M. BELL PH.D. THESIS 1978

THE IMPACT OF MAJOR NEW ROADS ON AGRICULTURE
LEGAL AND ADMINISTRATIVE ASPECTS

SUPPORTING PAPERS (IN SEPARATE FOLDER)

Motorway Trunk Road Development and the Farmer.

Agricultural land-take for new roads.

The Physical and Economic Impact of Motorways on Agriculture.

A Survey on the Impact of Motorways on Agriculture.

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A thesis submitted for the degree of Doctor of Philosophy at
The University of Aston in Birmingham

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The Impact of Major New Roads on Agriculture:

Legal and Administrative Aspects

Malcolm Bell

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Summary

An interdisciplinary study was undertaken to discover, rank and seek ways of ameliorating the effects of major road-building across agricultural land. Three principal areas were discerned which gave rise to administrative difficulty. These may be termed comprehension, communication and compensation. Firstly, few practicing agriculturalists have knowledge of planning procedures regarding new roads. What written material there is tends to be scattered, difficult to obtain and often composed in jargon or technical terminology. The important specialist input to decisions which the British administrative system expects of those affected has therefore been imperfect. Secondly, when agriculture has been taken into account, usually at a late stage of planning, it was found that there was a lack of a comparable basis for decision-making between the parties involved. The Ministry of Agriculture's concern for the long-term 'national farm', District Valuer's calculations of compensation for interests in land at a particular moment and the Department of Transport's desire for an optimal route do not share common assumptions and the basis for ascertaining the 'national interest' was found to vary in different cases. The most important parameters of this variation are analysed and discussed. Finally it was found that there was an imbalance between actual farm losses and compensation received. Alternative bases for determining the 'justness' of compensation, based on utilitarian or Rawlsian precepts, are suggested. The legal principal of 'equivalence', putting a man back as he was, was found to be imperfectly suited to what is - in reality - the final stage of an administrative process rather than a purely legal transfer of land.

MOTORWAYS: AGRICULTURE: PUBLIC ADMINISTRATION: COMPENSATION

To my Father and Mother who taught me to speak the truth bluntly, and to my Wife who ensures I still do, I dedicate this work.

To all who believe the English language can speak the truth without need of jargon, I offer it.

May we never surrender.

ACKNOWLEDGEMENTS

So many people; academics, farmers, administrators and valuers alike, have been concerned with and aided this thesis it would be impossible and invidious to attempt a roll-call. Many have moved from professional acquaintances to close personal friends. They know how much I thank them. I know how much I owe them.

ABBREVIATIONS

AC	-	Appeal Court
ADAS	-	Agricultural Development and Advisory Service
APSR	-	American Political Science Review
CPO	-	Compulsory Purchase Order
DoE	-	Department of the Environment
DTp	-	Department of Transport
DV	-	District Valuer (of the Inland Revenue)
ERCU	-	Eastern Road Construction Unit
IA	-	Injurious Affection (element of compensation)
J	-	Journal
JAE	-	Journal of Agricultural Economics
JPEL	-	Journal of Planning & Environment Law
MAFF	-	Ministry of Agriculture, Fisheries & Food
NERCU	-	North-Eastern Road Construction Unit
NFI	-	Net Farm Income
NFU	-	National Farmers' Union
OUP	-	Oxford University Press
P and CR	-	Property and Compensation Reports
PTRC	-	Planning & Transportation Research Committee
RAPE	-	Rural Association for the Preservation of Essex
RICS	-	Royal Institute of Chartered Surveyors
SERCU	-	South-Eastern Road Construction Unit
SMD	-	Standard Man Day
WLR	-	Weekly Law Reports

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PREFACE

1. The work described in this thesis is, quite deliberately, different from the majority of doctoral submissions. It is interdisciplinary, it attempts to rank and then integrate a number of aspects of a broad social effect, it is consciously practical. None of these in any way provide exemption from the basic criteria for any thesis, originality and academic contribution. They do behove some contextual explanation of the Project's genesis, aims and progress.

2. In 1974 Dr. D.J. van Rest, of Aston University's Interdisciplinary Higher Degrees Scheme (I.H.D.), was awarded research funds by the Wolfson Foundation. The topic of investigation was to be 'The Impact of Motorway and Other New Principal Road Schemes on Agriculture'. The research was to be the first actually based in the I.H.D. department, and was a natural extension of departmental academic aims. I.H.D. is a solely postgraduate department which seeks to place students capable of broad thinking with specific 'problem owners' (firms or organisations). The 'problem owner' usually provides financial sponsorship, a research topic within their ambit and practical guidance.

3. The Wolfson Project, as it came to be called, was thus in a unique position. Being independantly funded it could take as its remit the public good, whilst maintaining the I.H.D. emphasis on practicality and the breaching of disciplinary barriers where they were seen as obstructing the more effective solution of the problem or problems

addressed. Dr. van Rest set out to recruit an interdisciplinary team, united by a common interest in the topic of the research and the approach involved. The Wolfson Group began work in October 1974 and comprised Dr. van Rest (Agricultural Engineering and Operational Research); two full-time research students, Alan Hearne (Economic Historian) and Malcolm Bell (Political and Social Thought). Until September 1976 Dr. C.M. Vick (Biologist) was a full-time academic supervisor and worked personally on aspects of vehicle pollutants in pasturage.

4. It was intended at the inception of the Project that the two research students would submit a joint thesis, and work together fusing their respective disciplinary ideas. Field research proved especially amenable to such teamwork. Practically it was found that two-man interviewing was most effective for extracting maximum response from farm visits, and that the best use could be made of the data collected if both students based their work on it, allowing maximum cross-comparibility. What is more important, it was found that theoretically the study was one which benefited from a multi-disciplinary approach insofar as the most basic problem of road building on farmland was found to be that the disciplines (or rather professions) involved were not communicating their needs adequately to one another.

5. The Senate of the University decided that, although not contrary to regulations, the time was not ripe for joint submission. Whilst regrettable in that data has had to be reproduced twice and that certain arguments are less

of different professions, with different outlooks and responsibilities. There has been far too much of the tendency identified as long ago as 1970 by Peter Self "to convert genuine political and social issues into bogus technical ones" (p 251). It would be evident folly if a study of the process, aimed at easing the problem, fell into the selfsame trap. Thus the thesis attempts to be readable, self-explanatory, in plain English and unencumbered by referencing. In certain cases (especially chapters 4 and 15) the simple need to discuss ideas which have a specialist vocabulary has militated against this aim, and it is hoped that a balance has been struck. Generally however certain guidelines have been followed, which merit exposition:

a. Jargon has been eschewed, if occasionally this makes an explanation sound simplistic, it is possibly because many ideas expressed in jargon are basically quite simple.

b. Referencing attempts to aid readability.. University regulations call for references to be 'coded to a bibliography following the text'. This has been used to allow the briefest of allusions. Thus, above, the author (Self) and year (1970) have been written into the text, and only a page reference is required. The bibliography is alphabetical for the whole thesis. Years of publication, or initials, are only given where required to distinguish works or - in the case of

available being dispersed in the two theses, there is little effect on the individual presentation as the areas of research could be readily divided. Section 1, which treats of the earlier 'problem elucidation' work was drafted jointly. The final writing of this section and the entirety of sections II and III was undertaken independantly.

6. Whilst effort has been made to retain cross-comparability (in such matters as the numbering of the case study data base in section III), there has been concentration on making the thesis stand independantly for the reader. There are two facets to this. Academically, the argument is propounded in this thesis that agriculture has fallen into what is identified as a 'responsibility void'. No single administrative agency has had responsibility for its treatment during road construction. Those who have had to deal with the problems arising, be they contractors, road engineers, agriculturalists or chartered surveyors, have had no ready source of information to which they could turn. It is hoped that this volume might serve such a purpose, and it is being published at cost price in a limited edition supported by the Wolfson funding, in order to aid dissemination of the knowledge drawn together. There is thus every need to make it approachable in its own right.

7. Secondly, and more fundamentally, many of the saddening cases reported herein have arisen only partly for want of skill, knowledge and appropriate predictive or appraisal method. As much, or more, at the heart of problems has been a lack of ability, or will, to communicate between members

dates - to emphasise some point connected with the time of publication.

c. Similarly to aid the flow of the text certain specialist references have been adapted. The legal form, e.g. (1941) 1.AII E.R. 480, at p 491, is not used. The text will refer to "Horn's case (p 491)" and a separate table of cases is given in the bibliography. Command Papers are likewise cited simply as their number (with date if relevant) and a table is appended. Inspectors' Reports are given under name of the Inspector in the general bibliography. Hansard and newspapers or journal references only are given immediately in the text, as it was felt to be more confusing to attempt to code them by name.

It is a keen wish that professionals and academics in different disciplines will not feel slighted by attempts to open up their areas of expertise. The working rule has been that although only the skilled professional can give precise advice or interpretation within his subject, the man at the top of his profession can do so in a way non-specialists can comprehend. The Project has been lucky in obtaining the advice of numbers of such men.

PART I : THE PROCEDURES OF ROAD CONSTRUCTION

CHAPTER I

REVIEW OF RELEVANT LITERATURE

"... the more peculiarly one's own opinion may be, the worse its content is, because the bad is that which is wholly private and personal in its content; the rational, on the other hand, is the absolutely universal."

(Hegel: Philosophy of Right)

SUMMARY

This jointly drafted chapter sets the project in context. Its interdisciplinary nature is emphasised by contrast with single-discipline works which have preceded it. The paucity of directly relevant work is emphasised by contrast to the amount within particular subjects or professions. As an introductory chapter it seeks to lead the reader to the project's starting-point whilst being written in a comparatively undemanding way.

1.1 Literature and Action Research

1.1.1 It is, quite properly a criterion of doctoral submission that the candidate "shows a critical appreciation of any relevant literature". (Aston University, para 1.4) The application of this standard rule within an inter-disciplinary framework throws up considerable difficulties. Formulated in the simplest terms the problem is that of distinguishing between literature within the relevant disciplines (of which there is ample) and literature directly pertaining to the problem in hand.

1.1.2 The basic disciplinary texts must be taken as read, it is the task of the IHD student to come to grips with his newly encompassed disciplines. If, in a study of project appraisal Lichfield (1975) has been omitted, or of compensation Hamilton (1974) has not been read, then it will show in the very quality of the thesis. To specifically review them would not be appropriate. They will be alluded to as required at appropriate times in the text.

1.1.3 The task of this chapter is twofold. To critically examine directly relevant literature, and to illustrate the fact that the work to date was based within single disciplines - or, more correctly, individual professions. Insofar as our argument runs that an essentially unitary process has been artificially divided into professional categories and areas of responsibility there are important methodological insights to be gleaned too. In short, the literature review led us to confirm the need for an

interdisciplinary approach, and pointed to the type of approach to be adopted. For this reason and for structuring of presentation, the relevant literature is discussed by the respective professional disciplines.

1.2 Literature from the Agricultural Press

1.2.1 The NFU had a transport section for many years prior to the present 'roads programme'. It was then directed primarily towards campaigning for better infrastructure, the Union being an early member of the British Roads Federation lobby group, (Hamer 1975). Not surprisingly, the first article on the subject of motorways and agriculture in the NFU's journal "British Farmer" in 1964 was keen to illustrate the working relationship between NFU and the promoting authorities.

> "With the guidance of the NFU secretaries concerned, the construction of arteries of our future transport system has proceeded fairly smoothly" (p.21).

The article written by one of the journal's staff writers, gave the impression that the Union had been causal in a number of ways:

- it prompted the Government to upgrade the proposals for under/overpass dimensions.
- it made the Government accept responsibility for fencing in perpetuity.
- it made the Government agree to carry out (where possible) all remedial drainage work in advance of the construction of the road.

- "we had to speed up compensation payments. Normally, payment is withheld until all necessary legal documents are completed; events showed, however, that the considerable amount of documentation necessary was delaying completion for unreasonably long periods. It was as a result of the Union's submission to the Government that a 90% on-account payment of the agreed or anticipated sum should be made in advance of completion." (p.21)
- it made the ministry agree that wherever practical the permanent fencing would be erected before construction started.
- they instigated the system of Resident Engineers, with the function of overseeing the contractor's work.

Just how well these procedures have worked in practice, and how justified the NFU's claims were is not for us to judge here. What is interesting is how well they support that pressure group theory of the day which saw government implementing policy, leaving itself open to interest group influence, responding accordingly and thereby having its actions legitimised. (Potter 1961; Mackenzie 1955; Beer 1965, ch. 12).

1.2.2 No other literature appeared until the Farmers' Weekly published a short article in 1966. An example was given: The M1 extension from Crick passed through the Garendon Estate in Leicestershire for 4½ miles. It crossed seven of the estate's sixty farms "absorbing 152 acres and splitting the block of land from end to end".

The Farmers' Weekly journalist P. Gurney, summed up the situation with remarkable impartiality:

> "Certainly invasion by motorway may mean the reorganisation of a farm which may not always be convenient. There may be permanent disadvantages. But once the motorway is finished and settled its broad effects on agriculture will not be very much worse than when the railways first came a century ago. Since most farmers are motorists they too stand to gain from this 20th century system for rapid communication."

1.2.3 Perhaps the selfsame 'white heat of technological revolution' feeling implicit in the above was important in producing the streamlined administrative device of Road Construction Units in 1968. Since those days there seems to have been a fundamental change of attitude amongst the public at large to technocratic developments (Mishan 1969; Lowe and Warboys 1975). The period of the Wolfson project has certainly coincided with the rise of a serious and concerted anti-motorway lobby. Its history remains to be written although the precursors of the movement and its attitudes have attracted attention (Kimber, Richardson and Brookes 1974; Gregory 1974; Self 1976).

1.2.4 Interestingly the farming lobby's contribution to the debate altered too, in this time, and in November 1974 an article entitled "Motorway Problems" appeared in the Essex Farmers' Journal. This was written by Philip Shaw, the NFU County Secretary, and related to the practical problems

that occur before and during the construction of a motorway. Shaw generalised from his own experience which focussed mainly on various sections of the M11 (London-Cambridge) which were at differing stages of development. (He had previously been based in Surrey and had also dealt with the M3 motorway there.)

The first sentence of the article encapsulated the farmers' position faced with such development proposals at that time:

> "We are gaining in experience of the sort of problems which our members have to face when a motorway is built across their land."

In other words, the Essex farmers affected by M11 still had no pool of knowledge on which to draw after 16 years of motorways, and each was having to learn by his own mistakes. David Hellard, head of NFU Land Use Department, confirmed that this was the case nationwide and that the Essex farmers, having a very active County Secretary, were in a better position than most to face the difficulties. The point that, at the end of 1974 each farming community had to learn afresh about planning procedures and the problems associated with the imminent motorway construction cannot be made too strongly. It thus appeared to the Wolfson Group that neither the interest group nor the highly specialised administrative authority had been able to consolidate and disseminate information in such a way as to learn from the past and minimise problems in the future. The public administration aspects are reviewed in section 1.6. below

and we return to the implications of this lack of learning for our research role in chapter 2.

The advice offered by Shaw was, above all, direct and practical:

> "The problems usually start when the decision is taken that there should be a motorway between Point A and Point B. At this juncture we are many years away from the building of a road, but the Press usually pick up a decision of this kind and sometimes produce and publish maps showing roughly where such a road might go. At this time we always have the greatest difficulty in trying to convince our members that such a map in the local press has no legal significance. This is especially the case where the final route turns out to be very similar to that suggested by a newspaper." (p.12)

The article carries members through the planning procedures of initial appraisal, confidential consultation with MAFF and public authorities, boreholes, route selection, and ultimately inquiry.

1.2.5 Shaw was not mealy-mouthed regarding the specific problems likely to be encountered by his members during construction. He cited examples from his personal knowledge of procedural inadequacies and corner-cutting by contractors. Fencing, drainage, access and liaison were indicated as the prime concerns for farmers which were likely to be poorly regulated (pp 15-16).

1.2.6 A final piece of advice was that "wise men will have been to their own valuer and their own solicitors, and taken their advice by this time". Recognition that the problems involved were complex enough to warrant professional assistance led us to an important area of expertise, that of the Chartered Surveyor, (see section 3 below) and ultimately to the appreciation of compensation's important role within the planning and appraisal system as a whole.

1.2.7 Shaw's article did much to point the way for the Wolfson Group in both context and style. Primarily it indicated that the farming community was in real need of comprehensive, compact and concise advice. Shaw became an influential contributor to the Wolfson Group and much research was carried out in his area, both on the schemes he had written about and others. His reputation within the farming community ensured that we were received warmly and achieved a high level of cooperation. The flow of favours was by no means one-way; as will be seen the Wolfson Group, having tested Shaw's theories, agreed that there was an urgent need for the procedures and problems of motorways to be explained to farmers and their representatives and decided to undertake the task as a major research technique. Shaw saw this as of immediate use to him and his farmers, obviating the need to continue the series of articles of which 'Motorway Problems' was supposed to be the first.

1.3 The Surveyors' Approach

1.3.1 The farmer's professional representative in matters of land acquisition is his land agent. Whilst the professional bodies had come together as early as 1967, interest focussed upon the events after the decision to build a new road had been taken. Motorways: Procedure on Acquisition of Agricultural Land was published jointly by the Royal Institution of Chartered Surveyors, Chartered Land Agents' Society, Chartered Auctioneers' and Estate Agents' Institute and the Central Association of Agricultural Valuers.

1.3.2 The need for professional aid as soon as any rumours regarding a road may be heard was emphasised. Nonetheless, actual advice did not begin until the time of notice to treat (paras 1(c) and 3). It was, they noted, up to the DoE to depute someone to negotiate for them. Regarding "lines, diversions, accommodation works, etc" this may well have been the "County Surveyor ... as a prerequisite to dealing with the evaluation of the claim with the District Valuer". Now, this would be replaced by early negotiation with the RCU direct (para 4). The booklet was drafted in a haphazard way, for instance putting access during construction before proper provision (paras 16 and 18). Most importantly, however, it included as an appendix "a statement of general principles", signed by the Ministry of Transport and dated April 1967. At the M16 inquiry (see chapter 5) a supplement to "Roads in Rural Areas" (DoE 1968) was mentioned which we were unable to obtain via HMSO,

and had no reply from DoE library or their Marsham Street headquarters. Telephone likewise proved useless. This appendix we subsequently confirmed was the document alluded to and is discussed in section 4.

1.3.3 The majority of the booklet was taken up with the intricacies of compensation, and it was clear from the tentative style of much of the writing that the profession was feeling its way into a new area which had not been given detailed regard since the end of the railway age.

1.3.4 The all-important characteristic of motorways, that the farm after construction was 'injuriously affected', was brought into focus by the agents' concerns. Evidently there were grave problems for within 5 years the RICS had organised a special conference at Keele University (24th to 26th March 1972). The papers ranged widely and, importantly, included the initial planning stages. The concentration remained formally on the legislative framework of draft CPO's and so forth, but there was added the speakers' practical experiences. The impression from the papers was of a fairly explicable and comprehensive legal framework bearing only vague resemblance to the actual practices attested by phrases like "I am very much aware that the above negotiation procedure is contrary to many valuers' views: However, it does seem to produce more satisfactory results than attempting to negotiate with a District Valuer" (R.A. Law Negotiations, s.9).

1.3.5 The other product of the RICS is Hamilton's <u>Compensation for Compulsory Acquisition of Agricultural Land</u> mentioned earlier. Now in its second edition (1974) it is an admirably definitive basic text. The important lesson for us was to appreciate the wealth of practical knowledge garnered by land agents, leading to establishment of contacts with them on our study schemes. Nonetheless it was equally clear from the public inquiries being attended as part of the learning process that the valuers' approach to decision-making was inadequate in the sense of being unable to be cast in the terms necessary for vital early influence either on the decision as a whole or overall routing.

1.4 <u>The Department of Transport</u>

1.4.1 The working guidelines of the DTp (and the Department of Environment and Ministry of Transport which preceded it) are given in updated manuals, and the circulars issued to supplement them. The relevant basic document for us is <u>Layout of Roads in Rural Areas</u> (1968). Impact on agriculture is dealt with as a question of access and severance. The criteria for designing access onto the redesigned side roads farmers would need to use are given in great detail.

> "It is important that at a gated access the gates should open inwards and that sufficient space should be provided off the carriageway to accommodate a standing vehicle, and if necessary the gate should be set back to allow for this. Adequate entry and access radii and visibility should also be provided (see sections 4.30 and 4.34); the recommended minimum

radius is 20 ft. and the minimum verge width of 6ft. will normally give adequate visibility if clear of obstructions." (para. 3.44)

1.4.2 The strictness of central directives and perception of access as the sole problem (because it is one they have to solve) have been recurring themes of the MoT, DoE and DTp's approach to rural road building. In contra-distinction to a perception of it as a resource-maximisation or re-allocation problem for example.

1.4.3 The appendix to the RICS '<u>Motorways</u>' booklet spelled out the MoT's considered opinions in more detail, it supported the project's pessimistic starting hypothesis that no robust work had been done on the problems. Re-reading the memorandum with hindsight the poverty of the approach appals, but certain key phrases already occur:

"1. Where agricultural holdings are severed careful consideration should be given to the provision of alternative access in relation to the nearest road or bridge over or under the motorway. The provision of an agricultural underpass or overbridge, or any other form of alternative access should only be provided where this can be shown to be economically justified, unless the National agricultural interest overrides such economic factors.

2. It must be borne in mind that sometimes by a regrouping of holdings, viable units can be created which incorporate the severed land without the necessity of providing expensive accommodation works."

1.4.4 As there is no readily available directory of civil service concepts, the first paragraph can only be read in the light of experience. "National agricultural interests" we have found to be circularly defined as those put forward by MAFF, who have the responsibility of representing the national agricultural interest. Nowhere has the idea of "economic justification" been elaborated by the DTp and practice (see part 11 below) supports the meaning "only where it would be cheaper than paying compensation except where MAFF very strongly support an alternative, but not always then".

1.4.5 Similarly, comparing para. 2 with the RICS work and the statutes themselves it is shown to be a mere form of words. There is no power to regroup holdings as, for instance, the French "Rassemblement" (Garner 1975). Neither have the DoE any agricultural expertise to judge when or how this might occur. For their agricultural advice the DoE go to MAFF, and so it is to them as the repository of knowledge we turn.

1.5 <u>The Ministry of Agriculture</u>

1.5.1 It was part of the project's brief from the Wolfson Foundation that there should be close liaison with the Ministry's Agricultural Development and Advisory Service (ADAS). This was undertaken from the earliest date. Interesting cooperation was elicited, responses obtained, and background papers specifically made available as there was no existent published literature. Indeed, at a number of meetings with different ADAS regions it was stated that

the inspiration of questioning had led them to think through their role or draw together information for the first time.

1.5.2 At the time the Wolfson Group came together the Ministry of Agriculture (ADAS Wolverhampton) were beginning an investigation into farm crossings along the M6 in Cheshire and Staffordshire. Two and a half years later (MAFF 1976) the 10 page report was published. The investigation had two main objectives:

> "(i) to assess, on the basis of their current use, whether the farm crossings provided by the highway authorities along the M6 in Cheshire and Staffordshire had justified their cost, and
>
> (ii) to assess the effect of the motorway on the farms provided with crossings as regards changes in farm structure and agricultural production." (p.1)

The paper had intriguing objectives:

> "It was considered important at the outset to try and establish the criteria against which the provision of agricultural crossings was assessed." (p.1)

This would seem to imply that even MAFF themselves did not know. However, the unnamed investigator (a retiring ADAS officer) found this difficult due to changes in personnel involved. Only tentative conclusions were reached:

> "It is believed that the primary motivations were then as they are now, to meet the needs of agriculture and to preserve economic farm units provided always that the crossings were economically justified". (p.1)

This appears to be a circular piece of reasoning and really gives no indication of what criteria, in practice, were or are employed. More telling is the statement that:

> "Research has also revealed that when the route was planned through Staffordshire this Ministry was not consulted until after the design team had made provision for all the crossings included in this report, nor were we called upon to advise on the agricultural justification for them." (p.1)

1.5.3 If the theoretical and conceptual aspects of the paper were unambitious, unfortunately the factual information was equally poor in an academic sense. A 48 mile stretch of motorway was surveyed: in all there were 31 farm crossings serving 29 farms. Of these, 22 were bridges and 9, underpasses. Only one of the 26 occupiers seen reported any restrictions in the use of severed land as a result of severance, and in no cases did farmers state that the width of bridges and underpasses or the height of the latter were inadequate for agricultural purposes. Generally the existence of these accesses "tends to perpetuate the severed structure of farms".

1.5.4 The paper finally turned its attention to the future We quote at some length because the report is not commonly available and provides an essential starting point for understanding how low key the work prior to the project had unfortunately been:

> "It was never intended that this investigation should apply cost/benefit criteria in assessing

justification for these farm crossings. With hindsight now, it is even more obvious that this would have been quite impracticable. What this investigation has shown is that nearly all the crossings continue to be used for agricultural needs on a scale that is not significantly different from that envisaged when they were first provided some 12 years or so ago. To that extent the crossings have justified their provision for farming purposes.

