Harare	ME	Sec 26	2/8/92	9/24/92	229 Refuse
T1874	Harare	ME	Enforce	2/18/92		-33652 None
T1875	Masvi	MS	Sec 40	2/19/92		-33653 None
T1876	Harare C	ME	Use C	3/4/92		-33667 None
T1877	Nyanga	MN	Sec 40	3/4/92		-33667 None
T1878	Harare	ME	Use C	3/4/92	12/3/92	274 Refuse
T1879	Nyanga	MN	Sec 40	3/4/92	11/25/94	996 With
T1880	Maro	ME	Sec 40	3/11/92	3/23/93	377 Grant
T1881	Gweru	MID	Sec 40	3/11/92	11/13/92	247 With
T1882	Harare	ME	Use C	3/13/92	10/29/92	230 Refuse
T1883	Harare	ME	N	3/17/92		-33680 None
T1884	Harare	ME	N	3/23/92		-33686 None
T1885	Maro	ME	Use C	3/30/92		-33693 Post
T1886	Harare	ME	Sec 49	3/30/92	10/9/92	193 Refuse
T1887	Makoni	MN	Sec 40	4/7/92	7/13/93	462 With
T1888	Harare	ME	Sec 49	4/8/92		-33702 None
T1889	Byo	MTN	Use C	4/8/92	11/10/93	581 Lapse
T1890	Harare	ME	Sec 26	5/3/92	9/8/92	128 Lapse
T1891	Mutare C	MN	Use C	5/13/92		-33737 None
T1892	Harare	ME	Use C	5/22/92	12/4/92	196 Out
T1893	Nyanga	MN	N	5/27/92	2/15/95	994 With
T1894	Mutare	MN	Sec 26	6/5/92	10/21/92	138 With
T1895	Harare C	ME	Use C	6/16/92		-33771 None
T1896	Harare	ME	Sec 26	6/17/92	12/8/92	174 With
T1897	Harare	ME	Use C	6/17/92	7/15/92	28 Grant
T1898	Harare	ME	Sec 49	6/23/92	1/27/93	218 Grant
T1899	Harare	ME	Sec 49	6/30/92		-33785 None
T1900	Byo	MTN	Sec 26	6/30/92	10/15/92	107 With
T1901	Harare	ME	Enforce	6/30/92	1/6/93	190 Grant
T1902	Harare	ME	Sec 40	7/13/92	2/12/93	214 Grant
T1903	Harare	ME	Sec 40	7/13/92	3/25/93	255 Grant
T1905	Chipinge	MN	Sec 40	7/22/92	8/3/93	377 Out

T1906	Harare	ME	Sec 26	7/22/92	2/16/93	209 Refuse
T1907	Mutare	MN	Use C	7/22/92		-33807 None
T1908	Byo	MTN	Use C	9/16/92	9/28/92	12 With
T1909	Byo	MTN	N	10/7/92		-33884 None
T1911	Harare	ME	Use C	11/17/92	4/7/94	506 Grant
T1912	Masvi	MS	Use C	12/2/92		-33940 None
T1913	Chegutu	MW	Sec 40	12/3/92	5/12/99	2351 With
T1914	Byo	MTN	Sec 26	12/4/92		-33942 None
T1915	Harare	ME	Enforce	12/4/92		-33942 None
T1916	Byo	MTN	Enforce	12/4/92	2/26/93	84 With
T1917	Byo	MTN	Sec 40	12/28/92	5/9/94	497 Grant
T1918	Mutoko	ME	Sec 40	1/15/93	10/20/93	278 Grant
T1919	Chegutu	MW	Sec 40	1/18/93	5/17/93	119 With
T1920	Harare	ME	Use C	1/18/93		-33987 None
T1921	Harare	ME	Use C	1/22/93		-33991 None
T1922	Harare	ME	Sec 26	5/26/93	11/21/94	544 Grant
T1923	Harare	ME	Use C	5/26/93	12/9/94	562 Refuse
T1924	Harare	ME	Use C	5/26/93	6/14/93	19 With
T1925	Kadoma	MW	Sec 40	5/26/93		-34115 None
T1926	Harare C	ME	Enforce	6/9/93		-34129 None
T1927	Harare C	ME	Use C	6/10/93	9/2/93	84 Refuse
T1928	Ruwa	ME	Use C	6/10/93	12/24/93	197 Out
T1929	Harare	ME	Sec 40	8/10/93		-34191 Grant
T1930	Harare	ME	Sec 40	8/10/93		-34191 None
T1931	Goro	ME	Sec 40	8/10/93	12/30/93	142 With
T1932	Harare C	ME	Sec 26	8/10/93		-34191 None
T1933	Goro	ME	Enforce	8/10/93	12/23/93	135 With
T1934	Harare	ME	Use C	9/7/93	11/12/93	66 With
T1935	Harare	ME	Sec 49	9/7/93	10/14/93	37 Refuse
T1936	Goro	ME	Enforce	10/18/93		-34260 None
T1937	Goro	ME	Use C	10/18/93		-34260 None
T1938	Harare	ME	Sec 26	10/16/93	6/22/94	249 Grant
T1939	Harare	ME	Sec 26	11/4/93		-34277 None
T1940	Harare	ME	Sec 49	11/4/93		-34277 None
T1941	Byo	MTN	N	11/5/93		-34278 None
T1942	Glendale	MC	Sec 49	11/10/93	1/6/94	57 Refuse
T1943	Mutare	MN	Use C	11/11/93	3/29/94	138 Grant
T1944	Harare	ME	Sec 40	12/7/93		-34310 Grant
T1945	Harare	ME	N	12/8/93		-34311 None
T1946	Harare	ME	Enforce	12/13/93	4/28/94	136 Lapse
T1947	Byo	MTN	N	12/16/93		-34319 None
T1948	Byo	MTN	N	12/16/93		-34319 None
T1949	Harare C	ME	Enforce	1/3/94	4/22/94	109 Refuse
T1950	Nyanga	MN	N	2/11/94	3/17/94	34 With
T1951	Harare	ME	N	2/28/94		-34393 None
T1952	Harare	ME	Sec 40	4/27/94	2/14/95	293 Grant
T1953	Byo	MTN	Sec 26	5/18/94	7/20/94	63 Lapse
T1954	Harare	ME	Use C	5/24/94	8/8/94	76 With
T1955	Harare	ME	Use C	6/8/94	1/6/95	212 Refuse
T1956	Nyami	MW	Use C	6/17/94	1/19/95	216 Grant
T1957	Shamva	MC	N	7/1/94	1/19/95	202 With
T1958	Harare	ME	N	7/13/94		-34528 None
T1959	Harare	ME	N	7/26/94		-34541 None
T1960	Harare	ME	N	8/4/94		-34550 None
T1961	Ruwa	ME	N	8/9/94		-34555 None