"The findings of this investigation point to the need for a larger scale, in-depth study on the impact of motorways on agricultural production. Whilst several of the farmers interviewed in this investigation claimed that agricultural production had suffered as a result of the motorway construction, no attempt was made to substantiate or refute their claims. <u>The Aston University project referred to below may meet this need and obviate the need for a further MAFF study</u>". (pp. 4-5) (Emphasis added)

1.6 <u>Public Administration</u>

1.6.1 A remarkable insight into the public administration system which produced a position whereby different aspects of overall agricultural impact were broken down into discrete sections was gleaned from Rhodes' <u>Administrators in Action</u> (1965). The second volume of a series of case studies, one of its subjects was a pseudonymed by-pass planned and built by the MoT between 1954-8, having been first prepared in 1939.

1.6.2 The singular perspective on the questions raised was again evident insofar as the road was seen "as it appeared to officials in the Headquarters of the Ministry, and as it was dealt with on Headquarters files." (p.15) That is, as a series of legal and technical problems to be surmounted in order to achieve a single goal, the opening of the road. (pp. 55-58)

1.6.3 This sense of perceiving issues as problems to be overcome rather than optimised comes out most strongly in the case of an affected farmer whose cowsheds would be on the wrong side of the road. As it was a non-motorway scheme there was the problem of walking cattle across the road, seen from the Ministry's angle as one of disrupting traffic.

1.6.4 In 1939 when the scheme was first prepared the farmer was promised rebuilt cowsheds across the new road with possibly an underpass through which to bring animals back to the original side. In the words of the responsible Executive Officer, "I think it is clear ... that we are morally committed." (p.40)

1.6.5 The difficulty, and it is one which has recurred time and time again in our studies (see especially chapter 7 below), was as follows. The legal basis of compensation claim would not allow the farmer enough money to build new cowsheds. The Ministry saw their responsibility to the Treasury as taking the least-cost solution commensurate with their legal responsibility. At this point any rational optimisation was abandoned and Rhodes records farcical minutes with MoT refusing to pay more than £4,000 towards the cost for no other reason than that the figure

had been approved, albeit on false presumptions of cost! There was no question that more money was required for the cowsheds but it was hoped that the Ministry of Agriculture would grant-aid the rest. Thus MoT were quite happy to have the public purse pay, but not to alter their own wrongly estimated figure.

1.6.6 When it was discovered that MAFF would not stand the whole extra cost (some £3,500) the MoT memo. records the splendid understatement, "it is doubtful whether [the farmer] is prepared ... to find the extra money." The District Valuer, who estimates compensation for the Ministry, felt they were legally liable for only £4,000 on a land valuation basis and MoT stuck to this sum. Thus the farmer received no underpass, nor cowshed and only £4,000 towards the £7,500 cost. The Higher Executive Officer in charge minuted his content:

> "My only doubt about this was the possibility of the owner accepting the £4,000 but not building his cowsheds and allowing the cattle to continue to cross the road 4 times a day ... However ... as there would be no access from the farmlands to the Trunk Road ... I agree to the District Valuer's proposal to offer £4,000 compensation." (p.44)

1.6.7 Leaving aside the morality of the matter it is notable that at no time did anyone attempt to find out what would be the agricultural cost; that is - the national resource cost, of what was done. The sense that the "only doubt" of the MoT official was as regards his <u>traffic</u> responsibility reinforced our view that there was an urgent need to break out of the unidisciplinary framework.

1.7 General Literature on Motorways Planning and Design

1.7.1 No other 'motorways and agriculture' literature existed at the beginning of 1975. Motorways themselves, however, were the focus of considerable attention.. Such was to be found mainly within the civil engineering industry and dealt generally with technical issues. This is hardly the place to review such work in detail but its flavour can easily be transmitted. Two eminent road builders, G.R. Wells and Sir James Drake have both published books upon their craft. Drake was first with his, simply titled Motorways (1961). The first chapter asked "Why Motorways?". Drake's answer was simple: the 'purpose' of such Special Roads was "fairly obvious", the objectives being safe travelling, reduced journey times and the ability to carry more traffic. Slightly differently defined were the 'benefits' of motorways; according to Drake these included the relief of towns from traffic and the attraction of industry to certain areas. Possible community severance was dismissed as being impossible as side roads would pass uninterrupted over and under the new motor roads. It must be recorded that when Drake wrote, none of his assertions had been substantiated, and the work is best accepted as a propagandising effort. No reference whatsoever was made to any other possible social or economic disadvantages (noise, pollution etc) including the effect on agriculture.

1.7.2 Wells' book <u>Highway Planning Techniques: The Balance of Cost and Benefits</u> (1971), despite its title, pays no more attention to anything other than the design of the road, and the amount of traffic upon it, than did Drake's. The ethic behind this work, and indeed, many others like it, is to be found on p.36 in the summary of the chapter relating to the 'costs of highway building':

> "The cost of road travel per vehicle can be calculated as a function of average vehicle speed."

No attempt is made anywhere in such texts to define or measure what have become known as 'external costs'.

1.7.3 Lesser road builders than Wells and Drake felt that the subject of motorways and the (rural) environment did deserve attention. In a 13 page article on this subject Spearing and Porter (1970) devoted one half-page paragraph to agriculture and that again confined itself solely to the topic of "farm severence". It is worth reproducing this in full. Note how the basic assurance disappears in the welter of caveats.

> "Farm Severence
>
> 16. The motorway has impact on its surroundings both aesthetically and in relation to land use. Where rural motorways are concerned the latter will mainly affect the agricultural community, and severence of farm holdings will be well to the fore in the designer's consideration. The effects of severence will vary according to the nature of farming in the area: where holdings are small, the

designer will attempt to keep severence to a minimum, but where farming is carried out in large units it may well be advantageous to take a line which bisects the holding making allowance for cross-communication rather than sever small unworkable areas along its perimeter. Often, however, the pattern of ownership and tenancies will be such that the adverse effects of severence can only be minimised by a negotiated exchange of severed areas between farmers on opposite sides of the motorway. In general, it is unwise to follow closely the alignment of an existing road: the higher standard required for the motorway usually results in the severence of small unworkable areas of land between the two highways, and it is better to keep further away so that the intervening land remains wide enough for economic use."

1.7.4 Writers such as Bruton (1975) and Harrison (1974), having published basic university text books upon transport planning and appraisal are guilty of perpetuating a type of blinkered outlook amongst the new generation of civil engineers. Atkins, in his award-winning paper delivered to the ICE in 1976, agrees that:

"... transportation studies have been conducted in most major cities in Britain, and the programme of studies shows every sign of continuing unabated. Regrettably, however, many of the original causes for concern are still present. Even more regrettable is the apparent lack of concern of those engaged in transportation planning with the unsolved issues.

There appears to be an automatic, uncritical acceptance of past methods, simply because they have been used in the past." (p.58)

1.7.5 There are but two exceptions to this general rule. The investigation by university researchers as opposed to practising engineers, of the effect new motorways are likely to have upon industrial location and development challenged the underpinning of policy, whilst the 'Urban Motorways Committee' (an Expenditure Committee) of the Commons brought the external effects of road building into the open. Neither the work of Gwylliam (1970) and Dodgson (1973 and 1974), nor the many studies commissioned by the UMC dealt with agriculture, but they set a new tone wherein uncritical acceptance of benefit was unacceptable.

1.8 Agricultural Economics & Rural Planning

1.8.1 At the time the project commenced then critical attitudes were hardening as we looked for footholds in the disciplinary literature. Weller in his excellent book Modern Agriculture and Rural Planning, although published in 1967, was able to come to grips with the relevant points better than writers who followed:

"A new motorway fifty yards between flanking boundaries will absorb 16 acres a mile, plus land required for junctions and service stations. The net loss may be more than 30 acres a mile. It is to be expected that the 1,000 mile motorway programme will need 30,000 acres of farmland." (p.139)

"The main risk is that a viable block of agricultural land may be carved up in such a manner that separate

> parts prove uneconomic to manage in spite of overpasses and underpasses." (p.140)

Warning was also given that motorways would lead to the need for a "basic change in [rural] planning principles". The argument ran that these new roads would lead to the development of "linear towns" (as opposed to concentric towns planned round a central commercial core), which call for different restraint policies from those at present operating. The noted planning consultant, Leslie Ginsburg, recently resurrected this concept in a slightly modified form when he developed the thesis that major roads have tended to form boundaries to town expansion, (Gardner 1976). This question was eventually laid on one side as interesting but not integral to the work. A considered view on it was written up as an article and is given as Appendix I.

1.8.2 As the need for an approach based in agricultural economics and rural planning became clear, it was necessary to seek for useful texts, a far from easy task.

We were however encouraged by the criticisms of Stabler (1975) which pointed the need for studies such as the Wolfson Group intended. His main point is that practical considerations are being ignored whilst theoretical techniques are being developed for their own sake.

> "This pursuit of a scientific base to agricultural economics where statistics of the models are glossed over lends a false air of precision to analysis." (p.17)

The conclusions drawn are severe:

> "It is hoped that a fair indication has been given of where economists have failed to make an impact and why ... It is apparent that outside the studies of a specific nature related to farm management, a new breed of economist is needed, because agricultural economists have hardly begun to comprehend the ramifications of wider issues on theirown studies." (p.83)

Stabler goes on to outline a number of areas of "immediate concern". Numbered amongst these are, first, the empirical investigation of the different forms of rural land use, and secondly the development of methodologies for the appraisal of land use in conjunction with other disciplines such as social psychology, sociology, planning and law. The existence of these two issues in a list of matters 'still pending' both helps justify our work and also illustrates how little progress has been made academically in usefully interdisciplinary work.

1.8.3 There is then little doubt that when the Wolfson Group formed there was an urgent need for work to be carried out. Yet the studies by the Agricultural Economics Department at the University of Reading of the effects of the development of Milton Keynes (1973) and the agricultural input to the Third London Airport deliberations designed by Wibberley and Boddington (1970) had demonstrated that it was possible to bring analytics to bear upon the

problems of development on agricultural land. The work of Jones in North Wales (1970), although falling into basic traps as regards compensation and relying on a descriptive approach, reinforced the argument. Ideally, those responsible for motorway planning should have recognised the 'knowledge gaps', located people able to tackle the problems and set about finding the relevant solutions. Instead, the task fell to the Group which began operations some fifteen years after the first section of motorway was opened. It is interesting to note that the South Eastern Road Construction Unit did employ Boddington to carry out an assessment of the agricultural implications of a section of the M20 in 1971. The technique of appraisal used by Boddington is reviewed by Hearne, but it is important to recognise that the evidence was called for late on in the proceedings and was given little weight by any party, least of all the presiding Inspector. In any case, this evidence was not made public, except at the Inquiry and, yet more culpably, it was not passed on within the DTp structure.

1.9 Recent Research Development

1.9.1 The point has already been made that interest in the subject of 'motorways and agriculture' has recently grown on the more general tide of environmental concern. This has not usually manifested itself in research and publication, but rather in working seminars and conference discussion. The Wolfson Group played a fairly prominent role in these

deliberations. The three most important landmarks were:

a. A seminar organised by the NFU to discuss specific motorway and agriculture problems. Significantly however, the DTp demanded that the Wolfson Group be excluded from this meeting. The Group did, on the eve of the seminar, brief the NFU delegates.

b. A colloquium organised jointly by the DoE and Institute of Civil Engineers to discuss a wide range of issues pertinent to motorway route selection. The Wolfson Group was asked to give the 'agricultural' paper.

c. The Leitch Committee was set up early in 1977 to examine the problems of Trunk Road Assessment. Although the primary focus of this committee was stated to be the efficiency of traffic modelling procedure, the Wolfson Group submitted specially prepared agricultural evidence and was called to give further oral evidence.

The essential aspects of these developments are covered either in the text or appendices. In this chapter the concentration is on the work of others.

1.9.2 Jefferson, Deputy Director of the SWRCU, was given the task of drawing up a report designed to indicate how environmental impacts of new major road schemes should be taken into account at the stage of final route selection. This Report, completed in mid-1976 has never been removed from the confidential classification. The Wolfson Group was allowed to examine the agricultural chapter and the

overall impact matrix. An attempt was made to weight different grades of agricultural land, the weightings have now, however, been repudiated by the MAFF surveyor who drew them up, and the whole technique has never been put into operation.

1.9.3 Others speaking at more open conferences have been more forthright in their opinions of how agriculture should be taken into any highway assessment. Smith, speaking at the 1975 Planning and Transport Research Conference asserted that:

> "The evaluation of loss to agriculture can take the form of loss to agricultural production to the nation due to the construction of a highway ... Again an envelope approach is used for this assessment, the periphery line being the land acquisition line. The agricultural envelopes can be overlayed onto the land classification maps of the Ministry of Agriculture. Instead of subjectively scoring the various land classification areas within the envelope, costs of production based on an area of measurement can be made. Various universities today produce booklets containing information in this direction. Thus for each alternative route the consequences can be taken as
>
> $$AG = (AG_1 \times C_1 + AG_2 \times C_2 \ldots AG_n \times C_n)$$
>
> AG is the total costed agricultural loss of production where AG_1 - AG_n are the various agricultural classifications within the land acquisition envelope and $C_1 \ldots C_n$ is the production cost evaluated by

compound interest methods to perpetuity or over a period of years." (pp 146-7)

The method suggested has obvious flaws:

a. the inadequacies of the basic Land Classification

b. the lack of direct relationship between grade of land and actual farm activity

c. the lack of recognition that not just the land taken might be affected

d. the variability of costs within the agricultural market

e. costs would not appear to be the most logical measure to choose, output would give more indication of lost production.

1.9.4 It was nonetheless a good try and far better than what had gone before. What is wrong in it is that it is precisely the type of approach to be expected from a professional on the road economics side. The errors listed illustrate simply a lack of agricultural input. The one small step with great implications needed was to go outside the disciplinary boundary for a usable method.

1.9.5 Two attempts have been made at establishing the loss of land to motorways, neither with empirical evidence adduced. Interestingly, the estimates are from alternative "sides of the fence". Our specific, accurate and methodologically rigorous calculations of land take on completed sections of the network and are given in Bell (1978a). Cynics will note that the engineer under-estimates and the agriculturalist over-estimates.

1.9.6 Whelan, Group Engineer at MRCU, speaking at an ICE conference (The Integration of a Motorway into the National Environment, 6th July 1976), maintained that trunk roads and motorways accounted for only 2-3% of the 100,000 acres of agricultural amenity land 'lost' to development in England and Wales each year. On the other hand, J.E. Maher, 'Surveying Technician' for ADAS at Oxford wrote in February 1975 outlining the MAFF's role in the selection of a route for the M40 extension from Oxford to Birmingham.

> "All of these routes through Oxfordshire average over 30 miles in length, and accepting the accuracy of the statistic that a new motorway will swallow up at least 100 acres for every mile then it looks as if the proposed new motorway would require at least 3000 acres of agricultural land."
>
> (emphasis added)

Given that about 100 miles of the trunk road network is built, on average, each year, we have here fairly widely diverging views. Whelan is arguing that about 2,500 acres will be taken annually, whilst Maher asserts that 10,000 is a more accurate estimate.

Our findings put the figure at about 3,500 acres (8.9% of total losses to urban development - not forestry as Whelan must have counted in). It is distressing to see two government bodies awry 17 years after motorways began.

1.9.7 Detailed work by non-practitioners has been rare. In the political field the concentration has been primarily on the roles of those involved in the decision-process, particularly pressure-groups. In this sense there have been two meritworthy steps forward. Firstly the identification of the politics of the 'Sporadic Interventionists' called into action when they are affected by a road scheme (Douse and Hughes 1977). Secondly Gregory's (1974) splendid encapsulation of the issues surrounding the M4's route through the Berkshire Downs. He ends with a useful caveat and an encouragement for fellow-researchers:

> "With the retrospective wisdom that comes readily to academic snipers it would be easy enough to dismiss the Ministry's performance as short-sighted and unimaginative. The real lesson of this story may be that busy administrators are of necessity so preoccupied with the pressing day-to-day problems on their desks that there is not enough time for long looks and wide views."

1.9.8 Finally, in this section we turn our attention to the only relevant article in a recognised academic journal. Frost and his three colleagues published their article in September 1976. It was based on a "short survey" which was completed in 1973. Two stretches of motorway were investigated, a section of the M56 south of Manchester, which at that time had been open for less than one year, and part of the M6 between Warrington and Sandbach. In all,

47 farms were visited. At the time of publication of this article the Wolfson Group had been operating for two years (without hearing of this Salford research from any of its contacts with MAFF, DTp or NFU). The Group had attended relevant conferences as far spread as the North-East London Polytechnic, the National Agricultural Centre, and the Institute of Highway Engineers. Contact had been established with interested academics in University College London, Reading University, Wye College, Exeter University and University College Wales, to name but a few. None had ever heard of the Salford Group.

The point is laboured for two reasons:

a. so that the reader does not feel that the harsh criticism to be levelled at Frost for lack of basic academic contextual work is unfair;

b. because of the genuine annoyance felt at the waste of resources in an enterprise making so many crude, avoidable errors that it did a positive disservice to the subject under study.

1.9.9 The editor of the journal was approached and agreed to publish a reply article, Hearne (1977), from the Wolfson Group. The reading of both articles will indicate where it is thought that Frost et al were at fault.

In brief:

a. A sample survey was undertaken with no apparent basis to the sample selected or concern at possible omissions.

b. With no initial literature survey or groundwork the questions were directed at no particular end,

unformulated and tended to define their own answers.

c. Far too much emphasis was placed on individual farmer's uncorroborated replies.

d. Important questions were not addressed (secondary data, compensation provision) because they were not recognised.

1.9.10 An example: "One said milk yield had become more variable and was generally about 5% less than the yield prior to the motorway. He attributed this to the vehicular noise and the unsettling effect it has on cattle." If only one out of 47 thought this worth mentioning is it really worth repeating especially as a 5% fluctuation is well within the bounds of change most farmers would expect anyway? Again: "Cars and other goods are wrapped in polythene sheeting and sent North on trucks. As the trucks drive North and sheeting becomes torn, parts of it are torn off and blown into fields. These sheets of polythene and polythene bags from other vehicles may be eaten by cows and cause death. <u>One farmer has lost at least one cow for intestinal obstruction caused by eating plastic</u>." (emphasis added). "Many farmers expressed grave concern that they too would lose stock in this way and they continually collect plastic from their fields".
It is not to deny that the loss of a beast is of great concern to any farmer to ask if there is any <u>proof</u> of the loss, or to ask if it was compensated for by the farm insurance. Anyone with the vaguest agricultural knowledge will acknowledge that much windblown plastic is sacking from the farmsthemselves.

1.9.11 It is surely taking matters out of proportion that in the conclusions we find: "Costs to the farmer are increased by the time involved in collecting litter from his fields and the loss of cattle which eat litter and die." The word cost is mentioned a number of times throughout the article. "They (motorways) increase the inconvenience costs involved in farming land across the motorway and the opportunity cost of not using the best use."
However, no attempt is made at all to assess any of the impacts in economic terms. It is readily accepted that no terms exist for making such economic assessments exactly, (hence the need for one part of the Wolfson work), but there are approaches which can give meaningful results and ought to have been investigated; without such investigation it is not possible to state, as these authors do:

> "The reduced viability, the inconvenience, the time involved in collecting litter and the changes to production could all be assessed in monetary terms."

Not only did the authors not attempt economic analysis, they did not collect the data which would make such analysis possible.

1.9.12 More attention was given to factors which could be more easily dealt with. Quantifying the easily quantifiable whilst sidestepping more important factors which cannot be so readily examined is a basic error. The authors of this paper focussed most of their attention and effort upon constructing tables of factors upon which information

was readily available, noise, litter, fumes, dirt, etc.

1.9.13 Despite the assertion that:

> "Farmers should receive compensation or subsidy to offset all of these effects, which act to make their farms less competitive and productive than their neighbours..."

no mention is made of the very complex compensation code that existed, let alone any assessment of how smoothly it works or how effectively it compensates. Using vital moral words like "should" with all their obligatory and prescriptive overtones with no further discussion would seem a dangerous indulgence.

1.9.14 Overall, the impression gained from this article was that the authors had not really set themselves specific objectives at the outset and so had ended up listing problems which sprang to the minds of farmers. In its place the tracking down of specific problems can be a very useful research approach, but not when the overall objective is to give a balanced view of a field of research.

1.9.15 This, then is the literature available up to mid-1977. Hardly an impressive list and unfortunately it left a broad field. In the hope of drawing some parallels and guidelines, investigation was made of work abroad.

1.10 Review of Literature - Foreign

1.10.1 There are obvious and well-recorded difficulties in carrying out a literature search for countries other than the one where the research is based. Nevertheless, it was thought that to obtain the flavour of the relevant overseas

research would be of use. Due to the difficulties of translating foreign language research papers most immediate attention was placed upon English language reports from the USA and Canada. It is these we examine first.

1.10.2 The United States

Contact with the US Department of Agriculture proved most fruitful in revealing the extent of research carried out in that country. It appeared that the Department of Agricultural Economics and Geography at the University of Minnesota have been responsible for virtually all the work in the field. This was carried out between the end of the 1950's and about 1963, in close connection with both the Minnesota State Highway Department and the US Department of Commerce, Bureau of Public Roads.

1.10.3 Gensurowsky and Smith's paper How Farmers Adjusted to an Inter-State Highway in Minnesota, published in September 1970, is of most direct relevance to our requirements. Between 1956 and 1958, an 8 mile length of the Inter-State Highway system was built through the farm country between Owatonna and Faribault, Minnesota. This research focussed on three of the most important questions:

"1. How is farm size and shape affected by the Inter-State Highway?

2. How do farmers adjust to the changed layout of their farms?

3. Are payments for acquired land commensurate with the damages sustained, or is there a substantial difference between the size of awards and the market value of the land?"

Compulsory purchase for the highway affected 28 farms. "In 13 cases the farmers' land was trimmed; in 15 instances the farmhouse was separated by the highway from other sections of the farm." The average land loss for each farm was 13 acres. However, the average loss for the 13 farms which had been "trimmed" was only 5.1 acres, whilst the loss for 15 farms which had been split averaged 20.1 acres. The trimmed farms decreased in size by 3.3% whilst those split were reduced by an average of 13.2%.

1.10.4 During the four years following land acquisition 18 of the 28 farms altered in size or shape. In all, between 1955 and 1959 in the study area, 5 of the 25 farmers (18%) sold out and discontinued farming. Thus land was released for redistribution; the result was an increase in average farm size during the study period. Additionally, the number of farms operated as 'non-contiguous units' rose from 5 in 1955 to 12 in 1959. However, Gensurowsky and Smith assert that: "Because of the increased mobility farmers can cultivate widely separated parcels of land efficiently".

With respect to the 'right-of-way-awards' (i.e. compensation for compulsory purchase), it was found that per-acre payments for land taken from holdings exceeded the estimated per-acre market value of the farm. The payment in excess of market value was mainly attributable to damage payments. 9% of the total acreage of the 28 farms was acquired, yet compensation payments were equivalent to 52% of the estimated market value of the land and buildings.

"One of the larger costs in this total was for buildings which were condemned and taken to make way for the Inter-State highway. It seems apparent that highway costs might be reduced if highway planners avoided taking buildings. To this end, it would be helpful in highway planning to include economic and geographical data along with the more standard considerations of engineering and design."

Finally it is worth recording that the 8 mile length of dual two-land road required an average of 47 acres of land per mile. The figure was compared with nationally calculated breakdowns and an analysis of total potential land-take made.

1.10.5 A number of points pertinent to the Wolfson Group research arise from this study and its place in US highway planning:

1. Gensurowsky and Smith demonstrate a far greater insight into the pertinent problems of highway construction on agricultural land than that displayed by Frost and his colleagues in writing what we have described as the only publication of research findings on the subject in Britain before the Wolfson Group.

2. No information is available as to why the University of Minnesota felt motivated to undertake such research work, but it seems fairly certain that at this time those with responsibility for planning US freeways had little knowledge of how agricultural matters ought to be treated. Nonetheless, the

research began much earlier yet does not seem to be known to the DTp.

3. The approach adopted was descriptive rather than analytical. Thus, for example, great attention was given to readjustment in terms of post-acquisition land-trading, whilst the rearrangement of farm systems is totally ignored. In general the methods of the highway planners were used in preference to those of the agricultural economist. This is even more obvious in other papers published by the same research group which have as the focus of attention traffic projections and the urban industrial impact of the freeways under investigation.

4. A great deal of emphasis, however, must be placed on the "individual farm impact" approach which these Americans adopted. This, it will be seen, is in direct conflict with the approach by the Ministry of Agriculture in Great Britain where the overall agricultural patterns are placed above individual interests. Although the paper fought shy of analysis it indicated the potential value of such an approach.

1.10.6 The second aspect of American work we felt it necessary to investigate was the Environmental Impact Statement (EIS). Now attracting considerable interest in Britain (Johnson 1975; Callow and Thirlwall 1977) the Group undertook an analysis of the treatment given to agriculture in a number of typical EIS's. Useful information on the American approach was elicited. Most notably that the price to be

paid for land is offered in advance of public debate, and that agriculture is treated strictly as an economic impact and not a vague socio-environmental one as in Britain. Methodologically there were no significant advances offered by the method which is directed more at open presentation of issues than detailed analysis. Indeed complex calculations would be out of place in a document for public information. The method's main advantage for agriculture resides in the systematic treatment it is given with the authorities being forced to garner information early. On the list of considerations it comes well down. The order of discussion of potential impacts (and lines of discussion to give a rough guide to importance) in the introduction was:

Noise (11); Air Pollution (10); Wildlife (11); Mining (10); Ground Water (10); Historical (1); Recreation (2); Displacement of Residents (4); Accidents (3); General Economic (12); AGRICULTURE (5); Land Use Planning (2).