T1962	Beitbridge	MTS	N	9/5/94		-34582	None
T1963	Byo	MTN	N	8/31/94		-34577	None
T1964	Harare	ME	Sec 35	9/23/94	3/16/95	174	Grant
T1965	Harare	ME	Sec 26	9/23/94	12/21/94	89	With
T1966	Harare	ME	Sec 49	9/23/94		-34600	None
T1967	Harare	ME	N	10/14/94		-34621	None
T1968	Harare	ME	N	10/14/94		-34621	None
T1969	Harare	ME	N	10/24/94		-34631	None
T1970	Gwanda	MTS	N	11/1/94		-34639	None
T1971	Shurugwi	MID	Enforce	11/7/94		-34645	None
T1972	Harare	ME	N	12/9/94		-34677	None
T1973	Harare	ME	N	12/20/94		-34688	None
T1974	Ruwa	ME	N	1/13/95		-34712	None
T1975	Umzingwa	MTS	N	2/17/95		-34747	None
T1976	Byo	MTN	N	3/14/95		-34772	None
T1977	Lomagun	MW	Sec 40	4/24/95	11/9/95	199	Grant
T1978	Goro	ME	Sec 40	4/24/95		-34813	Grant
T1979	Harare	ME	N	4/24/95		-34813	None
T1980	Harare	ME	N	5/8/95		-34827	None
T1981			N	6/1/95		-34851	None
T1982	Goro	ME	N	6/15/95		-34865	None
T1983	Harare	ME	N	8/24/95	2/15/96	175	Grant
T1984	Harare	ME	Sec 26	8/24/95	2/15/96	175	Grant
T1985	Goro	ME	N	10/18/95		-34990	None
T1986	Harare	ME	N	10/30/95		-35002	None
T1987	Matobo	MTS	Sec 40	11/2/95	5/15/97	560	Grant
T1988	Harare	ME	Sec 40	12/19/95		-35052	Grant
T1989	Banket	MW	N	12/20/95		-35053	None
T1990	Harare	ME	Sec 49	12/15/95		-35048	None
T1990A	Goro	ME	Sec 40	12/15/95	12/6/96	357	Grant
T1991	Harare	ME	N	1/8/96		-35072	None
T1992	Nyanga	MN	N	2/8/96		-35103	None
T1993	Goro	ME	N	2/20/96		-35115	None
T1994	Byo	MTN	N	3/13/96		-35137	None
T1995			N	2/15/96		-35110	None
T1996	Goro	ME	Sec 40	4/3/96		-35158	Grant
T1997	Vic Falls	MTN	Sec 49	4/15/96	5/21/97	401	Grant
T1998	Bulilimam	MTS	Sec 40	5/7/96	3/24/97	321	With
T1999	Vic Falls	MTN	Sec 40	5/7/96	11/27/96	204	Lapse
T2000	Kariba	MW	Sec 26	5/7/96	7/22/97	441	Refuse
T2001	Nyanga	MN	Sec 40	5/29/96	9/25/97	484	Out
T2002	Mutare	MN	Sec 40	6/10/96	2/12/98	612	With
T2003	Harare	ME	Sec 26	6/12/96	7/5/96	23	Grant
T2004	Harare C	ME	Sec 40	6/20/96		-35236	None
T2005	Harare	ME	Sec 40	7/4/96		-35250	Refuse
T2006	Mazowe	MC	Sec 40	8/6/96	1/14/97	161	With
T2007	Kariba	MW	Use C	8/9/96	2/4/97	179	With
T2008	Harare	ME	Sec 40	8/15/96		-35292	None
T2009	Harare	ME	Use C	8/28/96	3/18/97	202	Grant
T2010	Harare	ME	Use C	8/28/96	3/18/97	202	Grant
T2011	Harare C	ME	Sec 26	9/13/96		-35321	Grant
T2012	Byo	MTN	Sec 26	9/16/96		-35324	None
T2013	Goro	ME	Sec 40	10/11/96	12/27/96	77	Lapse
T2014	Ruwa	ME	Sec 26	11/3/96	3/13/97	130	Refuse
T2015	Goro	ME	Sec 40	11/12/96	1/21/97	70	With

T2016	Harare	ME	Sec 40	12/17/96	1/16/97	30 With
T2017	Nyanga	MN	N	12/18/96		-35417 None
T2018	Byo	MTN	Enforce	12/20/96	11/21/97	336 Post

APPENDIX 4: SAMPLE OF APPEAL CASES

CASE	DISTRICT	PROVINCE	TYPE	DATE LODGED	DATE FINALISED	TIME DAYS	DECISION
AT1421	Sal	ME	Use C	7/1/76	2/25/77	239	Refuse
AT1423	Sal	ME	Use C	7/21/76	2/28/77	222	Grant Con
AT1425	Sal	ME	Use C	11/12/76	7/20/77	250	Grant
AT1434	Sal	ME	Sec 40	6/2/77	9/20/78	475	Grant
AT1436	Byo	MTN	Sec 26	6/23/77	3/15/78	265	Grant
AT1439	Sal	ME	Use C	9/9/77	4/19/78	222	Refuse
AT1441	Maro	ME	Sec 40	10/4/77	9/27/78	358	Refuse
AT1448	Sal	ME	Sec 26	1/3/78	6/27/78	175	Grant
AT1449	Sal	ME	Sec 40	3/13/78	7/18/78	127	Refuse
AT1450	Sal	ME	Sec 26	3/16/78	7/24/78	130	Grant
AT1461	Chiredzi	MS	Sec 40	11/6/78	3/5/79	119	Grant
AT1466	Sal	ME	Sec 26	4/19/79	11/21/79	216	Grant
AT1470	Sal	ME	Use C	12/11/79	7/15/80	217	Refuse
AT1472	Sal	ME	Use C		6/26/80	29398	Refuse
AT1477	Sal	ME	Use C	5/19/80	8/19/82	822	Refuse
AT1479	Sal	ME	Use C	1/11/80	2/2/81	388	Order
AT1483	Sal	ME	Use C	7/2/80	12/3/80	154	Grant
AT1484	Sal	ME	Use C	7/2/80	12/17/80	168	Grant
AT1492	Sal	ME	Sec 40	6/19/81	8/6/81	48	Refuse
AT1493	Sal	ME	Use C	7/27/81	11/19/81	115	Grant
AT1516	Harare	ME	Use C	8/3/82	9/13/82	41	Grant
AT1522	Harare	ME	Sec 26	1/18/83	3/1/83	42	Grant
AT1529	Harare	ME	Use C	6/9/83	11/14/83	158	Grant
AT1542	Harare	ME	Use C	9/19/83	1/18/84	121	Grant
AT1544	Harare	ME	Use C	12/6/83	5/28/84	174	Grant
AT1545	Byo	MTN	Use C	12/20/83	4/24/84	126	Grant
AT1559	Harare	ME	Sec 26	8/3/84	12/11/84	130	Grant
AT1564	Harare	ME	Use C	10/11/84	12/5/84	55	Grant
AT1570	Harare	ME	Use C	8/9/84	11/27/84	84	Refuse
AT1576	Maro	ME	Sec 40	1/2/85	6/6/85	155	Refuse
AT1587	Harare	ME	Use C	5/29/85	8/15/85	78	Refuse
AT1589	Harare	ME	Use C	6/6/85	8/28/85	83	Grant
AT1591	Harare	ME	Use C	8/14/85	2/24/86	194	Refuse
AT1592	Harare	ME	Sec 49	8/26/85	9/17/85	22	Refuse
AT1594	Harare	ME	Use C	10/29/85	2/4/86	98	Refuse
AT1600	Makoni	MN	Use C	1/30/86	6/17/86	138	Refuse
AT1622	Goro	ME	Sec 40	12/9/86	3/18/87	99	Grant
AT1635	Harare	ME	Sec 40	4/22/87	8/25/88	491	Grant
AT1639	Harare	ME	Sec 49	5/20/87	7/9/87	50	Refuse
AT1648	Harare	ME	Sec 26	9/1/87	2/26/88	178	Grant
AT1652	Harare	ME	Sec 26	11/6/87	7/28/88	265	Grant
AT1668	Harare	ME	Sec 40	2/18/88	10/19/88	244	Grant
AT1674	Harare	ME	Sec 26	3/23/88	8/2/88	132	Grant
AT1684	Harare	ME	Use C	4/25/88	10/31/88	189	Grant
AT1692	Harare	ME	Sec 26	6/22/88	2/16/89	239	Refuse
AT1697	Harare	ME	Use C	8/16/88	12/6/88	112	Refuse
AT1701	Harare	ME	Use C	10/17/88	2/3/89	109	Refuse
AT1704	Mutare	MN	Use C	10/24/88	8/30/89	310	Refuse
AT1715	Harare	ME	Use C	1/19/89	7/12/89	174	Grant
AT1734	Gwanda	MTS	Sec 40	5/18/89	9/22/89	127	Grant