1.10.7 Canada

The Canadians perhaps even more are attempting to erect a feasible framework in which to assess the viability and impact of major new road schemes. The Ontario Government made an initial step towards enacting legislation requiring an environmental assessment for those projects having potentially significant impacts on the environment. Other Provinces are considering similar approaches.

I.V. Oliver (Head of Environmental Office, Ontario Ministry of Transportation and Communications) and J.J. Armstrong (Senior Environmental Planner with the same organisation),

highlighted a fact of life with importance for our action research approach:

"... very few, if any, of these initiatives have been, or are being taken, on a purely voluntary basis by the Governments concerned. A number of environmental groups such as the Sierra Club and the Environmental Law Association are applying continuous pressure on various levels of Government on a policy basis as well as on a project specific basis." (1974)

The Environmental Assessment System (EAS) is just coming into operation in Ontario which:

"... is definitely one of those sensitive areas of intensive farming where land take is a delicate issue."

The objectives of any EAS are:

1. To identify and evaluate all potentially significant environmental effects of proposed undertakings at a stage when alternative solutions including remedial actions and the alternative of not proceeding are available to decision-makers.

2. To ensure that the proponent of an undertaking, and governments and agencies required to approve the undertaking, give due consideration to avoiding or mitigating any adverse environmental effects prior to granting any approval to proceed with an undertaking.

1.10.8 Reference to the booklet published by the Ontario Ministry of Transportation and Communications Highway 7, Kitchener to Guelph, Feasibility Study: Route Selection (1975) reveals that the fifth objective of the study was to minimise adverse impacts on agriculture. The rating each route received as a measure against this criteria depended very greatly upon the "effective number of acres of farmland lost" (Eff). This was calculated as follows:

Eff = R.W. + Sev - Spec - Z where

R.W. = Acres of farmland taken by right-of-way

Sev = Acres of farmland lost due to severence

Spec = Acres of farmland held in speculation

Z = Acres of farmland zoned non-agricultural

Happily, not all the work was of this quasi-scientific kind. Much showed practical empirical knowledge of severence - particularly that crossings rarely proved worthwhile - and of the need to go to the individual farm level:

> "... such items as effects of severence, effects on machinery movements between parcels of land, effect of partial loss of land on farm viability, are subtle impacts which our public participation programmes assist us in discussing with farmers on a one-to-one basis. These types of evaluation can also be included in our evaluation."

1.10.9 Europe

Work in the new world appears to have progressed much further than in the old. Apart from a library and journal literature search the pursuit of European research was undertaken through the EEC, OECD and Bureau Européen de l'Environment (BEE). Over the course of some 1½ years considerable numbers of subordinate and related institutions and organisations were contacted via these sources. Detailed work on land use policy and road construction was available but nothing on the nexus between them. Unlike North America with sizeable modern units split by roads the concentration of work uncovered in Europe was on using roads and rural transport development as a means of rationalising old holding patterns, (see, for instance, the works of the Dutch Institut voor Culturtechneik en Waterhuishouding - Institute for Land and Water Management Research).

1.11 Conclusions

The conclusion of our searches was that little work of moment had been done in other countries, certainly not that was publicly available. What there was, from America, pointed to the need for an analytical method to surpass the descriptive. By the time works came through our programme of practical problem-ranking fieldwork had taken knowledge past that which was available from overseas.

CHAPTER 2

THE PROBLEM AREAS DEFINED

"Why should I choose to divide my ethics into four rather than six? Why should I define virtue as four, or two, or one?"

(Pascal, Pensées, no 683)

SUMMARY

Chapter 2, again jointly written, seeks to give context to the fieldwork described and analysed in the rest of the thesis. Emphasis is placed on the development of contact with the NFU who came to have a major impact on the research direction, the academic justification for the relationship is examined. An outline of early fieldwork is given to illustrate the decisions the Group faced in balancing rigorous and precise studies with the IHD objective of achieving practical results capable of producing positive change. In particular it is shown how the question turns on defining 'national' and 'individual' losses.

2.1 Introduction

2.1.1 The purpose of this chapter is to describe the important exploratory work undertaken by the Wolfson Group which led to the selection of those issues most demanding of research attention.

2.1.2 The preface described, amongst other things, the essential nature of an IHD project. Although the administrative and sponsorship details of the Wolfson project distinguished it from others, the 'problem solving' nature of the work did not. Throughout the period of the research programme motorway construction was a highly controversial issue achieving national repute, culminating in a Transport White Paper which was published towards the end of the research in June 1977. Dispute was to be found in many areas relating to the planning and construction of major new roads. Motorway research blossomed in academic institutions; for example, the Science and Society Department at Bradford University focussed much attention upon the Public Inquiry stage of proceedings, whilst the University of Surrey, with a DoE grant, concentrated effort upon Public Consultation. Meanwhile the North East London Polytechnic's 'Motorway Research Project' worked upon the environmental implications of the Motorway Programme (1975).

2.1.3 The task of the Wolfson Group was then to select areas of research which were at once original (to fulfill doctoral requirements) and useful (to comply with the IHD ethic of research purpose). No other research was (or is) being carried out in the field of

new road development and agriculture. This fact allied to the dearth of directly relevant literature already recorded presented the group with the task of examining the whole range of possible impacts before being able to select those most deserving of detailed attention.

2.1.4 Academically, the situation had both advantage and disadvantage, the latter outweighing the former. Advantageously there was little chance of not producing work which would qualify as 'original' in the doctoral sense, but at the same time there was a need to elevate what is usually basic groundwork to the average doctoral student into a major problem ranking exercise essential to the progress of the project. That is, an important original portion of the work comprised the delineation of the most appropriate areas for detailed study.

2.1.5 Dr. van Rest was responsible for setting up the Wolfson Group. His reason for doing so was that his experience at Public Inquiries into proposed motorways (M40/M42 and M65) seemed to indicate that agricultural considerations were being given little weight. Thus the basic hypothesis with which the group started work was that "the true agricultural costs of a major new road were not being fully assessed by the promoting authorities." The alternative implications of this statement are either the authorities did not know the true agricultural costs and so could not consider them, or that the costs were known but not being considered for some other reason.

It should, of course, be recognised that the implicit assumption behind this hypothesis is that if a true agricultural assessment was to be made the overall balance of cost and benefit might be significantly altered.

2.1.6 Through contact with the National Motorways Action Committee, an environmentalist lobby, the Group was introduced to Philip Shaw, NFU County Secretary for Essex, whose important article we made mention of in the previous chapter. It was Shaw who decided that the NFU could possibly benefit from the work of the Wolfson Group. Independently, contact was made with David Hellard, head of NFU Land Use Department at Headquarters. The contact with Hellard proved invaluable, for as the Group had no official sponsor, a 'touchstone' was necessary in order to assess the quality and appropriateness of the project outputs. Hellard and his department have provided this throughout the research programme. The importance of this is expanded upon in section 4 of this chapter; it is, however, useful to state here that the preliminary meetings between the Wolfson Group and Hellard and Shaw (late in 1974 and early in 1975) enabled a number of problem areas to be articulated.

2.1.7 Regarding the actual research priorities Hellard, although not disagreeing with Dr. van Rest's basic hypothesis felt that the immediate needs of the farming community were of a different nature. It appeared that his department had been the recipient of an increasing number of inquiries and complaints regarding major new

roads, from both individual members and County Secretaries. These focussed around three issues:

a. there appeared to be a high level of ignorance among members and Country Secretaries about the procedures that surround the planning and construction of new roads.

b. the disruption during the construction phase of new roads recorded by Shaw in his Essex Journal article was not just confined to that County but seemed to occur on a nationwide basis.

c. the farming community at all levels expressed dissatisfaction with both compensation received from the Government for loss of land and also at the way contractors seemed unwilling to settle third party claims for damage caused.

2.1.8 Hellard very forcibly made the point that although he thought trunk road development a great threat to NFU members his department simply did not have the resources to set in progress detailed investigation of these matters. Instead, he had been placed in the position of having to respond to 'cries of help' from around the country; thus each case of road development he tackled involved improvisation at the last minute. He also emphasised that very often the NFU had its hands tied in the question of the selection of a route because it could not afford to favour one route as opposed to another when both routes affected farms run by NFU members.

2.1.9 Thus the Wolfson Group in conjunction with the NFU developed a number of initial hypotheses which set the research programme properly under way. These were:

a. that agricultural considerations were not being given the appropriate weighting during the decision-making period of major road planning;

b. that if agriculture was properly considered the overall balance of cost and benefit would be altered;

c. that the agricultural community did not understand well the problems or procedures surrounding both the planning and construction.

d. if advice on these matters was to be made available, the agricultural impacts of new roads would be lessened;

e. that farmers were not being properly compensated either for loss of interest in affected land or damage caused to remaining land by contractors during the construction period.

A fieldwork programme was devised to examine these issues which thus formed a basis for the attempt subsequently made to rank the various impacts.

2.2 Testing the Initial Hypotheses: The Fieldwork Programme

2.2.1 M16 (A10 - A12) Public Inquiry

For those not actively involved in the processes leading up to the construction of a major new road the only point during the planning of a new road at which it is possible to examine the agricultural impact to the decision-making

was the Public Inquiry. Thus, it was decided to attend a Public Inquiry in full to examine the decision-making forces. Since the ground-breaking M40/M42 Public Inquiry in 1973/4 the issues which may be discussed at this forum have been widened and so the examination of the proceedings of any Inquiry in detail should reveal much of the promoting authorities' attitude towards the balancing of components in any overall project appraisal. In addition, daily attendance enables the researcher to hear all agricultural objections presented and the promoting authorities' response to them.

2.2.2 A few weeks after the Wolfson Group began work, a major Inquiry was due to start. Through contacts with environmentalist groups it was discovered that the M16 (A10 - A12) Public Inquiry was due to be held in Epping and was likely to prove most illuminating as co-ordinated objections were being prepared by local action groups. (It should be recognised that vigorous opposition although giving a Public Inquiry a particular shape is necessary if analysis of the proceedings is to prove fruitful. Without opposition, the promoting authority need not expose its thinking on particular subjects.)

2.2.3 At this time, the beginning of the research programme, the nature of the work carried out was very much under the direction of Dr. van Rest. He decided that the Group should attempt to make a complete record of all proceedings at the M16 Inquiry by being in attendance from beginning to

end. The reasons for this were fourfold:

a. to introduce the Wolfson Group to the current state of the debate over motorway policy and planning;

b. to test whether the application of time and effort would enable the techniques of project appraisal used by the ERCU to be successfully dissected;

c. to examine the extent to which objectors could be helped by daily news reports;

d. to gain access to farmers' records and thinking by collaborating over an objection.

It was expected that the proceedings would take no longer than two to three weeks; as it turned out the Inquiry opened on 6th December 1974, but did not actually finish until July 1975. Because it was so prolonged the Group did not attend every day, but covered virtually all of the first half of the proceedings and the most relevant days after that.

2.2.4 Thus it was that a case study designed to be a brief testing ground for preliminary hypotheses grew into something of a more fundamental nature. For as the days went by, the evidence grew more detailed and it became possible to almost completely dissect the way the ERCU had gone about planning this particular section of London's Outer Orbital Motorway. It must be emphasised that whilst the evidence gathered could not 'prove a negative' there was considerable data to suggest that agricultural

considerations were not being accorded 'adequate' treatment in a number of senses. Without early indication of this (see chapter 5 below for detail), the coverage of the proceedings would not have been so extensive.

2.2.5 One striking aspect of this 'inadequacy' was that neither the ERCU nor the farmers themselves seemed able to present in any useful way the implications for agriculture of either the chosen route or the objectors' alternative routes. The reasons for this are discussed in chapter 3. Here we must note that this finding had important influence in shaping thoughts upon how to assess the agricultural impact of a proposed road scheme.

2.2.6 <u>The M42 (Solihull section)</u>

The extensive coverage of the M16 Inquiry began <u>before</u> formal contact had been made with David Hellard at NFU HQ. In addition some very early exploratory farm interviews were carried out upon the M42 (Solihull section). This road was chosen for investigation primarily because of its convenience as regards the execution of fieldwork being close to the University, and because contact with farmers was initially established via local anti-motorway groups. It was partly because the hypotheses put forward by Hellard and Shaw so closely accorded with the results of the fieldwork on the M42 that they were given such great prominence in the planning of future work. It was, however, decided <u>not</u> to extend the M42 sample survey into a full-scale investigation. The reasons for this were

twofold:

a. Mr. R. Bridle, who was in charge of the roads programme with the DoE, offered co-operation upon the rest of the research programme if this apparently sensitive scheme was left alone;

b. the farms of the area were undoubtedly plagued by many problems because of their position upon the 'urban fringe' which would have served to complicate any investigation unduly.

2.2.7 Before the brief survey ended it was, nonetheless, possible to obtain the opinion of both the promoting authority (MRCU) and their contractors (Douglas). Both parties were at pains to play down the problems of construction. Mr. Manzoni, Managing Director of Douglas, drew a distinction between <u>problems</u> and <u>incidents</u>. Only the latter occurred and these could be, and were, cleared up (usually by money payment) by either the site engineers or the insurers. That farmers and engineers involved on the same stretch of motorway construction could place such divergent interpretations upon events seems to be a clear indication that <u>communications</u> between the two sides had broken down. This is a theme which occurred regularly throughout many of our farm interviews: farmers complained that those responsible for planning and constructing major new roads made little attempt to liaise with them. It was noticeable that on the few farms where liaison had taken place farms were able to keep functioning more smoothly.

2.2.8 M11 Contract 3 (Harlow-Bishops Stortford)

It was during the early stages of the M16 Inquiry, and whilst M42 interviews were in progress that contact was made with Hellard. That his views coincided with preliminary findings from both these pieces of fieldwork prompted the Wolfson Group to organise another survey in order to test and refine findings. Both because of its proximity to the M16 Inquiry at Epping and because it was the section that Philip Shaw had written about it was decided to carry out a survey of the M11 Contract 3 (Harlow-Bishops Stortford).

2.2.9 This 10.7 mile length of dual carriageway three-lane road forms part of the London-Cambridge motorway. It was designed both to relieve the A11 and take traffic from an expanded Stanstead Airport and was opened in June 1975 some three years after the beginning of construction and six months behind schedule. The road runs through low-lying and gently undulating land, which prompts alternate cutting and embankment of a fairly simple nature.

2.2.10 This first complete survey of a whole contract showed that, as might be expected in a fairly small area, the farming systems were found not to vary greatly. Only one unit, a 40 acre bullock-rearing concern was not predominantly arable. The range of farm sizes was markedly large spreading from 40 to 1326 acres; the average size, however, was 431 acres, a reflection of the arable characteristics of most units. In total the farms lost 251 acres to M11 at an average of 15.7 acres

each, the largest proportional loss being 13% of the total holding, the smallest 0.8%. The weighted mean percentage loss was 3.6%. The scheme had a different RCU in charge - Eastern, and different contractors. It threw up the idea that there might be equivalent differences of treatment.

2.2.11 M6 (Cumbria)

It was thought necessary to also briefly examine the problems that hill-farmers faced during the construction of a major new road to see if this was a relevant variable. In all, eight farmers were interviewed upon a section of the M6 covering three contracts between the Lune Valley and Carlisle constructed and completed concurrently, the last being opened in mid-1971. In all, these schemes totalled 50 miles in length, but interviewing was concentrated in the hillier central area and around junctions. The farms were deliberately selected on the basis of having reported their difficulties to the NFU. In this sense the study was essentially selective.

2.2.12 The contractors on the schemes were, working northwards, French, Laing and Tarmac. Scott Wilson acted as consulting engineers throughout and information obtained from one of their engineers on the scheme provided a useful starting point for investigation. The main factors that had to be contended with, he told us were, a) gradients and b) amenity considerations, particularly avoiding the boundary of the Lake District National Park. Agriculture, he maintained, was not considered until construction began,

and not surprisingly, many problems arose. It was because so much attention was paid to the aesthetics of the scheme within the NWRCU, who knew that these were being closely scrutinised, that the contractors could "behave badly" towards affected individuals. It was clear that the RCU was totally committed to having the schemes finished on time and looking attractive (the Lune Valley section has indeed won awards on this score). Scott Wilson, it was reported to us, knew they would receive no backing if they attempted to be strict with contractors regarding the treatment of individual farmers.

2.2.13 A12 Chelmsford By-Pass

Although the evidence from the M16 Inquiry seemed fairly conclusive, it was also apparent that the London Orbital was a motorway of major strategic importance to both the promoting authority and objectors alike, and that this might make it a slightly exceptional decision-making case. Minor issues, although important to the process, may have been swallowed up by matters of greater national import. It was therefore decided that it behoved us to examine the proceedings at another, smaller, Public Inquiry.

2.2.14 The A12 Chelmsford By-Pass Inquiry which took place in mid-1975 was chosen. As with the M16 this Inquiry turned out to be a lucky choice and told us far more about the decision-making processes involved than could have been anticipated. (see chapter 6)

2.3 Testing the Initial Hypotheses: The Findings

2.3.1. From these preliminary surveys a number of important conclusions emerged which served to shape the research programme from that time on:

a. the promoting authorities responsible for plans to build major new roads appeared to have no way of making an objective appraisal of the agricultural effects of proposed schemes;

b. few farmers had any conception of the highway planning process and tended to enter it far too late to have any significant effect. The promoting authorities, arguing that the effects of blight would be too severe were reluctant to try and involve the farming community at earlier stages in the decision-making. As a general rule it seemed to hold that the later consultation occurred the greater were problems for individual farmers;

c. Shaw was correct in his assertion that drainage, fencing and access to severed land were the factors most remarked upon by farmers as causing problems during construction;

d. however, as well as these problems, numerous others were mentioned also. Whilst less frequent, instances of service cutting, trespass and severe littering were disruptive of farm planning when they occurred;

e. farmers thought far more about the physical damage caused by the road than they did about the

economic consequences. Without delving into psychology it can be fairly said that many took umbrage at the contractors' attitude towards their farms. In a significant number of cases this had a negative impact on output during the construction period;

f. it appeared from the interviews that most farmers were dissatisfied with the level of contact they had with both the planners and the contractors. In general they understood that on a large project incidents were bound to occur, the main complaint stemmed from the lack of communication channels through which problems could be solved;

g. much distaste was expressed at the slow process involved in assessing the level of compensation, the final level of payment and the manner of settling third party damage claims;

h. Mr. Manzoni's (Douglas) attitude to the construction of new roads explained the lack of liaison; he argued powerfully that the building of a motorway is a multi-million pound operation where the contractor cannot afford to have men or machinery idle. Thus it pays contractors to plan their work in the most effective manner for them, regardless of how farmers are affected. If damage is done in the process, then settling up through third party insurance claim is cheaper for the contractors than advance bargaining and consequent delay. (It is then important to record

our subsequent findings which indicated that payment for such third party damage upon which Mr. Manzoni placed much faith were in many cases never forthcoming, often slow and generally inadequate. See chapters 13 and 14).

Four major hypotheses therefore, emerged about the actual construction of new roads on farmland:

- that there are no problems of a physical nature that the present technology of civil engineering cannot solve;
- problems, however, do occur frequently because of a breakdown in farmer/contractor relationships;
- this breakdown in communication is due, in most part, to the contractors' desire not to delay work in order to negotiate;
- the mechanism for paying third party claims for damage caused does not work efficiently.

2.3.2 Meetings were held throughout the period of 'problem definition' with members both of the civil engineering profession and MAFF. The engineers, in general, were reluctant to accept that real difficulties existed. The one problem they would admit to was that of dealing, at the planning stages of a new road, with farm severance. Severance occurs when part of a farm is separated from the farm buildings by a new road. Because of the linear land take for roads, severance is today a phenomenon virtually specific to this type of development. It occurred also during the 'Railway Age', but one important

difference can be seen between the construction of the rail and road networks. Perhaps due to shifts in the social attitude to property interests, unlike the Railway Acts, the Highways Acts do not place an obligation upon the promoting authority to replace all farm accesses. Thus Highway Authorities have the discretion over whether to provide such access, whether bridge or underpass, across a new road. It was found that highway engineers as a body perceived farm severance as the main agricultural problem because it was the one *they* had to deal with, but there was no consistent method for so doing. All other problems as far as the engineering profession was concerned were matters for compensation and could be left for the District Valuer's office to deal with. More specifically, the engineers' view of the situation was that in practice the only other agricultural impact of a new road was that of land loss, and for this, 'good' compensation was paid. Highway engineers regularly pointed out that agriculture as a whole would benefit from the distributional capabilities of the new trunk road network, with the evident implication of 'swings and roundabouts'; if not costs and benefits.

2.3.3 Finally some mention must be made of initial contact with the MAFF. Introduction through the Wolfson Foundation was at high level, but the first contacts with the Ministry did little to shape our thinking at the problem formulation stage. This stemmed primarily from the cordial but cautious attitude adopted by the Ministry

toward the research. The attitude can fairly be summarised as 'you find something and we will comment'. Thus it was not until after our ideas had gelled and been reported that MAFF gave a positive input.

2.4 The NFU and the Wolfson Group

2.4.1 It will, perhaps, be wondered why more detail has not been given of the results, especially of the farm survey work undertaken. The answer is simple (and for those involved rather gratifying). Hellard, having seen the preliminary results of the surveys, made suggestions regarding the dissemination of the available information in order that the farming community might be made more aware of both the procedures and the problems involved in the planning and construction of a major new road. The prime result of this increase in co-operation between the Wolfson Group and the NFU was the publication Motorways, Trunk Road Development and the Farmer: An Information Pack for the Guidance of NFU County Secretaries. (Bell 1977) The production of this booklet was undertaken by the Wolfson Group based upon all the fieldwork results alluded to above as well as those from specially designed supplementary surveys set up after Hellard's suggestion. It is in chapter 3 below that the detailed results of fieldwork are found because there the story is told of how the 'Information Pack' came to be written. Thus the NFU played an important part in the Wolfson Project and indeed acted as 'problem owner'. The consequence of this was that a highly useful two-way

flow of ideas and information ensued. It is then academically important to examine the nature of the organisation with which we were working and the manner of the relationship. Doctoral research tied closely to one of the country's major interest groups being far from common.

2.4.2 There are a number of studies of the relations between the Government and the agricultural industry generally. (Self and Storing; Davey, Josling and McFarquhar) Yet apart from an exposition on the workings of the Cheshire County Branch, (Walters) little detailed work has been carried out to discover how the NFU functions either internally or as a pressure group. This is surprising given the statutory role the Union has regarding the Annual Price Review. In the field of Land Use Policy it functions more simply as a large, important body of interest.

2.4.3 Within the NFU the Land Use Department has responsibility for co-ordinating and implementing Union policy within a vast field. The Department exists solely at HQ level; no equivalent is to be found within the County branches. The Union has a democratic structure and at local level there is a system of committees which have responsibilities for different issues. Policy overall is discussed at the Annual General Meeting and monitored during the year by a series of elected HQ committees. The Land Use Department is responsible to the Parliamentary Committee of which there is a Land Use and Countryside Sub-Committee.

2.4.4 Individual County Secretaries are responsible within their areas for all matters relating to the welfare of their members to whom they report directly. Within each county are to be found a number of Group Secretaries; the prime function of these men is to run the Union's Mutual Insurance business. The degree to which they become involved in more general issues depends on both their outlook and their insurance selling technique. The proceeds of the insurance selling are, with the annual subscriptions, the prime source of Union finance.

2.4.5 Hellard made it clear from the outset that the NFU could not enter into the normal financial commitment accompanying the role of 'problem owner' or sponsor. This was acceptable to the Group as it was held desirable to maintain independence by using only the Wolfson research monies. Thereby allowing the possibility of producing results which the NFU would find unhelpful to their case. (That this has rarely been the case is, therefore, a measure of the justification of the NFU complaints.)

2.4.6 Other than Hellard (a lawyer), the Land Use Group mainly comprises people with a geographical/planning background rather than one specifically in agriculture; although internal liaison with other specialists is available. In particular, there was nobody specialised in agricultural economics. The style of operation of the department is reflected in the way Hellard felt the

Wolfson Group and his department should work together. Three parameters received prominence;

a. there was a need to lessen the work load of his department;

b. results had to be of immediate relevance to current problems;

c. the Land Use Department and the NFU should be seen to be providing the members with a useful service.

2.4.7 During the initial months of the project the liaison became stronger with each side gradually understanding how the other could assist it in the attainment of its own aim. Thus it was that in mid-1975 Hellard felt able to put more specific requests to the Group in order that the NFU might benefit from work carried out more quickly and directly. The proposals he put are interesting in that they well reflect the thinking within the NFU:

a. that some form of 'Code of Conduct' be drawn up in order to restrict motorway contractors within additional contractual obligations when working upon agricultural land. The success of such a Code would only be possible if the authority responsible for hiring the contractors agreed to include it in the contract documents;

b. that an 'Advice Manual' be drawn up with the objective of informing the farming community of the procedures and problems which accompany trunk road development;

c. that an objective investigation of compensation provision be made.