AT1739	Harare	ME	Use C	7/12/89	12/14/89	155	Refuse
AT1753	Ndanga	MS	Sec 40	9/13/89	9/14/90	366	Grant
AT1784	Harare	ME	Sec 26	4/4/90	12/12/90	252	Grant
AT1791	Goro	ME	Sec 40	7/12/90	4/10/91	272	Refuse
AT1798	Byo	MTN	Sec 26	10/11/90	6/26/92	624	Refuse
AT1827	Chegutu	MW	Sec 40	3/13/91	12/16/91	278	Grant
AT1833	Harare	ME	Sec 26	5/10/91	12/4/91	208	Grant
AT1834	Goro	ME	Use C	5/20/91	1/14/92	239	Grant
AT1840	Harare	ME	Use C	6/5/91	11/7/91	155	Grant
AT1844	Harare	ME	Sec 40	7/19/91	2/6/92	202	Refuse
AT1848	Harare	ME	Use C	8/7/91	3/4/92	210	Refuse
AT1869	Byo	MTN	Sec 40	12/23/91	7/22/92	212	Grant
AT1880	Maro	ME	Sec 40	3/11/92	3/23/93	377	Grant
AT1882	Harare	ME	Use C	3/13/92	10/29/92	230	Refuse
AT1897	Harare	ME	Use C	6/17/92	7/15/92	28	Grant
AT1906	Harare	ME	Sec 26	7/22/92	2/16/93	209	Refuse
AT1918	Mutoko	ME	Sec 40	1/15/93	10/20/93	278	Grant
AT1935	Harare	ME	Sec 49	9/7/93	10/14/93	37	Refuse
AT1938	Harare	ME	Sec 26	10/16/93	6/22/94	249	Grant
AT1942	Glendale	MC	Sec 49	11/10/93	1/6/94	57	Refuse
AT1952	Harare	ME	Sec 40	4/27/94	2/14/95	293	Grant
AT1956	Nyami	MW	Use C	6/17/94	1/19/95	216	Grant
AT2003	Harare	ME	Sec 26	6/12/96	7/5/96	23	Grant
AT2014	Ruwa	ME	Sec 26	11/3/96	3/13/97	130	Refuse

For Abbreviations See Key at the Beginning of Case Register Tables

APPENDIX 5

GLOSSARY

Southern Rhodesia/ Rhodesia/ Zimbabwe
Stand/Plot
Salisbury/Harare
Gwelo/Gweru
Gatooma/Kadoma
Umtali/Mutare
Que Que/Kwekwe
Fort Victoria/Masvingo
Selukwe/Shurugwi
Hartley/Chegutu
Lake Kyle/Mutirikwi
Mazoe/Mazowe
Sinoia/Chinhoyi
Nuanetsi/Mwenezi
Umvukwesi/Mvurwi

These terms were referred to in Chapter Five, the old name and the new name.

APPENDIX 6

ANALYSIS OF ECONOMIC DATA: INDEXES: ZIMBABWE

YEAR	INFLATION	RENT (Residential)	BUILDING INDEX
1996	21.4	986.8	1541.9
1995	22.6	802.4	1297.3
1994	22.3	687.6	1081.1
1993	27.6	593.8	947.5
1992	42.1	436.3	872.3
1991	23.3	351.8	637.7
1990	15.5	290.5	464.0
1989		254.9	252.5
1988	19.2	226.1	309.9
1987	28.6	223.2	292.4
1986	28.8	203.3	260.8
1985	15.7	167.5	221.7
1984	31.1	151.8	187.3
1983	28.9	134.7	166.2
1982	12.1	117.4	142.2
1981	13.1	107.2	125.4
1980	5.1	100.0	100.0
1979	11.5	93.8	86.3
1978	7.4	81.9	71.8
1977	7.1	71.4	65.4
1976	6.8	64.1	56.2

ADAPTED FROM CSO 1999

For Rent Index and Building Index 1980 is the base year. This is referred to in Chapter Six.

APPENDIX 7

THE HERALD NEWSPAPER PROPERTY PRICES/COSTS YEAR BY YEAR IN Z$

YEAR	TWO BED-ROOMED FLATS	HOUSE THREE BEDROOM	PLOT AND THREE BED-ROOMED HOUSE	FARMS 500Ha TO 1000Ha	RENT INDUSTRY 700-1500sq.m
1996	420 000	1 200 000	1 500 000	2 000 000	10 000
1995	325 000	575 000	1 270 000	2 000 000	--
1994	325 000	530 000	800 000	1 100 000	--
1993	320 000	500 000	--	3 000 000	6 500
1992	300 000	590 000	700 000	--	--
1991	250 000	530 000	175 000	1 200 000	--
1990	250 000	450 000	120 000	500 000	7 000
1989	255 000	325 000	300 000	300 000	--
1988	68 000	195 000	60 000	--	1 200
1987	46 000	95 000	100 000	260 000	6 000
1986	35 000	90 000	--	160 000	--
1985	13 000	85 000	--	--	--
1984	24 000	42 000	65 000	110 000	1 500
1983	19 000	72 000	40 000	40 000	800
1982	12 000	75 000	30 000	80 000	1 200
1981	--	48 000	24 000	125 000	--
1980	12 000	45 000	43 000	100 000	1 500
1979	10 500	18 750	25 000	--	425
1978	16 000	22 000	31 000	70 000	200
1977	12 000	23 000	25 000	25 000	600
1976	--	29 000	20 000	--	420

Source: The Herald 1976 to 1996 (National Archives of Zimbabwe)

For the Two Bed-roomed Flats, Houses, Plots and Farms the figures show possible purchase/selling price. For industry, the figures show the cost of renting premises.

APPENDIX 8

ANALYSIS OF POPULATION DATA AND NUMBER OF EMPLOYEES

YEAR	IMMIGRATION	EMIGRATION	NET MIGRATION	TOTAL EMPLOYEES
1996	3 286	1 629	1 652	1 273 700
1995	2 901	3 282	(-381)	1 239 600
1994	2 921	3 474	(-579)	1 263 300
1993	3 461	3 056	405	1 240 300
1992	3 171	2 620	551	1 236 200
1991	3 583	4 031	(-448)	1 244 000
1990	2 964	4 224	(-1260)	1 192 200
1989	3 342	4 565	(-1 223)	1 166 700
1988	2 915	4 305	(-1 390)	1 131 200
1987	3 925	5 330	(-1 405)	1 085 100
1986	4 452	3 787	655	1 081 100
1985	5 471	6 918	(-1 447)	1 052 500
1984	5 567	16 979	(-11 413)	1 036 400
1983	6 944	19 067	(-12 123)	1 033 400
1982	7 715	17 942	(-10 227)	1 045 900
1981	7 794	20 534	(-12 740)	1 037 700
1980	6 407	17 240	(-10 833)	1 009 900
1979	3 647	12 951	(-9 304)	984 700
1978	4 650	16 467	(-11 817)	986 200
1977	5 914	14 556	(-8 642)	1 012 200
1976	7 941	13 013	(-5072)	1 033 400

ADAPTED FROM Central Statistical Office 1999

Number of employees refers to people in formal employment. From 1976 to 1996 employment grew by a mere 240 300 new jobs. This is referred to in Chapter Six.

APPENDIX 9

RESEARCH FORM: DATA FIELDS FOR PLANNING PERMISSION APPLICATIONS

DATE OF APPLICATON	ACTIVITY/REPLY	DATE ACKNOWLEDGED	EXPECTED DECISION DATE	EXTENSION OF TIME	ISSUES ARISING	ACTUAL DECISION DATE

This is the form that was used to record data on sampled planning appeal cases being studied from files at the Administrative Court, Department of Physical Planning and National Archives. It referred to in Chapter Four.

APPENDIX 10

MINISTER OF LOCAL GOVERNMENT MEMORANDUM 1955 AUGUST

SUBDIVISION OF LAND IN RURAL AREAS

1. Despite the entitling of the Act as the Town and Country Planning Act, country planning in the wider sense is not directly an objective of the Act, the extent of its application being dependent upon the size of subdivision to which the provision of the Act are applied by regulations.

Originally subdivisions up to 100 acres were subject to control. Later this was increased to 250 acres, then in 1953 the Minister of Agriculture and Lands pressed for control over subdivisions to be increased to 1000 acres but the Minister of Internal affairs was reluctant to agree to any extension of control under the Act for purely agricultural purposes. It was considered that whilst such control might be desirable it was not a matter coming within "town planning" in the generally accepted sense but rather a form of control which should be exercised by the Minister of Agriculture acting under special legislation for the purpose. The matter was to have been raised in Cabinet for discussion but with the advent of Federation the question temporarily was shelved.

The subject was opened a year later by the Chairman of the Natural Resources Board and further examination of the problem ensued. The Minister of Local Government re-affirmed his predecessor's view that matters of this sort were not within the accepted scope of the Act and that neither he nor the Town Planning Department were qualified to deal with a subject which was mainly concerned with the suitability of land units for agricultural purposes. Ultimately the Board suggested that it would constitute a subcommittee under its control to examine and make representations upon the subdivision of all land in rural areas. This offer was accepted and the matter was put to Cabinet in the form of a recommendation that the prescribed area be increased from 250 to 3000 acres. (S.R.C. {55} 33rd meeting). Prescription of 3000 acres was considered unreasonable and it was felt that something in the region of 1000 acres was more related to the need for control. Further discussions took place in the Cabinet during August 1955 and it was decided eventually that control would be limited only to subdivisions of 750 acres or less. This was written into the regulations and still stands in-so-far as the colony as a whole is concerned.