2.4.8 It is important to recognise the fundamental distinction between the lines of action laid out in a) and b) above. Put simply, the attempt to have a Code of Conduct accepted by the appropriate body is to attempt to change the existing administrative framework, whilst informing the farming community of procedures and problems is to tell them how to operate better within this framework. The construction industry is highly organised in the field of contracts and contractual obligations; although contracts will differ from job to job this is primarily a matter of detail for there is a standard basic contract which all ICE contractors employ. Thus to suggest any modification to the standard contract which has been refined over a period of decades is a dramatic move not to be undertaken lightly. On the other hand a continual stream of advice pamphlets emerges from NFU HQ designed to inform members about all types of issues so that a trunk road advice manual would neither be unusual nor would it involve anybody except the NFU and its members. (What was to be different about the advice manual was that it would be a much more stylish and well researched reference document rather than the usual NFU stencilled circular. This would be important for the NFU to test the value of co-operating with such research generally.)

2.4.9 As it turned out the request for a 'Code of Conduct' became an issue of high priority in May 1975 because the Glamorgan County Branch, faced with the imminent construction of an extension to the M4, put in a request to NFU HQ for such a document. Although time constraints were fearsome, in that only a couple of weeks were available for preparation of the document, it was decided to make an attempt to carry out the task. Hellard was prepared to give valuable advice:

> "As I see it the Code of Practice should fall into three parts. First, there should be a general memorandum of assurances from the Road Construction Unit or the Welsh Office as the case may be. Secondly, there should be an actual Code of Practice governing the activities of contractors and sub-contractors setting out in some detail issues which are perhaps already covered in specifications for contracts but which should be brought together in one place as agricultural considerations. Thirdly, there should be an advisory leaflet or perhaps an NFU circular to be sent to all farmers affected by any road contract which would include elements of both Stages I and II.
>
> Stage I: the memorandum of assurance would, for instance, deal with preliminary works and survey;

"the appointment of a Liaison Officer, an initial meeting with all affected farmers to establish liaison, the preparation of farm plans, schedule of works and impact of road scheme on individual farm units also detailing accommodation works, etc; the establishment of an appeals procedure and safeguards for delays or emergency action; the claims procedure for damage caused during construction, and the final section dealing with procedure for checking works before the contract is handed over.

Stage II: Code of Practice for contractors. This should deal with your points about discipline of contractors, the timetable for work standards for accommodation works detailed issues such as drainage, fencing, water supply and other services and should generally extract all those matters which may be covered in specifications in the contract or a general guidance from the Road Construction Unit or the Welsh Office to the contractor on the ways in which he should carry out the work to minimise impact on farmers and farming activities.

Stage III: the circular to affected farmers should give a brief resume of the road proposal and the assurances from the Road Construction Unit as to the ways in which impact on farmers

"would be minimised, an indication of the contents of the Code of Practice and a check-list of do's and don't's to assist farmers and agents in coping with road construction." (Letter, 21 May 1975)

2.4.10 Using existing fieldwork results and drawing upon the only such 'Code of Practice' ever to have been adopted (see Bell 1977, pp 28-9), a draft document for use on the M4 was drawn up, and Hellard endeavoured to have it accepted by the Welsh Office (the promoting authority) and the contractors, at least in principle, if not detail. It was at this point, however, that it became apparent that such a document was a political non-starter and that it would not be considered by those in charge of construction. Thus the attempt to amend the administrative framework faltered at the first hurdle. Depsite the negative result, this was an important event in the shaping of the rest of the research programme, for it became apparent that the farming community could, in general, expect to receive little help from the authorities in their attempt to minimise the impact of the actual construction phase of development, just as we had seen at the M16 Inquiry, they could expect little co-operation during the planning stages. Therefore it was decided that the priority from that time would be the development of an Information Pack describing all the possible procedures and problems throughout every stage of development of a major new road. In this way, it was felt, a better agricultural input at an earlier

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stage would be encouraged, leading to national benefit as decisions moved toward the optimum.

2.4.11 It is finally pertinent to record that Hellard believed, even at the end of 1974, that the development of the Trunk Road Network would be cut short and road development would in future focus around new by-passes and the upgrading of existing roads. Thus he also suggested that the Group should carry out analysis of the problems farmers have when fairly small roads are upgraded by the building of a parallel carriageway, thus turning it into a dual carriageway. The Wolfson Group rejected this suggestion primarily because its members disagreed about the possible end to strategic road building. (At the time of writing, January 1978, it seems, from the Transport White Paper and recent policy statements that the Government is planning to cut back on inter-urban trunk road development and focus more on town by-passes. There appear, however, to be no plans for upgrading existing roads.)

2.5 A Ranking of the Problems

2.5.1 In order that the research programme should continue on the most effective lines, it was necessary, having made a preliminary survey of the problem areas, to assess which were of most significance. In drawing up this ranking of problems it was important to bear in mind the terms of reference of the Wolfson Grant. The grant was awarded

on the basis that the national resource implications of the construction of major new roads on agriculture would be investigated. Thus, to speak the language of the economist we should be looking to the costs and benefits occurring to the National Farm (as opposed to the individual farm) because of the trunk road network. The main problem areas selected by the Wolfson Group for research are described below.

2.5.2 The Procedures Involved in Planning and Constructing A Major New Road and the Problems Caused for the Farming Community

Hypothesis: That the farming community does not fully understand either the procedures involved in planning and building a major new road or the problems that are likely to occur at the various stages of development.

Assumptions:

a. The NFU HQ would be capable of assembling and disseminating the relevant information but does not have the resources to do so.

b. Those responsible for the construction of new roads are quite capable of solving the technical problems which arise on farmland.

c. Due to both a breakdown in communications between the contractors and the farmers, and the financial penalties for not keeping to the construction schedule, contractors are disinclined to plan and execute their work in a manner that takes account of the needs of the farmers.

d. The farming community cannot rely on assistance from those associated with the development of new roads and should seek to provide its own input and protect its own interests.

2.5.3 Because the NFU placed emphasis on this problem and preliminary investigations had supported fully Hellard's initial hypothesis it was decided that the aim of describing and explaining the procedures and problems should receive high priority in the research programme. Examining this component of the research from the standpoint of natural resource use it can be justifiably argued that if the farming community were able to better understand the procedures and anticipate the problems then many of the difficulties would be lessened. From this, it could be sustained that the pattern of farming would be less upset and less production lost. Few people would argue that the solution of current problems would create a greater loss of agricultural production, so that the question then arises by how much would the loss in production be reduced.

2.5.4 This was seen to be the point where the Group could make the most immediate and positive contribution because of the manifest desire of the farming community to have the relevant information. Although the point will be made more fully at the appropriate place it is necessary to point out here that what was required was not a delicately balanced appraisal of the interaction between planners, contractors, and farmers, but far more

fundamentally, a comprehensive, stage-by-stage listing of practices and problems in order that farmers could be aware of the complete range of possibilities. An explanation of the likely incidence of various occurrences would be useful but not so important. (Such a guide to farmers' concerns it was hoped would also be useful to engineers.)

2.5.5 Given the unsympathetic reaction of the DoE to the research project this work could also be seen in the light of working within the existing administrative framework rather than by attempting to upset the framework, which appears to have been the impression gained in Marsham Street of our work. As, in the final analysis, our work sought to have practical value we could not afford to be fundamentally at odds with them.

2.5.6 The Agricultural Input to the Highway Decision-Making Process

Hypotheses:

a. The true agricultural implications of the construction of a major new highway are not fully understood by either the authorities responsible for the developments or the farmers whom they affect, and therefore cannot properly be taken account of in the overall project appraisal.

b. The inclusion of an agricultural assessment would have an impact on the overall project appraisal balance.

Assumptions:

a. Given the way traffic benefits are counted for the purpose of testing the 'need' for a new road, it is unlikely that the size of agricultural disbenefits will cause a particular road not to be built. In other words, agriculture cannot be expected to greatly influence the debate over whether or not a new road is justifiable. (This assumption is supported by Wibberley and Boddington's findings concerning the agricultural implications of the Third London Airport as reported to the Roskill Commission.)

b. Thus the stage at which an agricultural input can have most impact is to be found after it has been decided to construct a road, whilst the actual route is being selected.

c. Those responsible for planning new roads are engineers by training and have little background knowledge about agricultural or farm economics.

d. Land loss and severance are seen by engineers as the components of agricultural impact, of these only severance causes them problems because they believe that land loss is covered by compensation payments.

2.5.7 If the explanation of procedures and problems was the most immediate task then the aim of improving the agricultural input to the decision-making process was seen

as the most important in terms of conserving the nation's agricultural resources. Here, the argument runs that if the true agricultural consequences of any route are identified it then becomes possible to reduce and perhaps minimise the level of impact. Thus the savings here are likely to be of a long term nature whereas those accruing from a better understanding of the operation of the system are, in the main, likely to be shorter lasting. Thus it would be hoped that once the true agricultural input is reflected in the system, the need for the farming community to be aware of all possible turns of events would be lessened. To this extent informing the agricultural community can be looked on as a short term attempt to minimise agricultural losses, whilst the improvement of the agricultural input is the long term solution.

2.5.8 Compensation

Preliminary interviews indicated that farmers were dissatisfied with the laggardly way compensation negotiations progressed. Because so few had settled the final amount on the sections investigated it was not possible to properly assess the reaction to them. The impression given however by many of the farmers was that the final settlement was likely to be less than satisfactory. Thus again we began with rather negative hypotheses:

a. Procedures for negotiation of compensation payments are unnecessarily slow.

b. The final amounts paid in compensation do not fully reflect the economic losses on individual farm units. It is important to recognise the nature of compensation payments: they are primarily amounts of money paid to an individual farmer for the individual losses on the market value of his farm, or for the loss of his tenancy as an interest in land. Thus the aggregated compensation payments to all the farmers on a section of new road will not necessarily equal the national loss of agricultural resources consequent upon the construction of that road. Therefore it becomes important to compare the economic loss on individual farms with compensation paid:

(1) to compare the theoretical agricultural costings used in the planning and design stages with reality, and

(2) to assess the efficacy of payment in justly settling losses.

This problem was also given high priority by the Wolfson Group in planning the project for it is the necessary complementary aspect to the production of a proper agricultural input.

2.5.9 Planning Policy and the Secondary Effects of the Trunk Road Network

Leslie Ginsburg of Associated Planning Consultants who was appearing for one of the objecting bodies at the Chelmsford Inquiry (Chapter 6) drew attention to what

is perhaps the most important <u>secondary</u> effect new roads can have on agriculture. He argued very simply that farmland between existing urban areas and newly built roads becomes vulnerable to development pressures. Supporting this argument he pointed to specific examples of farmland which had been so trapped and which had subsequently been developed: Lower Early was trapped between Reading and the M4 and quickly "infilled", similarly with Cressex between High Wycombe and the A40(M) and part of Worcester by the M5. These examples, he argued, were not unique and care should be taken when routing rural roads near urban centres to take account of possible secondary impacts.

2.5.10 The intrinsic appeal of Ginsburg's arguments convinced both the Public Inquiry Inspector and the Wolfson Group. However, in terms of national resource use it is of greater importance to know how widespread the phenomenon is and what overall impact it is having upon agricultural resources.

2.5.11 Relating this secondary impact to the published work upon urban fringe problems, it seemed valid to develop the hypothesis that even before development actually took place on potential infill land, problems such as trespass and vandalism would occur and the land might in consequence be 'underfarmed'. Naturally local and national planning policies will play the all-important role in determining whether or not vulnerable land will actually be infilled. Land would only be subject to infill if the relevant planning authority decided either to

allow it or carry it out themselves. Thus any study of the problem would require an understanding of the reasons for the relevant changes in planning policy. This undoubtedly is an important area of study. It was decided, however, that as the problem was by nature at a secondary level it ought to be given lower priority than elements of research already outlined.

2.6 The Planning and Progression of Subsequent Work

2.6.1 The most immediate task of the Wolfson Group was then that of informing the farming community about the likely progression of events surrounding the development of a major new road. (The completion of a sound piece of work on this task was also important firstly to secure positive NFU co-operation for the rest of the research programme, and secondly to prove our credentials and capability to professionals in the field.) Even though preliminary fieldwork had proven Hellard's hypothesis, it was necessary to further reinforce the data base in order to ensure both that the initial findings had not been exceptional and that all possible problem areas had been uncovered. In addition, research had to be undertaken into the relevant statutes and instruments in order that the true position as regards legal procedures could be discovered.

2.6.2. It was decided that both the Wolfson research students would be involved at all stages of this part of the research. Thus, this is the section of the thesis upon

which all stages of the work were carried out jointly by the two research students.

2.6.3 As regards the remaining areas of investigation outlined in Section 2.5, because the University authorities would not allow the production of a completely joint thesis, it was necessary to split up the areas of investigation. Hearne took on the task of examining the present agricultural economic input to the highway decision-making process. Bell devoted himself to examining both the efficacy of compensation procedures and the administrative network surrounding the technical appraisal techniques which were the subject of Hearne's investigations. In order, however, to facilitate the necessary fieldwork and allow the two theses to dovetail as far as possible it was decided that the major case studies (M40 and M5) would be undertaken by both researchers, although the data would be analysed with different objectives and conclusions in mind.

CHAPTER 3

THE DEVELOPMENT OF THE INFORMATION PACK

"I'll search where every virtue dwells,
From Courts inclusive down to cells
What preachers talk, or sages write,
These I will gather and unite."

(Swift, 'Cadenus and Vanessa')

SUMMARY

The last of the jointly written chapters this outlines the evidence for, and argument behind, the brochure drawn up jointly with NFU. Whilst the document itself is necessarily central; the argument ranges more widely and introduces questions such as lack of communication, appropriate inputs at different stages of planning and the clash between statutory compensation and damage by contractors. As the Information Pack is so much an example of the type of useful output aimed at in IHD research, considerable attention is devoted to the methodological assumptions and working criteria underlying the idea of writing a brief for one section of the community.

3.1 The Information Pack in Context

3.1.1 The thinking behind the Information Pack (IP) is detailed in chapter 2 above and the document itself (Bell 1977) is submitted with this thesis. No such final brochure can speak for itself and this chapter aims to discuss the methodology, results and context of the work. By the latter in particular is meant that it is hoped to outline the idea running through the thesis; that agriculture falls into what may be termed an 'administrative void' insofar as no specific authority bears responsibility for it when roads are constructed. In this sense losses have occurred by default rather than design.

3.1.2 To take on the task of helping to fill the void posed an immediate question regarding the danger of losing objectivity. The focus of attention being those affected rather than the promotors of the scheme. There could be accusations that a position of advocacy on behalf of the farming community was being adopted, which would be unjustifiable both from an academic and practical viewpoint. We see the problem and would meet such assertions with a number of countervailing points:

a. the concern was not with achieving any particular end extraneous to the existing process; such as preventing a particular road from being built or opposing the conversion of a particular plot of land from its agricultural use. Our aim, was one which fits strictly into the concept of interdisciplinary research, namely to remove the barriers between the parties involved and to aid

useful dialogue;

b. the non-acceptance of a Code of Practice (above 2.4.10-12) for highway contractors working upon agricultural land was the clearest possible indication that the authorities responsible for promoting new roads were unlikely themselves to aid the farming community in this way;

c. the distinction should be recollected between maximising the opportunity for the fullest inter-communication within the extant system, as differentiated from attempting to change the system to suit the achievement of a given end. The Department of Transport has erected a process whereby new roads are planned and built, it should therefore be in the interests of all concerned that each of the participants in the process enacts his role to the full. Helping the farming community to better understand the system and therefore play a fuller interactive role is an attempt to improve the overall system;

d. therefore those who would argue that the farmers by receiving this extra assistance are achieving an unfair advantage, thereby upsetting the balance within the decision-making process must be ruled out of order because it ought to be the aim to help all participants increase their level of useful involvement.

3.1.3 Recognising the danger of slipping from these standards, guidelines were developed during the construction of the I.P. to prevent a lapse into <u>unwarranted</u> advocacy. These can be summarised as:

a. advice should help the individual represent his own interests as well as possible, at all stages of planning and construction;

b. advice should be avoided which enables the individual to maximise personal benefit only at the cost of another individual;

c. in problematic cases it is fairest to err on the side of optimism regarding relations between farmers and authorities;

d. given that the I.P. informed people of procedures and problems it was decided that there were significant gains to be made in terms of national advantage if the communications between parties were not to be stemmed by over-formal relations:

e. the farmer was to be firmly advised of the need to check the basic official source, or, in reality, to take professional advice, even though in the I.P. basic sources might be given with the appropriate references to Acts, Statutory Instruments and Orders. It was felt that the main purpose of the booklet should lie in its legibility and clarity of style, factors which inevitably trade off with strict accuracy.

3.1.4 "Motorway, Trunk Road Development and the Farmer: An information pack for the guidance of NFU County Secretaries" was first issued in May 1976. A revised and updated second edition was published for general sale in April 1977. It is this later edition which is submitted. Initial publication took place a full eight months after the first draft had been completed. This delay was due to the process of iteration between the Group and Hellard, required because the publication was by intention a joint one, even if the major part of the work would be undertaken by the Wolfson research students. Hellard and his team made comment and suggestions upon the preliminary and subsequent drafts of the I.P. and were also successful in obtaining the views of the RICS. Advice was also sought from RCU's, project engineers, land agents, NFU county officials and other interested bodies. The Wolfson Group had the final word upon content and was responsible for the final preparation of the booklet. Hellard, on behalf of the NFU, readily accepted that there was a need to apply academic standards and constraints to the material published and on this score there was little need for decisive editing.

3.2 Gathering the Evidence

3.2.1 Rigorous desk study and literature reviewing was undertaken to provide the detailed theoretical background. The task facing an affected individual in attempting to obtain and comprehend the range of legal and official literature was evident. Initial fieldwork, however, had

indicated that the compexities of procedural theory waned before the realities of practice. For the deskwork the I.P. is its own evidence incorporating the most relevant references and being founded on the review of literature. The practical work merits a fuller discussion.

3.2.2 The first draft of the I.P. was drawn up in September 1975 and based largely upon the evidence gathered during the problem formulation stages of the project. Therefore the results of the M42, M11 (contract 3) and M6 farm interviews were combined with the evidence from the M16 and Chelmsford Public Inquiries and numerous meetings held with engineers, MAFF representatives etc. Two supplementary comprehensive farm surveys were undertaken.

a. M11, Contract 2 (Loughton - Harlow)

b. The A55 Chester Southerly By-pass

3.2.3 The results of the M11 Contract 3 research indicated that there had been a breakdown of farmer-contractor communications; in consequence individual farmers had been confronted with a large range of problems. It was hypothesised that:

a. engineers and contractors have the capability and technology to avoid or quickly solve any problems that may arise during the construction of a major road upon a farm, but that,

b. because of a breakdown in communications unnecessary problems arise.

The general opinion amongst the farming community was that this breakdown was due in the main to the uncompromising nature of the Contractors. It was decided that this hypothesis should be tested as rigorously as possible.

3.2.4 The next section of M11 to be built (Contract 2) had the advantage that apart from a change of main contractors (from Fitzpatrick to Dowsetts) all other variables were held as constant as possible: ERCU were still the promoting authority, Atkins the consulting engineers and the road ran through the same type of Essex arable farmland, which was fairly low-lying and susceptible to flooding. The main question then was did Doswetts manage to operate with fewer problems being created for the farmers? The section was, at 8 miles, a little shorter than Contract 3 and affected fewer farmers (12 as against 16). Because of changes in standards and the abandonment of Stanstead Airport expansion plans this section was down-graded from dual 3 lane to dual 2 lane carriageway. Construction began early in January 1977 and was nearing completion at the time of writing.

3.2.5 That Dowsett's were able to run their M11 contract with far fewer problems than on the Fitzpatrick scheme indicated that our hypotheses were valid and that the most important factor in deciding the overall level of difficulty individual farmers could expect during the construction of a major new road was the approach of the contractor.

3.2.6 The M11 studies had been in primarily arable areas but there was evidence to suggest that animal based farm systems might be more susceptible to disruption. Because of good NFU contacts it was decided to select the A55 (Chester Southerly By-pass) for the next investigation.

As well as traversing dairy farms this road was also not (in legal terms) a motorway and so provided another interesting variable factor. The 6.9 mile length of by-pass affected 11 farms. Of these two were market garden units serving Chester and the rest were predominantly dairy farms. Cheshire County Council was in charge of the scheme and Sir Alfred McAlpine and Son (Northern) the contractors. Work started on the £10.8m contract in January 1975 and was completed in late 1976. The major constructional feature of the road was the bridging of the River Dee, apart from this the dual 2 lane carriageway was constructed on almost completely flat land. The overall conclusions from this study conformed with the hypotheses set out above: more problems occurred on this section of road than on M11 Contract 2 but there were far fewer than on M11 Contract 3. McAlpines it seems, through prompting by a very active Resident Engineer, made some attempt to dovetail their work with the running of the farms.

3.2.7 The M11 (Contract 2) and A55 investigations were underway whilst successive drafts of the I.P. were being drawn up and naturally such evidence as became available was incorporated in the text. The final draft was printed in May 1976: at that time both additional surveys were still incomplete. However, to make our task here more straightforward it is intended to deal with the revised version of the I.P. which was issued in May 1977

by which time all fieldwork evidence had been gathered and analysed. The 1977 version differed only by virtue of the Corrigenda. The limited scope of this addition is an indication that the later surveys bore out the original hypotheses.

3.2.8 Although we have classified the M11, Chester, M6 and M42 investigations as <u>farm surveys</u>, the extent of information gathering did not stop with the farm interviews. Attempts were made to interview relevant engineers, contractors, private and District Valuers in order to both obtain their opinion on the general nature of problems and also to give them the opportunity to answer specific charges made by farmers. Unfortunately this attempt to trace-back problems to their source was in the main unsuccessful. The officials and contractors involved refused to grant interviews. Naturally, background information was also available from the local NFU representatives.

3.3 Methodology

3.3.1 As has already been stated, for the M11 (Contracts 3 and 2) and the A55 surveys <u>all</u> affected farmers were interviewed, whilst on the M6 and M42 a sample survey only was carried out. For the M11 and A55 studies most farmers were interviewed twice in order to check continuity of views over time. The interviews were best established by individual letter and confirming telephone call: (a final reminding call was found necessary as the exigencies of farming can easily lead to researchers

being forgotten when more relevant issues arise!).

3.3.2 The M42 interviews were simply a general conversation with the farmers with more intensive questioning on those matters which seemed of importance. Once the main problem areas were defined it was possible to construct a more formal questionnaire. This was initially drawn up for the M11 survey and subsequently modified and improved. The final version is shown in Appendix 1. The questionnaire was most useful as more of a checklist than as a means of obtaining precise answers to precisely worded questions. This accorded with our prime objective which was to locate and rank the range of problems farmers had to face; therefore it was essential to allow the interviewees to speak about the issues they thought to be of greatest moment.

3.3.3 On all surveys, except the M6, a two-man interview technique was used. The experiment with just one interviewer on M6 demonstrated the difficulties involved in marshalling and retaining a constant stream of information: interviews took much longer than on the other sections and points were less clear in the subsequent writing-up of information and had to be rechecked by telephone or letter.

3.3.4 The point cannot be made strongly enough that this type of research is extremely time consuming and expensive. It takes a great deal of preliminary organisation to set up. Farmers are difficult to pin-down to a set time. Any investigator undertaking an extensive series of farm

interviews will find it most helpful to work through the NFU branch in order to obtain initial recognition. We now turn to the evidence itself, the reader might find it helpful to have a copy to hand.

3.4 The background data of the I.P.; practical matters

Route Investigation and Selection

3.4.1 Current procedures mean that just the planning of a new road can take well over five years: during this time surveys indicated conclusively that the farming community tends to be kept in the dark about the progression of events as does the community at large. The MAFF may be consulted by the highway authority but individual farmers most certainly are not. The result of this was often that in the pre-Public Consultation days the first time farmers knew that something was afoot was when engineers appeared to survey their land as part of the process of route selection or final design. This surveying usually takes the form of both the placing of concrete pegs in the ground for siting aerial photographs and the digging of bore-holes to carry out soil analysis. Bore-holes appear to cause most problems as they take longer to dig than posts do to erect and contractors are in many cases reluctant to fill them in. Although usually only 6" - 12" in diameter, bore-holes may be up to 200 metres deep and substantial drilling devices are necessary to carry out the work. Movement of this machinery across the land may cause a loss of crops depending upon the time of the year and the care with which the operation is

carried out. It appears that the shock of work about which the farmer has no prior knowledge being carried out, combined with an inconsiderate attitude on the part of the contractor is the best recipe for landowner - official clashes. An initial bad relationship is likely to grow rather than diminish.

3.4.2 To demonstrate the magnitude of the borehole problem we would cite but one case from many on M11 (Contract 3). The farmer awoke one morning to find a man, his drilling equipment and a residential caravan camped upon his land without prior permission. (A general disregard for legal niceties of notice of entry was confirmed by farmers' Land Agents.) In all four bore-holes were drilled: taking some three weeks. At no time were the holes fenced off and finally they were left unfilled. It was a matter of months, during which numerous phone calls were made, before the holes were filled in. Compensation negotiations (for crops destroyed and use of land) had still not been completed at the time of last investigation (June 1976) even though the bore-holes had been made over five years earlier. The question of communication during the period of route section is generally met by authorities expressing their worries regarding blight. The evidence is discussed in detail by Hearne, here suffice it to record that we found farms to be more blighted in their planning by not knowing details of routing than by so doing.

Public Consultation and The Public Inquiry

3.4.3 The Chelmsford By-pass proposal was the first scheme to be subjected to the newly developed system of Public Consultation, designed to involve the public in the selection of a final line (from a choice of 3 or 4 usually) which would then be worked up in detail and published as a preferred route. For Chelmsford this took place in 1973 and gave the public a choice of three routes. Interviews with the farmers involved at Chelmsford revealed a fatalistic approach to the whole Consultation Exercise; most of them expressed the opinion that they felt farmers would always "lose" simply because there were more people living in the city centre who wanted the new road as far from their houses as possible, than there were farmers who wanted to protect their land.

3.4.4 The A1 - M1 Link Public Consultation Exercise was subjected to a brief survey to sound out impressions at the time. Engineers and farmers visiting the travelling exhibitions were interviewed along with farmers who had not attended. The latter were in the majority. The predominant reason for non-attendance cited was that the farmer felt that he could in no way influence the decision that was finally taken. However, it appears that those farmers who did attend and the NFU working behind the scenes might have had influence on the final decision to choose the least agriculturally disruptive route. (DoE Press Notice 752, 7/8/75)

3.4.5 Evidence from the M16 and Chelmsford Public Inquiries is detailed in Chapters 5 and 6. Although the Chelmsford decision was finally a victory for the farming community, the victory stemmed not from the individual farmers, but from the case presented by the NFU, the lack of ERCU competence and the attitude of the Inspector. In both these cases, however, the evidence presented by the individual farmers supported the need for the I.P. It was characterised by an inability to put across the evidence that really mattered in terms of influencing the decision, as opposed to merely obtaining sympathy. Of most farmers it can be said:

a. they did not really understand how the decision-making system worked; and

b. they did not know what real impact the proposed roads would have upon their farms.

3.4.6 Technically there are at least three inquiries. Into the Line Order, the Side Roads Orders and the eventual Compulsory Purchase Orders. Nowadays the first 2 are generally taken together, the CPOs being issued later. On all the schemes we investigated farmers in general were apathetic towards the general Line Order Inquiry and focussed almost all their attention and effort upon the CPO inquiry. The reasoning behind this was simple in that they felt the outcome of the line inquiry would _not_ be influenced by their appearance, and that the only stage at which it was worth fighting was when the detail of land-take was under discussion. Our own studies, supported by

extensive reading of Inspector's Reports from other inquiries supported the following reasoning:

a. cases that farmers present at Inquiries are, because of their brief descriptive nature, of little use to the Inspectors decision-making framework;

b. much emphasis was focussed upon access to severed land and the provision of bridges and underpasses;

c. little success was had in persuading the promoting authority to supply an agricultural access if they had not planned such provision prior to the Inquiry, thus emphasising the need for farmers to influence the essentially political decision-making process far earlier;

d. some farmers employed Chartered Surveyors (i.e. their agents) to present the Inquiry objection. This appeared to have made little difference to the outcome; indeed, some farmers voiced the opinion that using the agent was a waste of money (fees are only met by the Government in the rarest of cases) and he could have done just as well himself. This appears to be due to the theoretical roots that the agents have in valuation and surveying rather than the techniques of project appraisal economics and cost benefit analysis.

3.4.7 Finally the point should be made that although we indicate to farmers the need for analytic as opposed to descriptive cases at the Inquiry, until the Wolfson Group

there had been no *post hoc* studies of the actual agricultural impact of a major new road. At the time the I.P. was being written the Group had only just begun to process the results of the M40 survey (see part III below). Thus the main thrust of advice in the I.P. concerns being aware of proceedings, thinking deeply about the presentation of a case and using the Inquiry forum as a way of formalising agreements made beforehand. (We have examples of engineers *not* honouring agreements made prior to the Inquiry simply because they were never formalised.)

Drainage

3.4.8 The hydrological problems of constructing motorways through farmland are, arguably, second only to the civil engineering details of construction in demanding technical knowledge. Despite general background reading in the subject there was worry that the problem might be beyond the technical expertise of the Group. This would have been a grave limitation given the importance of the subject. However there was support for the hypothesis that rather than there being technical difficulties, problems arose from procedural and communication difficulties. This point was put to farmers, academic hydrologists, the NFU and eventually the MAFF. All parties concurred. Problems arose from

a. contractors not taking cognisance of farm under-drainage

b. not considering early enough what provision was required to marry the road and farm drainage systems,

c. in most cases, poor execution of the intended plan.

3.4.9 The one technical difficulty to be regularly raised, most notably in low-lying land as at Chester was that the contractors set their main roadway drains at too shallow a depth to give farmers with adjacent land a chance, in the future, to redrain the land at a lower level than at present. Some farmers undoutedly thought of this as the most important impact of the Chester-by-pass after actual land loss. As can be seen from the I.P. itself (para 4.10(f)) this was accepted as being a major matter of policy for the authorities concerned and beyond the bounds of the booklet. In many ways it would have been advantageous to be able to recommend the active involvement of ADAS land drainage experts, but it was clear that both because of strict delineation of function and also a lack of will, they could not and moreover did not want to become involved. All MAFF responses to road authorities stemmed from, and stayed within the Lands Arm of the Ministry.

3.4.10 The object of this section of the I.P. was to describe the best of the procedure as practiced, in order to encourage high standards. Certain pieces of advice, such as bringing in the local specialist contractor, being

the best of the procedure eventually adopted, rather than that first acceptable to the promoting authority. The recommendation was strongly supported by farmers and agents alike.

3.4.11 M11 Contract 3 was and remains the worst example of overall lack of drainage provision we have found. Only three of the sixteen farmers had been contacted before construction began, to find out the drainage characteristics of their farms, the same farmers being given an opportunity to offer suggestions on how motorway and farm drainage might be integrated. Although a direct causal link cannot be established because of other variables, it seems likely that the proliferation of drainage problems (fourteen farmers were adversely affected both during and since construction) was to some extent due to lack of early technical communication. The severity of problems encountered varied considerably, as did the type of problem. Fairly naturally, the main problem areas were found to be in the vicinity of the main water course, i.e. around 'Pincey Brook', the main east-west stream, and at the northern end of the section near the A120 intersection. Two complaints above all others were prevalent along the whole route: first, that drains at the base of the embankment were either inadequate or entirely missing. Second, the farms' drains were not picked up properly, usually because the road drains were not deep enough, but sometimes because no attempt appeared to have

been made to do so. All such sites were visually inspected, usually with the farmer present. Regarding the effect of drainage deficiencies for the fourteen with problems: three said they had "moderate" effect on production and four thought the effect was one scale higher than this on the questionnaire employed, at "noticeable"; three classified problems as "severe", and the "scarcely any" and "none" categories were occupied by one and three respectively. It has to be emphasised that references here are to short-term effects on fairly small pieces of ground, usually one or two corners of fields nearest the edge of the road, although in two cases there were complaints of changes in the level of water table and the positioning of springs, obviously problems of a far more fundamental nature. An important finding, pointing to the need for specialist advice, was that almost every farmer had particular problems unique to his holding; these included becks that should have been cleared out, but were not; a floodgate which should have been erected but was not; broken mole drains; flooding; septic tanks not catered for and interference with fields whilst work was being carried out. All but one of those interviewed said that they had to redrain part or all of a field to counteract changes brought by M11. Again, they mostly referred to fairly small areas, although one spoke of a 20 acre field.

3.4.12 The general impression gained was that procedural difficulties proliferated. It was argued that time and money could be saved by consultation before construction began and by the District Valuer and RCU agreeing to proposed schemes for rectification quicker. The contention about consultation seems to be borne out, albeit tentatively, by the two cases where there was prior consultation, and the farmers were given the opportunity to offer suggestions on how motorway and farm drains might be married, and where no subsequent problems appeared.

3.4.13 The close, often blood relations, between some of the affected farmers on Contract 3 and those on Contract 2 of M11 enabled some farmers on the latter scheme to be better prepared to handle drainage problems. Two respondents had prepared reinstatement schemes on their initiative prior to the beginning of construction and had had these accepted by the DoE and the D.V. Both farmers were fully content with the outcome of the construction period as regards drainage. Three more farmers on Contract 2 were consulted, prior to construction, by either the DoE or consulting engineers, presumably because of their position near the River Roding. These too can be classified as being "satisfied". Three more had not been consulted beforehand but were nonetheless satisfied and by contrast only two expressed dissatisfaction.

Access and Severance

3.4.14 It is occasionally useful to draw attention to the obvious and perhaps it is of use here to reiterate one of the themes of the I.P., that problems can be forestalled if discussed at an early enough stage in procedures. What is most important about the access and severance sections is their position in the I.P. before the section on the Public Inquiry. Too often, in fact, such matters were found to have been left as vague assurances or not considered at all until an inadequately late stage. The aim of the I.P. was to provide the requisite information to permit optimal use of the existing system: this it was felt implied having most issues settled early on. The evidence gathered on severance is briefly summarised in Table 3.1, from which three major conclusions are warranted:

- in general "satisfaction" is much more pronounced amongst those who had their cases settled early. There are, of course, examples of cases where an early negative decision is given and generalised dissatisfaction is recorded;
- there are clear indications that similar procedural matters have been dealt with at different stages of the procedures. On M11 Contract 2 everything was finalised immediately before or after the CPO Inquiry, mostly by negotiation and mutual agreement. On Contract 3, by comparison, there was much greater emphasis laid upon Inquiry decisions;

Table 3.1 : Decision-Making and the Provision of Access Facilities to Severed Land

Scheme — Procedural Stage at which Decision Taken

Scheme	Farmer Satisfied(S) Line Inquiry	Farmer Dissatisfied(D) Line Inquiry	Between Inquiries		CPO Inquiry		Immediately Post CPO Inquiry		Immediately Prior to Consultation	
			S	D	S	D	S	D	S	D
M11 Contract 2	0	0	1	1	2	1	3	0	0	4
M11 Contract 3	4	0	0	1	3	1	0	0	0	2
Chester By-pass	4	2	0	0	0	0	0	1	0	3
M6	2	0	1	0	1	0	0	1	0	3

- no-one was satisfied with a last minute arrangement, even where considerable efforts had been made to provide for the farmer concerned.

3.4.15 Table 3.2 refers to the problems of access provision both temporary and permanent illustrating the important issues arising. A few words of explanation will be illuminating: we have recorded above that farmers are prone to be psychologically upset by the construction of a road upon their land and this often prompts them to complain about those features of the intrusion which are most readily apparent rather than looking in depth at the true cost of the development. Thus farmers tend to focus much of their attention upon the ease of working the unit during and after construction, with the result that those with severed land lay great store by having access facilities which in no way impede operations. Agricultural access bridges and underpasses are built to standard specifications which unfortunately do not allow the largest combine harvesters through without taking off the table. Such a task of dismantling and reassembling, because it would rarely be needed, would not be a significant burden upon the farmers, nevertheless they feel aggrieved at being put to this extra trouble. Similarly those who are made to share accesses with public footpaths or another farmer feel upset even though the actual disturbance this causes is minimal.

3.4.16 The important problem of brucellosis transmission on shared accesses or public roads is, by definition,

Table 3.2 : Problems Arising from Severance and Access Provision

Scheme	Inadequate Width	Shared	Danger of Brucellosis Transmission	Access Across Site	Need to use public roads	Fencing Inadequate
M11 Contract 2	0	1	1	4	4	1
M11 Contract 3	1	2	0	9	4	2
Chester By-pass	1	2	1	5	2	1
M6 French	2	1	2	3	0	2
Laing	0	1	0	1	1	0
Tarmac/Dowsett	0	1	0	0	2	0

geographically limited to eradication areas. The Lake District had been one and after NFU pressure Appendix C to the I.P. was accepted for use upon an aquaduct scheme. Nonetheless there was no consideration of the matter during the M6 Contracts, nor at Chester where the question of accredited and non-accredited herds did indeed come up. The British system of public administration tends to leave such problems for the individual or interest groups to bring to the attention of the Minister, usually through an Inquiry. It is hoped that the I.P. will serve the important purpose of helping those affected comprehend the system and issues.

3.4.17 Access across the construction site was a matter which caused a substantial number of farmers real problems. The contractors having signed the contract with the authority promoting the particular road scheme are at liberty to carry out the work required in any order they wish. Thus, it was possible for farmers to be left for some months without any access to severed land because the agreed bridge or underpass had not been built before the road. Where possible the contractors would allow farmers to move machinery and animals across the site but often this was not possible because of work being carried out, or the steepness of embankments and cuttings.

3.4.18 The need to use the public road network to reach the land severed was again often cited as a problem. Here we came to recognise two types of complaint: the first was similar to that described over shared accesses or their

inadequate width in that the farmers simply objected at the extra inconvenience when in reality the farming pattern was disturbed very little. This occurred mainly where small lanes which were carried across the motorway had to be used. Secondly, however, are fundamental problems which manifested themselves in economic terms. This concerns farmers whose land was near to major motorway/existing road intersections, for it was often expected that farmers would use this junction when in reality it was too busy for safe, convenient movement. This caused a number of respondents to alter farm systems in order to minimise the number of journeys that had to be made.

Fencing

3.4.19 Standard highway construction contract documents place contractors under an obligation to fence off all land required for the construction before any other work begins. Shaw recorded in his 'Motorway Problems' article that work on the M11 proceeded "well ahead of any fence being put up". The efficacy of fencing arrangements was an important integral part of our investigations. The procedure followed by contractors in all 4 case-studies was that of erecting a temporary fence to last during the construction period and which is finally replaced by a permanent fence when the construction is complete. This arrangement was adopted to avoid damaging the more expensive permanent fence. Temporary fencing usually comprises a simple rough post and (barbed) wire.

3.4.20 Farmers were frequently much upset by the attitude of contractors towards the erection of fencing. Table 3.3 demonstrates the type and incidence of grievances aired.

Table 3.3 : Problems Arising from the Fencing of New Roads

	M11		A55	M6	TOTAL
	Contract 3	Contract 2			
Land not completely fenced off before construction	14	2	5	6	27
Inadequate temporary fencing	3	2	2	4	11
Permanent fencing inadequate	1	0	2	2	5
Gates inadequate	4	1	0	0	5
No problems	0	8	5	0	13

A number of points worth specifying emerge from this table:

- the most important problem to occur was that of not all the land required for construction being fenced off before construction actually begins:
- the difference between Contract 3 and Contract 2 of M11 indicates that the change of contractor was the vital factor in determining the overall level of problems experienced:
- in general, the permanent fencing when finally erected was adequate for existent farming systems. The only complaints involved fencing which was not strong enough to keep in heavy stock. On the M6 fencing

that had originally been adequate had become frail because of the severe weathering in that part of the country. (It should, perhaps, be recorded that the permanent fence is often of much higher quality than the farmers' own fences.)

3.4.21 Further evidence on the subject is available in Cockcroft's paper 'A Survey of Motorway Fencing' published by the Building Research Establishment (1976). Although not specifically looking at the agricultural implications of the adequacy of fencing this paper dealt with the long term efficacy of fencing and was based upon the results of a survey of four stretches of motorway. He found that for 51% "sound" posts there were 21% "slightly decayed" and 28% worse than that. The conclusion reached by Cockcroft was that:

> "The survey has confirmed that the Department's specification is adequate to provide fencing with the envisaged life (50 years), but it had provided evidence that it has not always been effectively implemented in the past." (p7)

That is, that only 91%, 77% and 64% of posts respectively met the official specification for quality, size and type. Cockcroft's conclusion supports the point made above that expertise is available to solve all possible problems that can occur on a farm during the construction of a new road, but that communication breakdowns and short-cutting by contractors allow difficulties to occur.

3.4.22 The problems of inadequate fencing can be clearly sub-divided:

- on arable farms the existence of a gap in the fencing means that the contractors' men are far more likely to trespass on farmland, deposit litter etc. However, once the construction period is over, the lack of fencing will be of little moment;
- on farms keeping animals the problem is more positive in the sense that animals escape either onto the construction site or onto the completed road. The Animals Act, 1971, Section 4 (1) lays the responsibility for such escaping animals upon the farmer, not the body responsible for the fencing. Police have prosecuted when cattle strayed on to the M6 near Birmingham because the contractors had not mended a damaged fence.

3.4.23 Finally mention should be made of the confusion which surrounds the planting of hedges: authorities will it seems, on non-motorway roads give farmers the option of having a hedge planted alongside the permanent fence. This appears to be both for aesthetic reasons and in order to obviate the necessity for future fence maintenance. Dispute arises over whether the hedges are planted on the farmside of the fence or the highway side. Evidence on the Chester By-pass is that hedges were planted on the farm side and the first edition of the I.P. was so written (p14). The DTp, however, in a formal comment

on the I.P. asserted that all hedges are planted on the road side of the fence-lines. At present the dispute is not solved.

3.5 <u>The background data of the I.P.; liaison and administrative Contractor Behaviour</u>

3.5.1 The outstanding finding on contractor behaviour (one which has been borne out by supplementary evidence collected on the M40 and M5) is the consistency of views about their 'misconduct'. In most cases starting from the farm interviews and working back to the NFU, land agents and on M6 a consulting engineer the story came across of firms who would not trim their policy to fit in with affected land-owners' legitimate requirements. The exception to this general rule was M11 Contract 2, where Dowsetts, it appears under strict instructions not to cause the friction Fitzpatrick had done, went out of their way to create good working relationships. This indeed is the exception that proves the rule that problems have communication roots rather than technical ones.

3.5.2 The worst example is, perhaps, to be found on French's M6 contract. The chief engineer had set a distinct tone of 'getting on with the job' to his staff and refused any formal or informal direct contact with affected landowners. That virtually the full gamut of potential problems were cited is not only a measure of French's lack of concern to avoid them, it is as much a reflection of the residual anger and frustration of the

farmers concerned. We found with the other studies that many farmers had experienced similar problems but did not mention, without prompting, those which were solved, quickly. This was not the case on the French contract: even where there were considerable long-term farm system problems they were given secondary place in the farmers interview response to the displeasure at French's behaviour. Running throughout this story as we followed it was the theme of a contractor determined to optimise profit and minimise delay by making no concessions to affected landowners. The NFU made early contact with French but were told by the site director that the firm had no intention of liaising with any outside parties at all. The intention was carried out to the full! According to NFU Group Secretaries and farmers alike Scott-Wilson (the Consulting Engineers) were unable to exert any authority.

3.5.3 The Scott-Wilson engineer we interviewed was delighted to have the opportunity to express his concern at the arrangements on the scheme. French had made it clear, he argued, that they were out to make a large profit by completing the earth-moving ahead of schedule. Scott-Wilson were appalled at what were quite blatant contraventions of the contractual provisions regarding agriculture, but could elicit no support from NWRCU. In the last analysis the only weapon they had was to cancel the contract, halt the scheme and sue French for the excess cost. Mr. Crowther,

the RCU Director, was not prepared to take such a step and Scott-Wilson were left "powerless and embarrassed". (NWRCU consistently refused to answer letters or respond to phone calls concerning the study.) The comparison with the other contractors on the M6 is striking because the complaints received about them were far less numerous and vehement. This appears to have derived from a genuine will to discuss problems and go some way toward meeting them. They employed specific liaison officers, an administrative arrangement of utmost importance which found itself placed prominently in the I.P.

3.5.4 The M6 study supplied a cross-section of virtually the entire range of problems which could occur. It was apparent from the farm interviews that those on the Laing, Dowsett and Tarmac schemes who were most content had intentionally fostered relations with the on-site personnel. In some cases this had led to quite considerable fringe gains. Examples including drives which were laid with waste concrete. This conclusion accorded with the evidence collected on the A55 and M11 studies. It was a carefully considered decision, based upon this type of evidence to distinguish in the I.P. between the need for informality when dealing with day-to-day construction issues and the importance of formal agreements when handling more important, lasting matters. In this latter category the problem of making "deals"

with the contractors holds prime importance. Arrangements which had originally looked most favourable to the farmers had soured rapidly when the contractors broke the informal rules. The most frequently occuring incident was that of contractors not restoring land which had been rented for use as a soil tip to agriculturally viable condition.

3.5.5 On M11 (Contract 3) these matters were to the forefront of farmers' thought. Of the 16 farmers all but four made private contracts. These private deals can best be broken down into renting or selling land to be used for soil dumps or borrow pits and getting certain jobs done around the farm, usually in return for some favour carried out to benefit the contractor. The second classification of private agreements were naturally not too deeply discussed by the farmers as presumably they did not want to prejudice any outstanding compensation claims, but we were able to find instances of hard roads laid down, ponds filled in, ponds dug, etc, often to the great satisfaction of the farmer. Satisfaction, however, was much less widespread when talking about soil dumps and borrow pits. There was only one farmer who would admit to doing well out of leasing a field so that material could be taken from it. Others were much less happy; the backcloth to this discontent is that grave mistakes were made in the assessment of suitable earthwork material that would be needed at the various points on the route. Thus hasty arrangements had to be made

throughout construction. The farmers who were renting land out naturally felt the backwash of these miscalculations and most lost their land for much longer than they first anticipated, and although they had penalty clauses built into these private contracts, the general opinion was that these were not stiff enough, giving the contractor no incentive to move off the land.

3.5.6 M11 Contract 3 was a sad story regarding farmer-contractor relationships. Fitzpatrick were almost universally felt to have developed an institutionalised form of avoiding responsibility, 'buckpassing' as it was generally termed. Thus problems fell to the Consulting Engineers, Atkins, who had problems of their own. The 1974-5 Appropriations Accounts of the House of Commons record:

> "(i) <u>M11 Stage 3 (Harlow-Bishops Stortford)</u>
>
> The M11 Motorway was designed and its construction is being supervised by Consulting Engineers on behalf of the Eastern RCU. The road is being constructed in four separate stages and soil surveys over the whole route were carried out by specialist contractors between 1966 and 1970 at a cost of £142,900. The contract for the 9.74 miles of Stage 3 was let in October 1972 at a price of £7.105m and was due to be completed in October 1974. The completion date was subsequently extended to June 1975 and the latest estimated cost is £10.750m. The increased cost includes £1.400m for variations to work in the Bill of Quantities due to the discovery during construction of substantially more unsuitable material than was allowed for, and £1.377m for the consequential disruption of the contractor's work programme. A Departmental review showed that the under-estimate of unsuitable material arose from the scope and interpretation of the main soil survey. The soils report was not a good one and, furthermore, in interpreting it, the Consulting Engineers had lacked foresight in not appreciating or following up all its implications. The Department concluded, however, that the Consulting Engineers had not lacked the "reasonable skill, care and diligence" contractually required of them."
>
> (Class VI, vote I)

3.5.7 The difficulty of actually proving damage or disturbance, when farming expediency required that it be made good quickly, was a major one. The farmers on the M11 were lucky, as they readily acknowledged, in having two dedicated land agents working on their cases. These agents were unequivocal in stating that the difficulties of the contract had turned out much worse than they had anticipated. They had both prepared for the construction by drawing up 'statements of condition' for individual farms so that subsequent impacts could be irrefutably identified. This excellent idea was incorporated into the I.P. as was the point made by both of them and many other experienced valuers that a detailed diary of events is an almost essential pre-requisite of specific damage claims. The I.P. thus recognises what is a theme of this thesis, that motorway construction is only a part of a greater process of planning, designing and eventually compensating. The "Construction of the Road" chapter although a useful aid, looks back to matters which should have been previously settled and forward to the eventual "catch-net" of compensation.

3.5.8 Before M11 Contract 2 commenced, the County NFU had become very conscious of the Contract 3 failings and therefore took matters up early with ERCU. Soon after Dowsetts were appointed as contractors a meeting was held at which farmers and their agents met the principal figures amongst the contractors. Dowsetts set out to minimise the development of "problems" with a

puissant senior engineer as liaison man and, above all, by ensuring that he was available at most times.

3.5.9 In the final analysis the advice given in the I.P. emphasising reasonableness, establishing relationships, and the need to keep a diary and establish a record of condition is a recognition of the weakness of the farmers' position at this stage of proceedings. At the time when he is faced with the difficulty of re-establishing his farm system around a major road he also has to farm in an alien environment. To have problems righted he has to deal with a network of contractors, consultants and public authorities which often seem unable or unwilling to settle disputes. Not to put the point over delicately, if a contractor wishes to act awkwardly there is little in practice the farmer can do about it. The Chester By-pass illustrated this: the farmers were well organised in advance, had agreed with the NFU to co-ordinate their cases through one experienced land agent and could be fairly categorised as comprising very aware farmers. McAlpines, it seemed, had done a good job of setting up a liaison system and making contact with the individual farmers. Nonetheless a number of issues became long-running problems. Most outstanding amongst these were dust and drainage. Bowsers to dampen the dust were promised but our observation and farmers' reports indicate that only a token effort was made. As on the other contracts the farmers who avoided drainage problems were those who made time to build up a good working relationship with foremen and inspect work as it was being carried out.

Contractors were, however, reluctant to hold up their work in order to obtain the farmers' seal of approval and so drains, badly connected, were covered up before inspection. Only one farmer had success in persuading McAlpines to expose drains already covered in.

Communications

3.5.10 The I.P. is an attempt to improve the decision-making process of road planning by making readily available the best and most up-to-date data and advice required to help the individual inform and communicate with the decision-makers. It is then a communications aid to the agricultural community, but will, hopefully, also serve to inform the relevant authorities of the issues that concern farmers.