2. The Natural Resources Board has never been satisfied with this decision and on many occasions it has reviewed the matter with the Minister of Justice and Internal Affairs. In the end the Board took the matter direct to the Prime Minister with reference particularly to the Nuanetsi Area. The Board maintained that it was required under the Natural Resources Act to conserve and improve the natural resources of the Colony and that this duty included enforcement of sound utilisation of such resources and protection of the land from abuse in whatever form. Attention was drawn to events in the Nuanstsi Ranch Area where land which only a few years previously had been subdivided into small units which on account of their situation were completely sub-economic for agricultural and ranching purposes. The Board maintained that such irresponsible action was destroying the food producing potential of the area and had to be stopped. It had no powers to take action under the Natural Resources Act so it sought the use of powers under the Town and Country Planning Act for some form of control which would enable it to consider upon its merits every case for subdivision of land in rural areas no matter what the size. It was agreed

that something must be done, and this as soon as possible, to stop the unwarranted and irresponsible subdivision of land in the Nuanetsi Area. The gravity of the situation warranted immediate action and despite doubt as to its legality the Town and Country Planning regulations were amended on the 21st December, 1956 to provide for control over subdivision of 15 000acres or less in the Nuanetsi Area whilst leaving control throughout the rest of the Colony on its existing basis of 750 acres or less.

3. The validity of this amendment to the regulations is extremely doubtful and in fact the Solicitor General has given it as his opinion that it is "ultra vires". This was understood to be the position at the time that the amendment to the regulations was published but it was decided to proceed with the promulgation of the amendment and then to consider the question of amendment to the Act at a later date.

4. The objects of the Act have been reviewed and it is clear that, as stated at the beginning of this memorandum, country planning in the wider sense is not within the scope of the Act. It is in section 65 that the power to control subdivisions is provided but in the same section control does not apply if the size of the subdivision exceeds a prescribed area and property being subdivided is situated outside of a scheme area or of any area under jurisdiction of local authority. This section as at present worded does not provide power to prescribed different areas in relation to subdivisions in different parts of the Colony and it is for this reason that the amendment published last December is considered to be valid. The provision under section 65 is, however, a logical one having in mind that the whole of object of the Act is control of township development and the factors leading to such development. The formation of Townships arises from subdivision of land into small pieces in suitable areas. Small plots arise from subdivision of larger areas and so on until it is seen in retrospect that in suitable areas it is through the breaking down of farms that the process of urban development commences. It is for that reason that provision for control over subdivision of land is made in the Town and Country Planning Act. Whilst control over the break-down of farms is necessary when this is likely to lead to the establishment of a township, it is not until such breakdown reaches the stage where the size and number of subdivisions lead to close settlement indicating the beginnings of ultimate urban development that town planning control need be applied, and it is unreasonable to suggest that the criterion for densities which will lead to urban development should be different in different parts of the Colony. The following extracts from the Minister's explanation during the Committee stage of this legislation are relevant:-

(Debates Volume 25 part II columns 2145 et seq)

"The whole idea of the clause is not to prevent people subdividing land but to prevent them subdividing it with an unexpressed intention of commencing a township. "……" There is no intention to prevent anybody surveying a portion of their or letting or selling it unless it is the beginning of the creation of a township. We have had examples where owners of land have divided it into big plots, which did not show any indication of becoming a township. Having succeeded in getting it divided into big blocks, they next proceeded to have the blocks subdivided. We suddenly found our selves with a township on our hands without having taken the necessary precautions to ensure that the owner of the township should provide the roads and the amenities necessary. "….." I think the farming members will agree if anybody is starting the development of a township without telling us, we have to have some means by which we can detect what his intentions are. As long as there is no apparent intention of commencing the cutting up of a township there will be no difficulty. The Minister will not insist on meticulous plans."

5. It is clear that for the true purpose of the act it was unnecessary to increase the prescribed area in its application to the Nuanetsi subdivisions. Nevertheless this has been done and the consequences now required to be resolved. The violation of suitable planning of farms in that area has been checked. So far no one has contested the validity of the regulation which has been enforced but it still remains to be decided whether or not to amend the Town and Country Planning Act to cover this discrepancy or consider the matter from an entirely different angle.