3.5.11 A number of assumptions underpin the approach:

- the farming community desires to have the information
- better involvement of the agricultural community will help to lessen overall agricultural losses to road development
- that there is inadequate information at present.

The first two assumptions have been discussed above. The third assumption, however, merits attention here. The complex, disparate official sources from which the picture of road planning in the I.P. is culled are not the end of the official output. The DoE/DTp puts out 2 brochures for public consumption which are of interest to farmers; these are:

- "Public Inquiries into Road Proposals" 18 pp (DoE, 1974C)

- "Land Compensation your Rights Explained, No 4, The Farmer and Public Development" 21pp (DoE, 1974B)

Both are small in size and, more importantly, are only concerned with the later, formal stages of procedure and make no attempt to go into the practicalities of decision taking and the setting up of communication channels. Put simply, it is assumed you want to present a case and know what to say, just as it is assumed you have lost land as required by a CPO and are in the process of preparing a claim. There is no provision outside the I.P. for an understanding of road planning as a process, and a process which can be influenced.

3.5.12 Too often the outstanding problems found on fieldwork arose because there had been no knowledge of them at an early enough stage to accommodate them into original plans or contract documents or set up communication or liaison machinery to deal with them. In informal conversations with RCU engineers during the fieldwork the desire to meet agricultural requirements was strongly expressed, however, the formal line was that repeated by Mr. Carrington of MRCU in his letter of comment on the first edition of the I.P. when he argued that agricultural considerations are given full weight through consultation with the MAFF. In the strict sense of compliance with the specific wording of the Highways Acts this is true. In any wider sense it is not and the letter expresses in reserved

official form an acceptance of the I.P.'s role in expanding communications:

> "We feel that the report is a useful document in that it sets out the procedures followed by the Department when promoting new road schemes. It also contains much good information and good advice which will be invaluable to the farming community."

3.5.13 One of the more important meetings on this theme was with an ex-DoE engineer who strongly emphasised that he and his former colleagues would have welcomed an opportunity for continuing inter-communication with affected farmers. Of all the issues facing them agricultural impact was the one they were least able to accommodate within the structured assessment practices employed. It was to be expected, he emphasised, that the official response from DoE would be one of placing emphasis on the formal procedures - as indeed it was - nonetheless the engineers would welcome farmers coming direct to them at sub-unit level (c/f para 2.2 and the Corrigenda) regarding their own schemes. This view accorded with others gained "off the record" and was incorporated into the I.P.

3.5.14 Our evidence pointed clearly to the conclusion that the moment of greatest openness for an authority was not at the public inquiry when policies tended to be stoutly defended, but immediately before when there was a possibility of dispensing with the objection altogether.

In order to optimise this relationship, however, farmers needed to be informed of the limits within which the engineers were working. Hence the length and importance of Section 4.10 "Prior to the Public Inquiry". By the final stage of precise routing a road's promotors need to be fully informed of the effects of alternatives. Not only is this so that Farm A or B can be properly accommodated, but so that the route comparison and assessment is fully informed. In the last analysis that input must come from the individual farm itself.

3.5.15 The Leaflet for Farmers

The I.P. was written specifically for NFU County Secretaries although the second edition (due to public demand) was made more generally available. It was, however, decided at an early stage that it would be of use if, when specific road schemes were announced the County Secretaries had a circular to give the affected farmers. Thus it was that 'Roads and the Farmer: Some Practical Advice' was written. A copy accompanies the thesis. This was based upon the same fieldwork and evidence as the I.P. itself and puts over the same message, albeit in a truncated form. Again the Wolfson Group undertook the main drafting task, but, in distinction from the I.P. the NFU Land Use Department took charge of the final preparation and content of the document. This decision was both political (the NFU was to pay for this publication whereas the Wolfson Group paid for the I.P.) and practical (Hellard felt that he better understood how to communicate with individual farmers).

3.6 Success or Failure

3.6.1 The I.P. and the leaflet for farmers are documents that must appeal to the audience at which they are directed otherwise they are of no use, no matter how well researched or written. In this sense both documents may be counted as successes. This is best reflected in the response of the County Secretaries which can be seen in two forms:

- a number of County Secretaries wrote to Hellard expressing their gratitude for the document. Only one expressed positive dissatisfaction and this was with the presentation rather than the content;
- perhaps more indicative than this is the fact that the enormous flood of inquiries about roads to Hellard and his team, which had been continual before the issue of the I.P. dried up almost entirely.

(The I.P. originally sent simply to County Secretaries was accompanied by a list of planned roads for the whole country drawn up by the Wolfson Group and broken down by county. This was the first time such a list had been compiled and it was apparently of great use to the County Secretaries.)

In addition, we record that a number of RCU's offices of the MAFF, the I.H.E. and the RICS expressed the view that the document would be of "great value" to the agricultural community.

3.6.2 It was the response from the County Secretaries and other bodies that prompted Hellard to suggest an updated

version of the I.P. be printed. After careful consideration it was decided that it would not be necessary to rewrite the I.P., but that the addition of Corrigenda would suffice. The length and content of the Corrigenda may be some indication of the 'correctness' of the first edition.

PART II : DECISION-MAKING IN ROAD CONSTRUCTION

CHAPTER 4

THE CASE APPROACH TO PLANNING AND PUBLIC ADMINISTRATION STUDIES

"There appears to be nothing about the case study technique which is inherently non-theoretical or unscientific; the problem lies in assuming that theoretical contributions will emerge automatically from narrative."

(Heclo, 1972, p3)

SUMMARY

This chapter seeks to provide both a review of relevant literature and an introduction to the case study method employed in the section. It is argued that concentration on the single subject of agriculture, by giving a structure to the general narrative, transcends many of the methodological problems associated with case studies. A distinction is drawn between policy formulation and implementation, and certain caveats accepted regarding the transfer of concepts applicable to the one to the other.

4.1 The State of the Art

4.1.1 The concept of the 'case study' is a commonplace of social, and especially, political research. So much so that a resume of the voluminous literature shows a range of methodological approaches being subsumed under the same umbrella-term. A definition might be in order to help ideas. A case study, then, is any piece of work which has for its subject-matter a single event, or strictly delimited set of related events considered in and of themselves. That is, the essence of the case method lies in <u>what</u> is researched, not <u>how</u> it is presented. This important distinction points the way out of a rather sterile debate concerning cases <u>versus</u> theory, and to a more positive consideration of the need to combine the best aspects of both. An approach eloquently pleaded for by Heclo in the article from which the quotation on the summary page is taken. Contrasting the two styles he rather neatly concludes:

> "If case studies represent confused realism in search of an analytic framework, the programmatic approach resembles an analytic framework in search of realism. There is something to be gained from each but perhaps more to be gained from a mood combining both." (Ibid, p104)

4.1.2 Naturally the position in the best professional studies is not a simplistic opting for either reciting facts or pressing hypotheses beyond their bounds. As early as 1962 the inherent difficulties of the trade-off between

'idiographic' and 'nomothetic' studies had been analysed in some depth by Riggs. The very need he encountered to seek hard for appropriate terms (p9 and note 17) illustrates the subtlety of the divide. Case studies, as he points out, are only one form of idiographic work along with biography, single country or area based descriptions and so forth. His theme is that merely lumping together related studies no more makes work truly comparative (nomothetic), than focussing attention on a certain problem means that valid generalisations cannot be found.

> "Thus a good idiographic case study should suggest hypotheses, possible relationships between variables, which could be verified in studies of other areas, decisions, agencies, etc. The better idiographic reports, in other words, usually contain embryonic nomothetic propositions." (p12)

The point is taken.

4.2 Interdisciplinary Work and the Case Approach

4.2.1 If there has been an underlying thread running through the many major and minor turns in the often pragmatic execution of the Wolfson study (as distinct from the academic direction of it) it has revolved around the matter of how to disentangle so many facets of the macro-study. The breaking down of the joint thesis, and especially the structuring of aspects perceived as forming an integrated whole in the presentation of the evidence illustrate this. Given the advice of Riggs and

Heclo the case study debate was approached with care. The focus was on what could be learnt to aid presentation of the facts in such a way that viable generalisations, lessons - and importantly for action research work - suggestions for improvement could be drawn out. Two keys to the difficulty were found.

4.2.2 The first lay in Richard Rose's analysis of the role of case studies in his own collection of them (1969). He alluded to overcoming the problem of specific factors by "generalising across time and space" (p169). A prime value of working at a critical leading edge of administrative developments is that it permits a step towards generalisation because one of those two crucial variables, time, can be held fairly constant. In best Hegelian fashion the problem is met by standing it on its head. Rather than worrying about how to discover constants, by studying the same administrative process almost coincidentally but at different distinct locations, the concentration can be on differences. Given furthermore that one constant feature - agriculture - is a pre-determined focus, then studying major determinant variables offers possibilities of discovering what is constant and what is not in the treatment of farming by road promoters.

4.2.3 The second relevant methodological guide is the identification of the case study debate as a grass-roots manifestation of the clash between those, mainly Americans, who believe in political 'science' and the contrasted approach which follows Bagehot for one in looking for the mysteries, the 'efficient secrets' of government. That is

treating politics as an art rather than a science.
A comparison between the modest phrasing of Kimber and Richardson, and the aggressive programmatic modelling of Braybrooke captures the flavour.

> "As Dr. Roy Gregory points out in his book The Price of Amenity, there is a good deal to be said for allowing case studies to speak for themselves... They do offer the opportunity, however, for making some limited observations on the circumstances in which environmental pressure groups can hope for success." (1974, p212)

> "... my theses lay a heavy burden of argument upon anyone upholding them, whether in the object-language or the meta-language versions. Talking about models does nothing to lighten the burden. Yet I think the reference to models is sooner or later inevitable. I also think that the programme of argument on which I am about to embark is strong enough to bear the full burden of the theses as stated for the distance that I wish to carry them, which is somewhat short of final safety." (1969, pp 41-42)

4.2.4 IHD-style research transcends, but does not beg, the questions of method encapsulated above. For in the final analysis what influences the questions to be asked by students are the results looked for. It is the value of the different results which is fought over so bitterly. Two parallel strands run through the work of the project:

a. that it be informed by, and reflect results back into, the appropriate academic areas;

b. that it be practical in the sense of leading, where necessary, to change.

The breadth and higher aims of the former should ensure the project's aims and approaches rise above the simple optimisation of a given procedure completely within the values of the micro-system concerned. The aim was neither to help farmers 'twist' rules, nor aid authorities to minimise objections by other than proper means. The concept of practicality, on the other hand, gives the project its immediate topics for investigation. It becomesirrelevant whether the Wolfson team thinks of a given discipline as science or art, and criticism of it on such grounds would be misplaced. The debate is irrelevant to the concept of practical research with at once academic ideals and results which are both broad and of interest. This is the logic pointing not only to the case study as a research method, but as a primary mode of presentation - prior to such generalisation or hypothesis as we might see fit to draw ourselves or indicate to those who come after.

4.3 Case Study in Planning and Public Administration

4.3.1 The study of government and particularly specific applications of policy has proved rewarding for the case approach. The quasi-official 'Administrators in Action' volumes (Willson 1961, Rhodes 1965) with their theme of systematisation, Gregory's planning narratives with

their theoretical summary chapter (1971), and, the detailed single subject normative study of Swindon's expansion by Harloe (1975), show the adaptability of the method.

4.3.2 A stimulating starting point for any review is the discursive but often profound stocktaking by those involved with perhaps the world's largest ongoing set of studies. The International Institute for Administrative Sciences has supported studies throughout the globe. In 1962 a number of the major figures in the highly-developed American side of the Institute's work came together to pool their considered views. Above all, they addressed themselves to the question of the 'decision', that ageless problem of all political analysis. In the scene-setting essay Stein wrote assuredly concerning the need to concentrate attention on decisions, going so far as to include the idea in his very definition:

> "A public administration case may be defined as a narrative of the events that constitute or lead to a decision or group of related decisions... While background and aftermath may be briefly summarised, the main detailed account is confined to a restricted time-period. Emphasis throughout is on decision whether taken as act or process... The decision problems selected for treatment involve policy rather than technical issues."
> (Bock, pp 25-6)

4.3.3 Much of Stein's concern has been with the types of cases which, by definition, end in courts or other decision-competent tribunals. In these, as the Wolfson team has found, (vide the next 4 chapters) the case method of presentation becomes almost an essential because frequently there is no other complete and available record to which the reader can be referred (p38). Although he selected such areas because they featured decisions, there was a lack of appreciation that certain issues are not 'decided', except in a truistic sense. If the student looks too much for matters of decision he may miss equally interesting subjugations of other facets. In this he would most likely be accepting the decision-maker's values. The importance of clear ideas of what one is looking for is thus brought out. To collect "particulars prior to, or as part of a generalisation", and look for proof "only when a whole series can be made to yield useful statistical conclusions" (pp 16-17) is, as Stein rightly points out, possible in the controlled atmosphere of a pure scientific experiment or discrete medical case but inapplicable to the administrative world. He does not make the logical jump either to the need for hypotheses or need to have a particular angle of approach from which to focus on the totality of the variables. The point is picked up strongly by his more politically orientated colleagues. "Ideally", wrote Fesler, "Cases should suggest hypotheses, test

hypotheses and build theory systematically". Bock emphasised "the desire to produce a narrative that is significant and useful, something more than an unconnected list of actions chronologically arranged, a narrative in which meaningfulness is not drowned in a flood of trivial facts". The way to do this seemed clear to Waldo: "There should be a research 'design', that is, careful thought should be given to the question of what data is desirable to collect, and in what form it is to be recorded and marshalled". (pp 60, 77 and 91)

4.3.4 It is Bock, the Director of the American study programme who cogently puts the need for operational, or perhaps better, functional criteria to meet the need for direction. To consider a case study away from <u>purpose</u> is to strip it of significance and utility, he argued. Only with a clear and discrete topic will it be possible to decide "what piece of narrative will be cut from the continuous tightly-woven fabric of the real governmental process". (pp 91-104) It is possible to go further with the practicality yardstick and argue that the fact of having a given topic reinforced the need to be sure the process is examined in its full breadth. In place of chronological or "climactic decision" (p73) parameters are the given, if adaptable, parameters of the subject core and the aim is finding how best to fit them to that process. In the Wolfson study the primary task of ranking impacts became not only thus of major importance but took on an extra dimension. With,

of necessity, a somewhat a posteriori approach wed to the desire for practicable results the 'Information Pack' work took priority over that of economic analysis. A directly perceptible use and an agency for achieving it raised the search for case-examples of the different procedural stages above the detailed examination of economic impacts.

4.3.5 Similarly, Fesler points out that given a functional approach to the case study, the most important facet of the decision under examination may well be why it was delayed - or indeed not dealt with at all.(pp 74-5). The idea developed as that of 'non-decision' or a 'decisionless decision' (Bachrach and Baratz). Sophistication was added to the case study by the development of subtle ideas like those above. Works such as Crenson's neatly titled 'Unpolitics of Air Pollution' built on the American tradition of community power studies (Polsby; Hunter; Wolfinger 1960 has a useful bibliography). Instead of looking simply at who did what, there was a shift of attention toward the unfulfilled expectancies (or rights or needs or wants) of those studied. For the Wolfson Study with its emphasis on problem areas as discussed in Section I, the synthesis of case study with theories of non-emergence of issues provided a fruitful conceptual tradition.

4.4 Recent British Work

4.4.1 Important as the work above is, it is American and requires filling out by British work in the culture-bound area of land use planning. Allison offers an analysis of planning administration and approaches to it which concludes that the values of the system can be seen as modernised Benthamism, based on the famed maxim of the greatest happiness of the greatest number. The fundamentals of the argument are covered by his first principle which is the real basis of the rest.

> "At the outset this is an assertion of teleology against deontology. Ultimate justifications are to be in terms of an end achieved or a purpose, not in terms of duties or of deeds good in themselves... the criteria of morality are to reduce to something which can actually be demonstrated; an end product to which we can point." (pp 74-5)

The assessment of road construction administration is thus in terms of policies first and the moral ends of those policies second. Firstly did the RCU fulfill its statutory obligation regarding agriculture, only second should it have done so.

4.4.2 Combining the anti-normativism of Allison's critique with the IHD approach the problems facing the social scientist are seen to be one step removed. The subject is given, and the need to 'speak the same language' as the administrators pre-determine the approach to the subject matter. Academic criteria then fall to be met regarding the collection, organisation and presentation

of data. One extreme of case study presentation is Gregory's "collection of stories" (p 307). In his 'Five Studies in Conservation and Government' Gregory rejects any idea of approaching major planning questions with statistical analysis. There are always variables upon variables in such cases and to concentrate too hard upon things which can be counted or defined very strictly would be to miss much more important aspects and truths. He prefers that the student look for broader issues and seek a perspective on policies. Much in the same way as is argued in the following four chapters, Gregory looks to "...special features and...particular flavour" in each specific case (p35). Whilst there are underlying features which carry through examples these can only be assessed by looking first at the character of the individual case.

4.4.3 Gregory's importance rests not only on the fact that his is arguably the best analysis of actual planning decisions from a theoretical public administration angle, but as much on his unabashed antipathy to over-scientific approaches. It was this latter methodological aspect which stimulated a major review by Webb. His is a sturdy defence of the more scientific method and approaches the book with an eye to its "systematic testing" of variables.

> "Amenity questions raise some of the key issues and conflicts of our industrialised society...Nevertheless, little is made of this body of raw material...theory

is necessary; without concepts the data lack form or substance and it is impossible to assess which data the author has consistently included and which he may have neglected." (p66)

Later, Webb writes of the "considerable sacrifice" involved in too close attention to each case without background, summary or generalisation. Surely it could be urged in contrast; there would be much more to be sacrificed if the presentation of well-rounded, detailed studies were to be abandoned in favour of the pursuit of pre-selected concepts. It does seem to be having one's critical cake and eating it for Webb to complain on the one hand that there is no concentration on particular aspects and on the other to say that Gregory might be grinding particular axes whilst neglecting others! Indeed Webb himself picks out generalisable points from Gregory - the time weapon, the poverty of much national planning, the structural system; nowhere does he really say whether these were the kind of concepts he would have been seeking to test had he pre-selected them.

4.4.4 In pursuit of working concepts Webb rather loses his thread and takes us on a desultory ramble through pluralism almost for its own sake (pp 67-71). It is difficult to resist the feeling that pluralistic models of competing interest groups are applied because they offer more scope for applying quantitative or similar 'scientific' criteria, rather than because they are particularly applicable to British administration. This is a pity because Webb's final section on the sytematic use of

cases does contain some useful suggestions. He offers two principle strategies for enhancing the value of cases:

> "The first is the production of 'sets' of cases centering on a particular field of study, or decision-making process. The second is a comparative approach. Generalisation implies comparison". (p71)

The Wolfson work clearly fits the first of these paradigms. By their very nature the cases concentrate on a very small field of administrative study. Yet equally this serves to exclude them from being much use in the second case. For all that more can be said about the excellences and faults of road planning, less can be said about the applicability of our findings to other fields except by comparisons so thin as to be little more than analogies. What is best academically is, as Webb admits, a combination of these two approaches "because the ideal base for comparison is the set of cases". One of the few important examples of this, Webb then tells us with a splendid example of head-standing, is Gregory's (pp 72 and 74).

4.5 Towards Hypotheses for the Wolfson Study

4.5.1 By giving us a much longer time perspective on the case than is usual in more decision-oriented studies Gregory provides useful support for Webb's central point and reinforces the importance of time as a variable. Picking up from Fesler (4.3.5 above) he iterates the possibility that the concentration on decisions alone may,

of itself, present policy in the field as a 'harder' or more definite thing than it, in fact, is. If the Wolfson Group conclude that there is a specific character to each scheme under examination, and that there are as many differences in the treatment of agriculture as there are constants, what is really being said? Is it not as much that policy is flexible, as that it is not strictly adhered to? It is of import that this is not acceptable. To do so would be to confuse the study of the administrative process in terms of its own ends, with wider ends. This is the important distinction made by Allison above. Farmer Giles' drainage problem could be examined deontologically - what universal rights has he to fair treatment? - but this would make an all-important step. It would be to criticise the system in external terms. It is the difference between the Information Pack and a Code of Conduct for motorway contractors, a distinction which merits refining. The former seeks to outline the system, point out the important aspects, show the appropriate remedy for a given grievance and in all ways to smooth the workings of the extant procedures. The latter, by contrast, implies there are failings which cannot be accommodated without new procedures, and that these failings amount to broader 'unfair' treatment of a specific group.

4.5.2 Such a distinction does not ignore the complex debate concerning the concepts of 'decision' and 'policy' within an administrative process, (compare Lindbolm and Dror). It specifically rejects their applicability. Like Webb, the commentators cited offer models to explain policy (Schulman has a recent review of the options with bibliography). But they are also American, and this is the crux. American governmental agencies are much different from the British. It is a thread of all the Wolfson Group's work that the room for manoeuvre of RCU's and related agencies is slim indeed in most cases. It is a value of the British system that control is theoretically direct from the Secretary of State. There is therefore more practical use in looking for exceptions to the directed norm, than worrying overly about how policy arises when this ought, within the system's own values, to be a central matter. Hanson and Walles in their splendid study of the realities of modern government distinguish between real decentralisation of policy-making and "the purely bureaucratic phenomenon" of "deconcentration". In the latter case

> "the taking of the actual decision (within the ambit of centrally determined rules and procedures and subject to appeal either to a bureaucratically superior authority or to an administrative tribunal or both) is confined to the 'outstationed' official". (p 210 and ch.11 passim)

This is the reality of road construction.

4.5.3 The argument then is that the subject-specific case study approach to the work of British deconcentrated governmental agencies is relevant to the study of policy implementation, but not policy formulation. It is this latter which has mainly been under discussion by those critics of straightforward decision implementation studies mentioned above. Their ideas may occasionally be borrowed when discussing facets of the process where local agencies <u>do</u> have a degree of freedom, but generally, the concept of policy is reserved for central authority concerns. It is acknowledged that this reservation is intimately connected with one's understanding of the governmental process:

> "Policies are more generic than discreet [sic] actions (such as clearing a street of unfit houses...) and more specific than broad social goals (such as raising the standards of mobility...) Discussions of policy involve discussions of ends and means but this takes us into difficult realms where the crucial question is likely to be what model of government we are adopting." (McLoughlin, p161).

McLoughlin's approach to the concept is less that of the active case student than the overview from a systems/cybernetics man. Not surprisingly he turns to Friend and Jessop's Tavistock Institute Operational Research study which deals with administrative problems

as structural questions. Concern with the framework of activity leads to a whole new language of perceptions, system interfaces, meaningful translations and so forth. Policy is regarded as a "formal commitment...through an assignment of resources or a public statement of intent", and it is to be found where "a situation or problem crosses the interface between the community system (where it originates) to the governmental system where it undergoes 'appraisal'". (pp 163 and 168)

4.5.4 The jargon is unfortunate because the good point McLoughlin himself seeks to make is lost. Cutting through we find an argument that within bureaucracies problems may be utterly missed because no-one has responsibility for dealing with them. This again is Fesler's point discussed above that we must "see the decision whole". (p71) The case study has to be particularly acute in picking up inaction, but to be aware of the caveat is part way to acting on it. McLoughlin adduces no less an authority than Richard Rose to provide evidence fo his point, although the reader may feel that Rose is saying more about roles than about system cybernetics, when he found that local housing officials:

> "could not answer a seemingly simple question about the objectives of their unit because they did not think in such terms. When the question was rephrased to refer to their functions (i.e.

statutory duties) their answers came readily... middle echelon public officials are not expected to define their role in wider means-end relationships ...officials do not see (or are not trained to think about) statutes as means to further ends. Their statutory duty is an end in itself".

(1971, quoted in McLoughlin, p177)

In the four cases, then, when there are items which appear to be excluded from consideration it will be important to remember this distinction between statutory duty and policy. No-one took note of drainage questions on M11 Contract 3 it was shown in Chapter 3. It could well be that overall policy was not followed, yet no-one specifically failed in their statutory duty. There was a failure of the administrative mechanism only. It is reading too much in to invoke (as Webb does) concepts suited to the policy analysis level when discussing implementation, a point well made by David Donnison amongst others (pp 100-2. The essays in Griffith 1976 show that these problems remained unresolved.)

4.6 Conclusion

To sum up this brief methodological survey, then, it was found that the case method admirably suited our research needs; given that its limitations were recognised. The case study is essentially a behaviourist tool and the limitations of that approach apply *a fortiori*. The rapprochement between the behaviourist and more conceptual approaches in recent years provides

a firm basis for the study. In the words of Sibley in his excellently sane combining of the schools:

> "The politicist, we are maintaining, must be much more than a behaviourist - he must be a historian, a lawyer, and an ethicist as well... to understand politics implies the kind of insight characteristic of the artist as well as the precision which we usually associate with science..." (p383)

In the end it is the well-rehearsed methodology of political science which assures us of a solid basis of understanding. For as Wiseman most appropriately put it:

> "A decision to build a certain kind of road or bridge may be made on pure engineering principles; where to put them demands a political answer". (p351)

A slightly simplistic division, it nonetheless will serve as a working hypothesis in the cases to be described below.

CHAPTER 5

THE M16 INQUIRY

"Before making or confirming a scheme under this section, the Minister shall give due consideration to the requirements of local and national planning, including the requirements of agriculture."

Highways Act, 1959, section 11(6)

SUMMARY

The M16 Inquiry at Epping in 1974-5 was one of the major trials of governmental road policy. It served the Group as both a crash-course in transport planning and a detailed study of agriculture's role, contact being established with prominent farmers prior to commencement. The Group produced a daily narrative of events, published and circulated by the major objecting group. This was partly to marshall evidence and in part an experiment with the hope of raising the standard of the Inquiry by focussing the attention of those yet to appear on issues of relevance. The chapter confines itself to the lessons of the Inquiry for agriculture; that it took low priority and that a better framework for related decisions was required.

5.1 The Context of Agricultural Land Policy

5.1.1 To the agricultural economist farmland is a factor of production just like capital or labour. It is a resource (Edwards & Rogers). Yet the fact that the question of how well this resource is being used can engender such fervent debate, even amongst experts, reflects how incomplete an attitude this is (Centre for Agricultural Strategy, Boddington 1973, Edwards & Wibberley). It is to cite only the most obvious to recollect Sir Frank Fraser Darling's Reith Lectures, and their re-assertion of the essential totemism 'unspoiled' land has for many people.

5.1.2 The clash between what may be termed the 'totemist' and 'resource' approaches has underlain attitudes to development on agricultural land since the inception of national controls in the 1947 Town & Country Planning Act (Cullingworth ch 1-3). As Hall *et al* so well termed it in their stocktaking analysis of the value-systems of land-use planning, 'The Containment of Urban England' has been in most people's minds the major achievement of planning (1973, vol I, ch 2-3, Vol II ch 1 & 12).

5.1.3 At the end of the Second War the totemists were in the ascendant. The driving force behind the landmark 'Scott Report' on Land Utilisation in Rural Areas (Cmd 6378, 1942) was the late Sir Dudley Stamp. His ideas dominate the Committee's central doctrine, that

the onus of proof be on the developer:

> "Where the land concerned is of a good agricultural quality and there is no dominant reason why there should be constructional development, the task of the Authority is simple - its answer will be 'No'! But in the case of some of the intermediate qualities of land...it would be of very general assistance...if it were common knowledge that agricultural sites would not be handed over unless a clear case of a national advantage was made out." (p233)

5.1.4 Underlying the planning system was the attitude of Stamp and his fellow seer, Abercrombie, whose 'Town and Country Planning' (1933, revised ed. 1943) became "the standard planning textbook of the interwar years" (Hall _et. al_, p45). Abercrombie's Platonic conception of essences did not alter in the two editions:

> "town should be town, and country country: urban and rural can never be interchangeable adjectives. If this fundamental polarity is grasped...there should be no danger...Towards the town all is centripetal...Towards the country all is centrifugal: with our backs on the town or village we look out in all directions on an ever-widening opening horizon." (1943, pp 177-8).

"The English Countryside", he continued lyrically "is not a vestal but a Ceres, a well-cultivated matron who duly produces, or should, her annual progeny!" (pp 178-9)

5.1.5 Although the reality of seeing amenity and agriculture as one has been strained of late by the 'new agricultural landscapes' (Westmacott & Worthington, Brett) the totemism which rests on such unity has continued to be a real factor in rural planning and reconciliation of the uses is under way (Hookway, Minay). The efforts of economists to substitute viable appraisal methods for the totemist value-system in decision-making have been considerable, from Professor Dennison's minority opposition to the Scott Report onward (Cmd 6378, Wibberley, Ward). These efforts are covered in detail by Hearne. Here we need to be aware of the debate in that it provides a vital context for the case studies which follow. How, and on what basis, were routing decisions across agricultural land now being taken, we needed to know, if the input was to be improved.

5.2 Methodological Place of the M16 Inquiry

5.2.1 The M16 (A10 and A12 Sections) Public Local Inquiry at Epping provides a useful starting point:

a. It provides a detailed bulk of evidence from a major public development scheme where the authority concerned faced detailed public consideration to encourage it to provide the best possible case.

b. It will serve to illustrate the range of issues shown up by road building and help us isolate its distinctive aspects.

5.2.2 This distinctive identity has two principal facets. Firstly unlike a 'normal' transfer of land to urban use roads are a form of linear land-take <u>around which the farm is supposed to continue</u>. Secondly whereas there remains a significant onus of proof on private developers to exhibit the national interest aspect of their proposal, roads are proposed as the implementation of national policy by a department of state. The debate surrounding policy at inquiries associated with the campaigner John Tyme, although first achieving national recognition with M16, is not itself discussed here as it is well covered by existing and forthcoming publications(Lucas, chl + appendix, Kay, Hansard H.L. Debs 2/7/76 cols 984-1014).

5.2.3 The job of this chapter is rather to elicit how, in practice, the DoE (as it then was) took specific decisions regarding agriculture, not the general one regarding the road as a whole; although it must be asked whether the former can influence the latter. That is, can agricultural costs ever be so great as to influence the balance regarding the value of the road itself. Our hypothesis, it will be remembered, was that this can rarely be so within the present system of counting time-saving traffic benefits; and so we shall be yet more concerned with the weight given to

specific agricultural problems. Insofar as this case study sets the scene for those which follow it is therefore - despite pruning - detailed and lengthy.

5.3 The Eastern Road Construction Unit and Highway Policy

5.3.1 It is, then, firstly necessary to deal with the vital political concepts of 'policy' and 'need'. It is of moment for the way agriculture will be treated to ask: Is it policy to do what is needed, or is a scheme needed because it is policy? In this case: Is agricultural land needed for a road to achieve certain policy objectives a step removed (faster journeys, quieter secondary roads, etc), or is it policy to construct a road whenever, say, faster journeys or traffic relief on secondary roads require it? Conceptually the question raised is, of course, whether the road scheme is to be regarded as a means to an end or an end in itself. We can reasonably presume that the more it is regarded as the latter, the more minimising agricultural losses can only be regarded as secondary objectives to be balanced against other secondary objectives (possibly, amenity or tree planting). Vice versa the more the chosen route is envisaged as a means to other policy ends the more agricultural costs can be regarded as part of the intrinsic balance at a policy level and could influence the scheme as a whole.

5.3.2 The ERCU statement of case opened:

"The need to provide orbital routes to enable through traffic to skirt the periphery of the London

Area has been recognised for many years."

(Proof P1, para 2.1)

This principal objective was filled out by two subsidiary ones; M16 had priority over other schemes because it was "aimed particularly at the needs of heavy lorries which would also meet other wider commercial, social and environmental objectives." (2.10)

These wider objectives included the other secondary factor: "The route will also benefit traffic of a more local nature wishing to make journeys in orbital directions." (2.15)

This is, note, only a desire not a need and the subsidiary nature of this aspect was emphasised: "The main purpose of such a route is to enable traffic having no business in the London area to avoid it." (2.14)

The most important feature of that traffic being, we presume, heavy lorries. It was noted too that landscape architects, had "been involved at all stages of design of the motorway." (2.18) There was no mention of agriculture at all.

5.3.3 The point regarding landscape architects would appear to emphasise the importance of amenity above agriculture, particularly by its inclusion in the policy and need section rather than the routing criteria section which followed. DTp it may be noted has emphasised its commitment to aesthetics and there is an Advisory Committee on the Landscape Treatment of New Roads (Williams-Ellis, de Hamel). This reports direct to the Minister whereas

MAFF are invited to comment only at regional level. The question of directly responsible and advisory ministries proved to be an important one.

5.3.4 Equally important to us in gleaning empirical evidence of weighting are the cost yardsticks landscaping was tied to. This would give us a firm, quantitative base. Unfortunately answers on this point were hedged about and even contradictory at a generalised level. In cross-examination it was asserted both that proposals had not been costed and that a DoE maximum had been used as a yardstick for the plans. In reality it emerged under the Inspector's questioning that landscaping bore a maximum price of £155,000. Although the plans were introduced in such a way as to emphasise their fundamental importance and, it was asserted, were prepared in the abstract on their ultimate value and not influenced by internal ERCU costings; credibility was strained as the costings were:

1.	Land	£40,846
2.	Earth Shaping	£22,775
3.	Planting	£90,633
		£154,254

(Special paper S23)

5.3.5 It will be an hypothesis here that the nature of the objections faced by ERCU at this Inquiry reinforced the tendency to emphasise concern with amenity, either along with the agricultural nature of the land but, where necessary, against it. At Epping the major

objections were clearly directed at the taking of green belt amenity forest. ERCU was therefore at pains to point out how they had adopted a route which minimised this, and was placed on farmland instead. A good deal of time was therefore spent on disassociating agriculture from amenity and resisting the contention that the marching farmland was an important facet of that amenity. For instance, rebuttal of assertions that the Forest would be badly injured were based on the legalistic point that only four small areas of land within the strict terms of the 1878 Epping Forest Act were affected (Wolfson Group 1974, Days 16 and 25). The reference is to our daily record published in conjunction with the 'Alliance Against M16'; of whom more below.

5.4 Routing Criteria, the ERCU case

5.4.1 How agriculture fits into the overall routing decision will depend to a great extent on the way the authority regards the question of routing itself. It may be perceived as simply a question of optimisation. This argument would regard the road itself as a good outweighing its concomitant disbenefits.

The question then becomes one of minimising the disbenefits (to agriculture, amenity) and maximising advantages (shortest, least hilly). Other models of routing are possible however. Two seem particularly relevant. The routing can be seen (especially in a high-amenity area) as part of the policy end itself.

If the road cannot be built without touching Epping Forest, the argument might run, then it is no longer a good. Again, routing can be viewed as a purely administrative proposition, especially one of minimising costs. This is a variant of the optimisation approach so much narrower as to be qualitatively different. In the general theory enunciated above the nature of the road as a good rests on accepted and acknowledged benefits which are to be maximised. In this theory the policy to build is accepted more abstractly and the routing is merely a skilled procedure hastening that end. Disbenefits are to be minimised but less tangible ones are given little attention. Some estimation of the reality will be attempted below.

5.4.2 The route in this case was 15.74 miles long and estimated cost (March 1974 prices) was:

Roads	£19,672,000
Structures	£19,693,000
Land	£3,760,000
	£43,125,000

Thus a cost of £2.74 million per mile is involved. Land costs equal £238,882 per mile, some 11½% of the total costs estimated. The top price obtaining for agricultural land can be taken to be £1,000 per acre and an estimate of 35 acres per mile is reasonable. (Bell 1978A) At agricultural use price then, land for the route might cost £551,000. If the routing tends toward the strictly economic then the use of agricultural land

will be highly desirable. Equally the gross discrepancy between agricultural land cost and 'Road' cost illustrates the difficulty of any argument which would increase road length to protect a farming interest. The argument does not apply to all land. The low cost of the agricultural land averages out expensive sites with planning permission or existent development. Again a cost minimisation approach would tend away from these toward farmland.

5.4.3 Even when the wider 'optimisation' view is taken the relative cheapness of farmland may still be a relevant factor. It is indeed Government policy to take no more agricultural land "than is reasonably required" (DoE 1976). This would seem to be an optimisation approach rather than an economic costing one. There is certainly no implication that the loss should be weighed against the road as an overall good. It is interesting because ERCU therefore logically decided it was "reasonable" to take farmland rather than forest land:

> "The Forest is a national asset, and every effort has been made to minimise the effect of the motorway on it. Therefore, while the most direct line for the road, and therefore the best purely from the traffic and civil engineering aspects, would be through the heart of the Forest, it has been routed so that it passes to the north of the main Forest, through Bell Common." (Proof P1, para 3.8)

The Bell Common amenity tunnel emerged as an issue of great salience.

5.4.4 One of the farmers on route, Mr. John Padfield of Great Gregories put forward the route through the Forest as an alternative. It was subsequently withdrawn by the major objecting group (Alliance Against M16) of which Mr. Padfield was a leading light. The withdrawal of this route is a strong empirical piece of evidence for the contention that it was the amenity function of the Green Belt land which had political weight, and that agriculture's best hope was to subsume itself under that aspect of decision optimisation.

5.4.5 If the individual farmers (as they did) found their hope lay in playing the amenity card, this does not mean that the agricultural interest was forgotten. ERCU would have solicited representations (in strict confidence) from the local MAFF surveyor's office. Clearly without this input it is difficult to see how optimisation could be effected in accordance with the requirements both of the Highways Act (see the head of this chapter), and generally.

At the time of the M16 proposals it was:

> "the Government's policy to ensure that as far as possible land of a higher agricultural quality is not taken for development where land of a lower quality is available, and that the amount of land taken is no greater than is reasonably required for carrying out the development in

accordance with proper standards."

(DoE 1971, superseded by DoE 1976 which maintains the approach)

In reality, engineers have told us unattributably, MAFF responses are frequently of little use. They are descriptive rather than analytical and give no guidance to, for instance, how many acres of lower agricultural quality equal one of a higher. The Group have put this point directly to MAFF's Chief Surveyor who accepted that this may "leave agricultural considerations isolated from the decision-making framework, but this sacrifice was worthwhile." Long term strategy was considered more important. (Meeting Record 12/5/77)

5.4.6 Thus, at present RCU's may have no alternative but to look for advice elsewhere. As in the case discussed in chapter 1 this often comes from the District Valuer who can, at least, advise in quantitative terms which allow some trade-off. His costs are based on compensation estimates. It is a theme of this thesis that market value compensation is an inadequate basis for decisions based as it is on individual rather than national requirements. Hearne attempts to erect an alternative economic framework.

5.4.7 M16 provided an example of what happens when the cost minimisation approach of the D.V. is used in place of a broader optimisation approach. At one point the

route swung some 260 feet off the reserved Development Plan line onto farmland returning to it after a short distance. The reason for the diversion was "to minimise the effect of the motorway on the business of the scrapyard immediately to the east of the main line railway. In order to reduce the effect still further, the new road embankment is supported by a retaining wall on its northern side to minimise land acquisition." (Proof P1 paras 4.9-10).

Here is a case of land-use which it is expensive to acquire under the present Land Compensation Code. It was considered worthwhile to go to the expense of a retaining wall to reduce compensation cost, by saving a minimal amount of land. For this is, of course, what ERCU mean. The land saving (which is more than offset by the swing) is a means to the end of saving compensation cost but must be expressed as 'reducing the effect' to fit the optimisation framework. It is illustrative of the difficulties inherent in the somewhat artificial exclusion of compensation matters from discussion at inquiries. ERCU considered the public purse and on balance one presumes found it cheaper to build a retaining wall than pay compensation. This is quite right. Yet the nature of the decision process is such that this must be expressed in terms of 'minimising the effect on the business' a much broader matter than an economic decision. It is often difficult to say whether the decision method was an interest

optimising one or a strictly economic one. This matter, of fundamental importance to low-cost agricultural land acquisition decisions, is not aided in its solution by the norms of inquiry conduct which demand that such terms be employed whether the decision was broadly based or done strictly on the basis of the District Valuer's estimates of compensation liability.

5.5 Agriculture and Amenity

5.5.1 In the face of a certain abdication by MAFF and, it is argued, the inappropriateness of the D.V. there may well be need for specific agricultural expertise. So it is an illustrative fact that a landscape architect was employed but no agricultural adviser was. Nonetheless there is interesting research material in the fourfold distinction of landscaping proposals employed. These may be seen to express the ERCU view on land acquisition, much of it agricultural, for amenity purposes. The proposals broke down as follows:

1. Planting on land acquired for construction of the road.
2. Planting around the Bullsmoor cut and cover (near residential property)
3. Planting for which the DoE were prepared to serve Compulsory Purchase Orders under section 22 of the 1973 Land Compensation Act.
4. Planting which is desirable but will only be done by section 24 agreements under the 1973 Act. (Proof P3 para 1.6)

5.5.2 The first category holds especial research interest insofar as it should enable some empirical evidence to be gained of how the vague farmland policies work in practice. The argument is this. Legally, acquisition should only comprise land "required for the construction" of the road. (Highways Act, 1959, s.214)
Given the Minister's responsibility to have regard to agriculture then the question of "proper standards" (see para 5.4.5) becomes the important one. For once the road has been constructed then land which was indeed required during construction may become redundant, except insofar as its use for amenity planning is considered to be part of the "proper standard". In simple terms the question is to elucidate policy regarding the considerable areas of verge around major roads.

5.5.3 The textbook on design standards for rural motorways gave no guidance on this matter dealing only with verges on non-special roads (DoE, 1968). Whilst the Inquiry was in progress however the Department issued a circular containing "current recommendations" which needed to be "more widely known". The circular dealt primarily with single carriageway roads but it is illustrative of thinking which, it can be presumed, was already known to specialists at ERCU.
One very useful suggestion was:

> "In some cases, where landowners are willing, it may be practicable to adopt flatter slopes and to

> locate the new highway boundary at the foot of the slope of a cutting rather than at the top where it would be more obtrusive. Moreover this may enable more land to remain available for agriculture." (DoE, 1975, para 4.04)

As we shall see (chapter 13, Farm 4) such a policy had already been adopted to fit particular exigencies.

5.5.4 Similar thinking was evident in a revision of motorway interchange standards we shall look at in more detail below. The new memorandum was issued because "pressure on land resources requires that the land take implications of alternative designs should be critically examined...to reduce land take to a minimum." (DoE, 1975 (A) para 2.)

5.5.5 Insofar as no mention was made of flattening out for returning to agriculture it seemed fair to conclude that either Departmental "recommendations" were not followed or proper standards are to be interpreted as meaning considerable amounts of land should be taken for amenity purposes. Evidently this is a priori deduction rather than stated policy. The implications appeared similarly confusing to the Inspector who ordered ERCU to produce an elucidatory 'Special Paper'. (Wolfson Group 1974, Day 8)

5.5.6 Special Paper S21 was prepared within two weeks and is of moment because rather than being elucidatory it responded to the pro-amenity tone of the inquiry.

Considerable moves were made in the direction of compulsory acquisition of farmland (under the 1973 Land Compensation Act) for amenity planting. Notably the Inspector had expressed a strong desire to see such CPO's served (Ibid, Day 18).

5.5.7 The impression gained from planting measures then was that, given the nature of the Green Belt area farmland had low priority during ad hoc land-use decisions. An impression amply reinforced by the problem of recreational exchange land.

5.5.8 Under the planning acts, acquiring authorities have an obligation to replace any recreational or common land acquired. At Epping the question pertained to Forest land and 2 sports fields. The matter need not be dealt with at Line Inquiries, only once the CPO's have been served. It was evident that ERCU had opened negotiations with the authorities concerned, to the prejudice of third parties whose land might be required.

5.5.9 The wealthy and influential Corporation of the City of London (trustees of Epping Forest) had been tentatively offered part of the neighbouring agricultural Copthall Estate. Similarly ERCU had suggested to Waltham Abbey Town Council that some 7 acres of farmland could be converted to recreational use. (Wolfson Group 1974, Day 30 Papers S6 and S14)

5.5.10 There is a most unsatisfactory situation here. ERCU had held consultations with the authorities concerned about a separate but parallel procedure which would arise directly attendant upon the decision to acquire land

for the road. Yet where third parties were involved, in this case an agricultural tenant, there was neither an onus to consult them nor any suggestion that there should be. There are concerns regarding both prejudice and administrative efficacy if the Minister lacks information integral to the consequences of his line-order decision. If a land-owner must appear at a subsequent C.P.O. inquiry after the road decision has been taken he will be in a prejudiced position similar to that which has come to public notice following the procedure of taking road schemes to inquiry in short stretches, the so-called "wet-end" argument. It is understood that legally the inquiry is not into the proposals but into the objections to the proposals. (In re The Trunk Road Act 1936, etc) Nonetheless it would seem that the inquiry could still fail to provide useful evidence to the Minister. In the words of the Inspector's Report

> "it is most unfortunate that full details of the exchange land proposals were not available at the Inquiries." (Clinch, 1976, p899)

5.5.11 One area of recreation land not covered above is the area known as Bell Common. One of the most popular areas of the Forest it became a symbol of amenity objection. If evidence were still required of the dominance such issues had it must be that the Minister

has agreed, on the Inspector's recommendation to the construction of an extra 250 metres of tunnel due "to the special nature of this Epping Forest land". The cost of this roughly ¼ acre of ground will be £2.5 million (1974 prices)! (DoE/DTp, Eastern Region, Letter CE 416/1/26/10, para 6.9.7). The comparative amounts felt to be worth expending on farmland will be shown below.

5.6 Value Systems and Agriculture

5.6.1 In the final analysis the cost of amenity or aesthetics rests on the fundamental values of the decision-maker. To make the point that agriculture has tended to be treated as part of the amenity value-system, rather than as an economic cost which is calculable in advance of value judgements, it is necessary to examine the tendency in action. That is, how does agriculture appear in the discernible value-systems of objectors?

5.6.2 The best starting point is provided by Mr. Sheppey, a lucid objector whose alternative route C - a substantial loop - challenged the DoE's values fundamentally. He is important to us also in that his approach regards farmland as a place where the least damage can be done.

5.6.3 Mr. Sheppey felt, to summarise, that people were more important than views. Thus he had looked for a route which went completely through agricultural areas, avoiding houses. The Inspector found it necessary to terminate the ensuing debate between Mr. Sheppey and the Department over engineering alignment and traffic benefit on the alternative route. Quite correctly, he

recognised that there was a lack of common-ground (Wolfson Group, Day 11).

5.6.4 If one set of values regards farmland as the inevitable site for development, and Mr. Sheppey is selected as but the most consistent exponent, another sees it as not being transitively related to other social needs; that is, too important to be traded off. A typical example of this position is one objector's irate assertion that the Department's policy implied

> "that a motorway was needed more than food. This despite what we hear about every day about [sic] a world shortage of food." (Proof p17)

Such a value-system seeks to assert that the food producing function of farmland is so important as to outweigh any possible benefit from the road. To have it cease to be a good.

5.6.5 The way agriculture was normally brought into the debate however was not in such broad terms. For instance Mr. Sheppey's long looping alternative route engendered the following opposition:

1. Broxbourne Borough Council's Director of Technical Services felt it would lead to irresistible pressures on Green Belt agricultural land for development. He was "prompted to this conclusion by the many examples of development being allowed in this area following the construction...of major roads particular that released by the Minister on appeal". (Proof p18)

2. The same Council's Director of Environmental Health noted the "nuisance" effect on Green Belt land and concluded:

"The alternative proposals pass through some of the best farmland in this district and some of the most flourishing nurseries. The present situation in the world as to food shortages and balance of payments lead me to say that any proposal which would reduce food production should be looked at most carefully, these proposals would diminish the production of foods and horticultural produce in the area through which the alternative would pass." (Proof P19)

3. Goff's Oak Community Association included as one of its fourteen reasons for counter-objecting the effect on "such prime agricultural land. Two farms...would be so truncated as to be almost unviable as production units". (Proof P24)

On the other hand the West Cheshunt Action Committee, Turnford Gap M16 Action Group, Cuffley and Northaw M16 Study Group, Broxbourne's Housing Director and Welwyn Hatfield District Council all counter-objected too and put forward traffic, landscape and cost arguments but no agricultural ones at all. (Proofs P20,21,22,23 and 25)

5.6.6 This was found to be the way agriculture generally was dealt with in objections. As no more than one minor aspect of a generalised antipathy. The evident fact

is that agricultural matters are either included or not in such objections in a haphazard way, and assessed no better.

It became a fundamental tenet of the Wolfson Group's findings from M16 on, that within the terms of government policy and the function of the Inquiry within the decision-making process vague and generalised agricultural arguments as evinced above are of little or no moment. Indeed ERCU's rebuttal evidence on alternative routes showed a well-honed appreciation of the importance of putting arguments in the policy framework. In this case it is the respective amounts and qualities of land to be taken which are relevant. Agricultural rebuttal to the major alternatives was:

Route B "Due to the additional length, a greater total area of agricultural land would be taken."

Route C As above with the further point: "Generally speaking, the land taken would be of a higher classification than that on the published route." (Proofs P29 & 30)

Equally interesting is the low priority given to this matter by ERCU. Each rebuttal was in three sections with "traffic" and "environment" having precedence

Table 5.1 : ERCU Rebuttal of Alternative Routes

	ROUTE (No. of lines of Rebuttal)	
	B	C
Traffic	9	14
Environment	9	12
Agriculture	2	3

Insofar as this is not a reflection of the importance accorded the topics in the original submission it could be regarded as a rough and ready indicator of ERCU's appreciation of the weight each merited in decision terms.

5.6.7 It became evident that the Inquiry, with its task of gathering evidence for the Minister required not challenges to policy values, nor generalisations, but agricultural evidence presented in a measurable, assimilable form aimed at achieving specific results; a shift in the route, an access bridge, a design change or whatever. With this in mind let us examine the cases presented.