6. As already has been explained, the whole object of Town Planning Legislation is to control the establishment and development of urban areas. Of necessity this control must extend to adjacent rural areas and this extent power to control rural subdivisions is essential otherwise the outward sprawl of development would carry on at heavy cost for the provision of services to the area. Control of the subdivision of land in rural areas in the interests of agricultural and pastoral economies is unrelated to Town Planning but at the same time it is an important point of government policy to see as far as possible that the subdivision of land in rural areas does not take place on such a scale and in such a manner so as seriously to impair the Colony's agricultural potential.

The problem boils down to the two aspects – "Country Planning" from the viewpoint of agricultural and pastoral needs and "Town and Country Planning" from that of urban development; and the inter-relationship of the two. Starting from scratch with virgin land the first phase is subdivision of this land into economic farming units. The size of these subdivisions will depend upon accessibility, availability of water supplies and fertility of the soil. Town planning control is necessary as the population is widely distributed and none of the problems of close settlement arise. Nevertheless, control over the use of the land is essential in order to preserve and make full use of its productivity. In the course of the time a central meeting place for the community comes into being and at this centre shops and offices together with residential buildings follow. This brings into being the second phase where Town Planning Control should be applied, and as the area thrives so will the community increase and likewise need for Town Planning control to extend through various phases into the surrounding countryside. There will be an overlap of the control factors of both phases in the area dividing the two forms of control. The recently published Report of the Select Committee on Development of Unimproved Land contained a recommendation that a National Land Development Authority be established. This authority will undoubtedly come up against the need for co-ordination of the requirements of producers from the land (agriculture, and possibly mining) and those of the producers on the land (industry and commerce) so it seems that under the proposed authority two separate branches dealing with each aspect will be needed, one dealing with country (and town) planning and the other with town (and country) planning.

7. It is suggested that there is a clear need for special legislation to cover "country planning" control. This could be done through a separate enactment but it may be preferable to deal with it as a new part to the existing Town and Country Planning Act. The biggest difficulty is to decide the dividing line between the need for application of country planning policy and that of town planning policy. The existing prescribed area, 750 acres, is ridiculously large from the town planning angle but is far too small from that of country planning. It is subdivision of well over a square mile in size (640 acres) and one or even several of this size cannot be considered as demonstrating the nucleus of township development. Even 250 acres is rather large for this

purpose but bearing in mind the future need for land for public purposes and the existing policy to reserve for this purpose up to a maximum of $12^{1}/_{2}$, it does appear desirable for town planning policy to go into operation upon subdivisions of less than 250 acres outside its scheme areas in cases where future urban development is indicated.

The suggestion then is that Part IV of the Town and Country Planning Act be amended to apply only to subdivisions of 250 acres and that a new part be added to the Act to deal with subdivisions of land not otherwise covered. The new part could be placed under administration by the proposed Land Development Authority from which body recommendations would be made to the Minister. The authority would deal with these matters in consultation with the Department of Lands and the Federal Ministry of Agriculture. It would not be necessary in this new part to include clauses concerning reservation of land for public purposes or the payment of endowment but it would be necessary to include provision for any large subdivisions required for the establishment of industrial undertakings to be dealt with under Part IV and to provide that where the authority considers that residential small holding factors are outweghing agricultural considerations (e.g. the Inyanga area) it may recommend that a rural scheme be declared. Briefly then, the set up would be two authorities, a land development authority in which agricultural and pastoral considerations will predominate and a town planning authority in which urban development considerations will predominate. The former would deal with all uses and partitions of land down to lots of 250 acres subject to a provision that within scheme areas town planning objections may override. The latter would deal with all declared scheme areas subject to the proviso that agricultural objections in respect of plots over 250 acres may override, and with any proposals to establish lots of under 250 acres outside all scheme areas. It goes without saying that close liaison between the two will be necessary and that within scheme areas the existing arrangements for consultations with the Natural Resources Board will continue.

The text above is an extract from government files on a meeting by the Minister of Local Government and senior officers on the subject of subdivisions in the rural areas. It demonstrates how policy was formulated.