5.7 Agricultural cases at the M16 Inquiry

5.7.1 In many ways a model proof (given their needs) came from the Church Commissioners, represented by their agents, Cluttons. General points were avoided in favour of arguing to the policy framework and options available. Given these they opted to support

the published route against the various alternatives although generally they "would have preferred a route more closely aligned to the south-western boundary of their Estate." (Proof P27)

Their comment on the loss of land was simply that other routes would take more. Similarly severance was described in terms of its precise and predictable effects on the holdings concerned, including the possibility of bridges being necessary and the "existing versatility of management" being impaired. The Inspector was given a table showing the comparative virtues of the published route in a simple form coded to a six-inch to one mile map:

FARM	COLOUR	SEVERANCE (Acres)	
		Route "C"	Published Route
Howletts Hall	Pink	290	40
Loft Hall	Green	175	125
		465	165

It is gratifying to see that the Commissioners felt able to support the published route although, from a research viewpoint, the opportunity was missed of seeing ERCU face a well-argued agricultural objection. It being the case that the Commissioners were backing the general scheme and opposing other routes on a broad scale, then it is interesting to note how they omitted any detail of farm working beyond a simple desire to ensure "that the fixed equipment can continue to serve the majority of the land without difficulty". Above all these was the

avoidance of the whole issue of re-organisation of the 3,500 acre estate. It was a theme of the M16 Inquiry, compared with other, smaller schemes we shall examine, that the amenity and general traffic arguments dominated it to such an extent that agriculture received this lowly treatment. There was need for just as much detail as the Commissioners gave. Any route change would have been on grounds of amenity disturbance, or traffic implications. It was only necessary that the Secretary of State have reported to him enough to have had the due "regard to the requirements of agriculture".

5.7.2 The most striking single feature of the farmers who objected to the published route, rather than to alternatives like the Commissioners were, is how few bothered. The reasons for this will be examined later.

5.7.3 One who did was Mr. Fowler, Mitchells Farm, Romford. He is put first because, unfortunately, he is typical of farming objections found during the literature review and later on other schemes. He employed blunt common sense which was of no use whatever to the Inquiry. The opening point of his proof was that despite what was said in the DoE's official booklet for those affected (1974, para 47) about the public interest, there was no such thing. If there were he had not seen it proved. His challenge was in essence that there would be winners and losers by the scheme, but the benefits were tiny and disparate whilst the disbenefits would be concentrated and harsh.

A second barb was directed at Green Belt policy. He outlined two planning applications of his own, for a recreational lake and the conversion of a defunct barn into a dwelling, which had been turned down because of their location in the Green Belt.

> "So, apparently trees, water and grass constitute destruction of the Green Belt but concrete and iron enhance its attractions... So we have it from no less a body than the DoE that two windows and doors would destroy this Green Belt...but within one mile of the site, still well within the Green Belt, the very same government department does a complete about face."

As for the 'farming' portion of the proof we can, once more, do no better than quote Mr. Fowler:

> "I lose upwards of 30 acres...and over 50 acres are isolated from the main body of the farm. DoE seemed to imply that the effect of this dissection was mitigated by the fact that we also farmed the area to the north...I cannot accept this road engineer's judgement of what will become an extremely difficult agricultural problem. I must make it clear that this road completely wrecks the viability of a separately held 200 acre holding, that...has always had the ability to return to separate cultivation. This facility is now lost and to make matters worse it also disrupts a system of cultivation that has operated successfully on both farms...with no hope of ever

re-arranging...Those areas that are isolated have not been provided with sufficient points of access - just one in one mile. Drainage will be completely disrupted...This motorway means loss of production not only on the area on which it is constructed but... on acres adjacent to it. Even road planners have to eat and I defy them to produce sufficient food for themselves by cultivating the central reservation of this M16...on only the length of road that affects me, could be grown sufficient potatoes for 3000 people or bread for 1800 people annually."

5.7.4 In face of the disruption by national objectors, legal challenges and major policy onslaughts which dominates the Inquiry, the Inspector had been at pains to emphasise the local nature of the forum. Both he and counsel for ERCU were duly most sympathetic, but insofar as nothing had been asked for regarding alignment or access nothing could be given, except generalised assurances regarding the drainage.

5.7.5 One illustrative aside to arise out of Mr. Fowler's case which merits recording was that the engineer in charge of the scheme admitted that he was confused about the grading of even the Land Classification Maps - the most basic tool of agricultural appraisal. (MAFF 1968) Although the Classification has demerits for specific planning, (DoE 1976 Appendix B) it is the principal agricultural input claimed for road planning.

5.7.6 Mr. Watt of Hill Farm, Noak Hill, had a particular grievance which he sought to overcome by means of the Inquiry. Although he had to make a formal statement of opposition to the road in order to establish his <u>locus standi</u>, the burden of the proof was an argument for altered side road provision. Hill Farm was described as a 327 acre mixed dairy and arable farm which was worked in conjunction with 16 acres rented from the Greater London Council. The main buildings at Hill Farm were supplemented by older ones at Wrights Bridge used for stock accommodation.

Under the side road orders it was proposed to close off Wrights Bridge Road and this it was contended would "cause considerable difficulties to the working of Hill Farm as a dairy unit". A supplementary agricultural bridge was requested, but not very foreefully, and the point was withdrawn under cross-examination.

5.7.7 The main burden of the proof was a request that arrangements proposed to bring side roads to a new overpass be abandoned as they would "cause the loss of further land and isolate an area of approximately 14 acres together with the farm buildings at Wrights Bridge between the motorway and the Weald Road extension".

To leave the local road system as it stood would, it was asserted, add no more than one third of a mile to journeys. When pressed on the matter of the agricultural disruption to be caused by not being able to work all his land from the

buildings, ERCU produced a somewhat disturbing reply. Their counsel employed his most personal and friendly manner and implied heavily that he could expect to be very well compensated by the District Valuer for these buildings.

As was found in the case described by Rhodes (see chapter 1) such assurances are not always to be relied upon. More importantly, it is most disturbing that compensation should be strictly written out as a matter to be discussed at Inquiries, yet that the public authority should raise it in such a way. Compensation is not discussed for the perfectly good reason that Inquiries are about national policy, whereas compensation only relates to individual loss. It is a matter of concern that it be alluded to as an administrative placebo. Mr. Watt was most dissatisfied with the response (Proof P85, Wolfson Group, Day 19).

5.7.8 ERCU did not accede to Mr. Watt's request which, the Inspector pointed out, would leave a length of redundant road on the farm. He requested them to reconsider the matter. ERCU's reply is interesting in view of the considerable sums being expended on amenity. There were no services under the road to prevent its being returned to agriculture and ERCU estimated as follows.

(Our tabulations and calculations)

Table 5.2 : Effects of breaking out a redundant road

	Length	Cost	Land Gain	Cost per Acre	Utility
NORTH OF M16	100 metres	£1,670	0.35 acres	£4,770	Irregular shape with pylon.
SOUTH OF M16	not given	£2,750	1.35 acres	£2,040	More use to G.L.C. due to field shape

ERCU gave no reason for the discrepancy in costs and the tenor of the proof was to make the most of difficulties. They concluded:

> "there is little, if anything, to be gained from breaking out the existing superseded lengths of Wrights Bridge Road".

In this case the approach to agriculture was clearly to give it little consideration when wanting to defeat an objection. Again it must be emphasised that although the Inspector was sympathetic he was given no assimilable facts to work with. Had Mr. Watt provided details of how much output he might have obtained annually for the nation this would have given the Inspector (who was clearly inclined in favour of breaking out the road) something to work on.

5.7.9 The major farming interest on the route, the Copthall Estate, had joined the Alliance (Against M16). Their agent informed us that they therefore agreed to subjugate their tenants' agricultural questions in favour of the Alliance's concentration on loss of amenity.

Counsel for the Alliance set the tone in his opening statements.

> "The Estate is mainly agricultural, but includes many woodlands and several footpaths, and so is an essential part of the amenities of the forest area."

The agricultural evidence was basic and outlined the effects of severance on the 4,000 acre estate. There would be division of the Home Farm from its woodland but above all, in farming terms, there would be a loss of 11½ acres of "good land" at the Bell Common interchange were it constructed. (The Alliance firmly opposed this interchange.) The difficulties of the MAFF land classification arose here as the land to be taken was mainly Grade 3 and that severed Grade 2. It had to be pointed out that there was no discernible difference between the areas in productivity and output. The Alliance would call for routing amendments which took more of this "better" land but were to be preferred as they eased severance and amenity impact.

The greater part of the case was taken up with emphasising the place of the Estate as part of the Forest, its deer and woodlands in order to oppose the Department's legal definition of the Forest. The Estate had chosen to oppose the road as a whole and its arguments suited that line. (Wolfson Group Day 27 + Proof P112)

5.7.10 The last case by a farmer in this section is the best example of a full-scale agricultural case at the Inquiry (the Church Commissioners having a singularly negative role). Davis Farms of Quinton Hill had a case complicated slightly in that their main attack was against an Alliance alternative route. They had side road matters for the Department however and these were taken first. The problem concerned the access road to the farm which was to be re-aligned. ERCU's reply was reassuring. Although the road would be faster when straightened this was more than counterbalanced in terms of access by:

a. a new gradient on the farm road, from 8% down to a 4.2% maximum

b. the straightened road would have better sightlines.

There remained a secondary "social" question of the effect on the existing tree screen to the farmhouse and buildings. After a break in proceedings for private discussion ERCU agreed with the agent about the possibility of leaving more trees and the objection was withdrawn. Quite apart from the obvious advantage of ERCU sympathy as an overall supporter, Davis Farms' case had four vital elements of one looking for practical change and which were received favourably by the Inspector:

a. it was short and to the point

b. it was put forward very reasonably and cogently

c. it blurred issues to emphasise impact (not necessarily a good thing, but effective)

d. it contained actual suggestions for changes which ERCU had to answer

5.7.11 With the Alliance case Davis Farms were in the role of counter-objector. The proposal, a familiar one, was that it was better to route the road through Davis' agricultural land than on the preserved line round which housing estates had now been built. Davis Farms notably switched their approach from the imprecise "impact on the farm" line previously adopted to a specific questioning of the Alliance regarding severance, viability of the unit and so forth. The Alliance had obviously realised the possibilities but could not talk in those terms. The same problem arose over the Alliance's planning and landscaping evidence. Davis Farms again established that a lack of attention had been given to impact on the farm and managed to harm the Alliance case quite severely. Some of the responsibility for the strength of Davis' case must rest with the Alliance who could have been better prepared. That being said however the case made by Davis' Farms was only as strong as others at the Inquiry, in particular parts of the Alliance case we shall examine next. The essence of the difference would seem to lie in ERCU's ability to say of their agricultural cases that MAFF had been consulted, without necessarily elaborating on whether the advice was taken.

It is of interest to add that we have the evidence of

the Alliance chairwoman, that they found out, too late, that Davis, in his capacity as a local councillor, knew that a road was planned on virtually the Alliance route for local purposes unless M16 was built. The farm therefore had everything to gain by throwing in its lot with the published route. (Wolfson Group Days 28 and 38, Proofs P115, 115 (A), 154 and 161)

5.8 The Alliance Case

5.8.1 For any road proposal a major decision for any objector, farmer or not, is whether to 'throw in his lot' with an organised case. At Epping considerable numbers had done so and the Alliance had the problem of balancing a number of interests especially as affected landowners were major contributors of the extensive funds required by an objecting group. The most important facet of their case, and one which set the tone for the Inquiry was the decision to oppose the road as a whole, although a fall-back position of routing amendments was retained. The Alliance had many of the most prominent farmers along the route committed to their case. In practice this meant that the farmers were prepared to ignore alternative routes and have their case subsumed beneath the generalised amenity/ environmentalist standard, perhaps something of a gamble. Before the Inquiry one of the most involved and affected farmers, Mr. J. Padfield, had put it that although the Alliance would be useful in fighting minor points he looked to the Forest's amenity value as

a hope of salvation. Interestingly he was prepared to press this point, and pay the £500 Alliance fee although he was pessimistic about the chance of winning even these minor points. It was good policy he emphasised, because compensation was so low and ineffective that the gamble was worthwhile quite apart from any more altruistic feelings about the area. This feeling was supported by other farmers who had joined the Alliance, all of whom were interviewed.

5.8.2 The primary "general" case was presented by Mrs. Woods the Alliance chairwoman and concentrated on controlled and well-argued emotional impact, with amenity aspects to the fore. (Proof P153) Mrs. Woods had learnt a great deal by attending the Inquiry, especially (as she told us afterwards) to base a case on some official source. She had been invited to lecture to the Royal Institute of Public Administration on her experiences at Epping and had emphasised the apparent existence of documents pertaining to, and supporting, seemingly contradictory arguments. (Interview 26/5/76).

As far as agriculture was concerned she quoted from "Sinews for Survival" a government report prepared for the U.N. Stockholm Conference (on the Human Environment) of 1972. This had the figure for land-take by motorways roughly correct, and put it in the following terms:

> "A theme which runs through all our evidence is that our management of our limited non-renewable

resources is wasteful and often profligate...
In transport the motor car is a wasteful and dirty user of both minerals and energy and the motorway an extravagent consumer of land...
If we construct another 500 miles of motorway for what may be the temporary convenience of motor transport, we are using up 20,000 acres of land which may never again be available for husbandry." (Proof P153, para 6.8)

Mrs. Woods made the same point as many other objectors, that regarding our 50% level of self-sufficiency in food. Again too it was a good deal more telling than many in that she tied it to a government proclamation. She pointed out that at the 1974 Rome Food and Population Conference Britain had joined other countries in pledging to work toward self-sufficiency. "Land taken for development", she argued, "is so often good or at least medium agricultural land. Roads - including this one - certainly come into this category." (Ibid, para 6.8)

5.8.3 In cross-examination ERCU made no attempt to refute these statements other than by a generalised question regarding national policy. Surely, ERCU argued, national policy is a matter for the government to concern itself with and not for an Inquiry to decide. Mrs. Woods agreed with this, simply expecting that in terms of land policy due weight would be given by the Secretary of

State to the elements she outlined.

5.8.4 It is a fundamental feature of British government agriculture and land policies that they are flexible and allow for considerable administrative scope in interpretation. Recent Parliamentary answers (Bishop 1976 and 1976A) indicate that the government considers itself committed to a policy of reducing import dependance along the lines outlined in the white paper 'Food From our Own Resources'. So far as the land factor in agricultural production goes, that paper repeated that most pragmatic of policy phrases, "to ensure that, whenever possible, agricultural land of a higher quality is not taken for development where land of a lower quality is available". (Cmnd 6020 1975, para 16) Presumably the other facet - no more than is required by proper standards - also stands to be considered. These policy aspects omit entirely the idea of rejecting development because of its agricultural implications, yet this clearly happens. Whilst say, housing may be expected to site itself elsewhere if a given plot is rejected; speculative developments such as, say, marinas and pony trecking centres, or hypermarkets in the more directly economic sphere will tend to be site specific and if rejected lead to more intensive use elsewhere without equivalent land demand. Accepting this, albeit crude, bifurcation, in which category then are roads? Government policy gives little guidance and the Alliance were forced to clearly recognise the division. Whilst

they above all desired intensification of use on other existing or planned roads in order to stop M16, they were prepared to put forward land saving plans, especially at intersections.

5.8.5 The abandonment of M16, although it held out the greatest possibility of land saving, was argued for on strictly traffic grounds. There is no doubt that the weight given to agriculture in the M16 Inquiry was negligable when "serious" alternatives were being advanced. Hearne in the complementary thesis shows that in economic project-appraisal terms agricultural loss is swamped by suoh benefits as grossed-up time savings. Here too, in both political and transport engineering terms it became clear that realistic opposition to a major motorway link must establish first and above all alternative traffic possibilities either as good, or almost as good as the scheme. Secondly, a special case for the area which would otherwise be injured must be made out. The whole must be within a reasonable cost excess. In the Epping area agriculture was a most minor element of the special case. The scheme was such a major one that an equally major factor was required to outweigh it.

5.8.6 Figures can only support an argument of this kind which rests on subtler aspects of the lack of attention given agriculture. Nonethless the following analysis of the Alliance case, representing as they did most affected farmers on the route, illustrates the reality:

Table 5.3 - Emphasis of the Alliance Case

Witness	Cost	Qualifications	Aspects Dealt With	Agriculture
Dr. J. Manning	£2,335	BSc, PhD, MInst Civil Eng. FInst Highway Eng.	22 pp + 4 appendices Traffic Engineering and Potential Re-Alignment on Amenity Grounds.	1 pp - Land take on Davis Farms not calculated. Reductions of 24.7 acres in M11/M16 interchange, and 24 acres at A11/M16 interchange.
Noel Moffett	£3,415	BA, FRSA, F.Royal Inst. British Architects, M Royal Town Planning Inst. President Architectural Assoc.	44 pp - Environmental, planning and landscape aspects.	2 pp - Intersection effects at Skillet Hall and Garnish Hall Farms.
William Allen	£1,571	BA (Architecture) M Royal Inst. British Architects, Pres. Inst. Accoustics.	32 pp - Noise	None
Peter May	£3,130	MA, M.Inst. Civil Eng. AA Dip (Town Planning)	71 pp - Traffic Forecasts and Capacities	None

(Continued)

Table 5.3 (Continued)

Witness	Cost	Qualifications	Aspects Dealt With	Agriculture
Steven Plowden	£1,312	Transport Research, M.Market Research Soc, Sec. of Independent Commission on Transport.	37 pp + 20 pp appendices - Transport Planning & Policy.	None
Alfred Leutscher	Free	BSc (Zool), Lecturer BM (Natural History)	6 pp - Ecology.	None
Joyce Woods	Free	J.P., Chairwoman of Alliance.	25 pp - Social Effects.	1 pp - Land Policy.
A.E.S. Pearson	Free	MD FRCP	33 pp - Pollution.	½ p - Grazing Animals.
K. Hoy	Free	Head of Forest Field Study Centre.	12 pp - Ecology, Amenity.	None

5.8.7 We have discussed the amended design affecting Davis's Farms above. The best that can be said of this from the Alliance viewpoint was put to us by the chairwoman. The housing estate should never have been built so close to a protected line even if no-one suspected it would be motorway standard. The error should be acknowledged and road re-routed. Unfortunately, the Alliance ignored agricultural impact in all but the most minor way. A distinct impression gained from the proofs and arguments outlined, but even more from the tone of all concerned and especially the Inspector was that agricultural considerations had much more impact when they were opposed to objectors'alternatives. This was probably a function of the perception of objector's routes as 'interested' as against the Department's 'public interest' standpoint.

5.8.8 The other major alteration proposed by the Alliance of moment to agriculture arose primarily from amenity and social interests. It was also dramatically illustrative of on one hand the problems faced by objectors desiring a unified front but on the other the kind of ideas only they could put forward. Immediately south of Epping town ERCU proposed the already-mentioned Bell Common intersection with the All trunk road. The Alliance hoped to avoid this by extending the next junction eastward, on the farm of William Collins at

Garnish Hall, to include omnidirectional turning possibilities. To put forward such an argument it was necessary for them to avoid being seen to be shifting the problem onto the unfortunate Mr. Collins who is at present suffering the construction of the M11 motorway. The junction design put forward by ERCU at Garnish Hall was a dramatically large one, particularly given that not all turns were included. It was calculated to take 116 acres of the farm and was designed to be very close to the farmhouse and buildings, some 150 yards. The Alliance planning expert termed it "surely ...one of the greediest interchanges ever designed in this country". (Proof P161)

5.8.9 At a meeting held in Garnish Hall attended by the area's farmers and Alliance counsel our notes record that Mr. Collins agreed to gamble. The Alliance would present two connected, but in the final analysis, divisable cases:

a. for the omission of the Bell Common interchange with extension of the Garnish Hall junction

b. for this M11/M16 junction to be reduced in size and moved right to the edge of Garnish Hall's boundary (Proof P154)

5.8.10 The Garnish Hall interchange question emphasises the importance of determinist traffic predictions. It was argued by the Alliance that even given the constraints of the DoE's own Roads in Rural Areas design guide for

the predicted traffic flows, the proposed complex design was in contravention of the general policy guideline regarding no more land than needed. The considerable differences in land take were "due to the assumptions for design speeds of the links". If it were only accepted that traffic should travel more slowly then the entire design could be tightened up. The Alliance knew that any alternative proposal would need to be in terms of a DoE yardstick and were lucky in that a new design memorandum (DoE 1975B) had been issued in the February of the Inquiry. It contained altered consideration of the amount of traffic which was permissable through roundabouts and allowed for the following differences in land take:

		Acres
1.	ERCU Proposal	116
2.	Alliance Alternative	91
3.	Some without extra slip road links (i.e. slower)	54

It was expected there would also be a small cost saving with the redesigned, smaller junction.

5.8.11 Up to this time in the Inquiry (mid-April) ERCU had staunchly refused to permit any question of amending the interchange at Garnish Hall on the grounds of proper design standards. On the day of cross-examination regarding the alternative however there was a most remarkable volte-face. Counsel for ERCU pointed out that they had put up two plans for the interchange, the promoted scheme plan and an alternative with

omnidirectional connections. He would be happy to see the Inspector accept the latter as the now 'preferred' plan as, despite earlier assertions to the contrary, no final decision had been made. ERCU hoped to build this junction a little further away from Garnish Hall and its farm buildings. Members of the Wolfson Team had been with the farmer immediately before this and he had heard nothing of the possibility, nor had the Alliance.

The Inspector and Alliance alike were at a loss and a detailed discussion of the legality of such a modification to the published proposals ensued. It was agreed that the Inspector could recommend it as a modification within the legally prescribed limits and it would be up to the Secretary of State to accept it, or not. (Highways Act 1959, part II and 1st and 2nd Schedules. Ibid 1971, S.17)

5.8.12 The most important aspect of this revision, from both the public administration and agricultural angles, did not emerge until later. In the same month, April 1975, the Directorate General of Highways at DoE head office issued one of its regular design guides. These are less guides in the conventional sense as firm instructions to Road Construction Units and others building under DoE aegis. Their strictly defined limits of curvature and emphasis on a determinist procedure, whereby acceptance of the initial traffic predictions

leads inexorably to the size, type and scale of road to be built, has proved a recurring constraint upon questions of optimal routing. The scope for modification is strictly limited and often to increase a curve at point A to help farm structure necessitates a worsened position elsewhere to maintain the curvature. These guidelines appear to be much stricter than those in use by other nations, a point illustrated excellently by the subtly fitted German motorway pictured in Nicholson's "Environmental Revolution". (Photograph C17
See also Spearing 1971)
This design guide was specifically on the matter before the Inquiry, motorway to motorway interchanges and was "based on a review of the experience so far gained on the design and operation of interchanges and studies within the Department". This experience was, by definition, that of RCU's and previous agent authorities, who had designed the existing jucntions and must have been known to the designers of so important (and huge) a junction as M11/M16. The major conclusion of the review, if we may precis, was that the old design standards used on the 116 acre intersection were out of balance:

> "Increasing pressure on land resources requires that the land take implications of alternative designs should be critically examined. A fully

directional free flow interchange <u>can extend over 5 times as much land</u> as the compact 3 level roundabout type. If necessary some restriction on traffic (speed) may be imposed to reduce land take to a minimum provided the resulting level of service and safety standards are adequate." (Emphasis added) (DoE 1975A, para 2)

5.8.13 It would seem that the drafting of the new memorandum had been in the offing for some time, and it is hardly likely that those designing a major intersection would not be aware of the fact, particularly within the tightly knit professional world of DoE highway engineers. ERCU admitted that negotiations had secretly been underway with other statutory bodies for some time which indicates a prescience that they would be allowed to accommodate the request for a smaller junction further from the farm. Nonetheless it had been considered impossible to pass this information to the farmer concerned, or the Alliance before they had invested heavily in having a redesign drawn up. We shall see this problem of altered design standards again at Chelmsford where it was met in different ways, but still caused severe dissatisfaction amongst objectors - especially agricultural ones who lost extra land. (Gardner, para 2.16)

5.8.14 The outcome of this case was the recommendation to the Secretary of State of a design more acceptable to the farmer and acknowledged by the Alliance as better than their own designed to higher standards. (Proof P118 and Closing Speech, p87). Nonetheless the secrecy and confusion surrounding the issue did little to enhance the atmosphere of public confidence the Secretary of State had called for when introducing public consultation some two years earlier. In his circular on the matter he included, as matters to be included as early as the consultation stage,

> "such engineering details as the approximate location of junctions and (if available) types of junctions". (DoE 1973)

Similarly in attempting to show objectors "how a case should be presented" the DoE brochure draws specific attention to the importance of the Department's initial statement of case and proposals:

> "The statement is important since it gives you the chance to consider beforehand points you may wish to put". (DoE 1974, paras 1, 32 and 33)

Neither the introduction of a new design after denial of it as a possibility nor the repudiation of arguments by assertions of unchangeable standards would seem to be in the spirit of public administration as exemplified by the above. If the Inquiry is regarded strictly as a means of informing the Minister then it is feasible

that there need be no attempt to inform objectors of coming changes in standards insofar as they can be taken on board after the Inspector has submitted his report. However, even in strictly administrative inquiries there is the necessity to respect wider values as was recognised by the government during a recent debate on Highways Inquiry Procedure:

> "I think that no one would dispute that fairness requires that those whose individual rights and interests are likely to be affected by a particular road scheme should know in good time before the local inquiry, the case which they have to meet." (H.L. Debs 2/7/76, col 1009)

Somewhat earlier the Under-Secretary of State, for Environment, Neil Carmichael, had also faced a debate. He modestly and reasonably admitted imperfections: "We are always learning from our experience", he told the House, "And we welcome any comments and suggestions from the public on how we could improve our procedures." (H.C. Debs 6/11/75 col 771). The case outlined above would indicate that public confidence in decision-making and the protection of agriculture from disturbance could both gain from less rigidity, arbitrariness and secrecy in road design procedure.

It is precisely these aspects of road planning which were so trenchantly criticised by the recent appraisal Committee

under Sir George Leitch (our written evidence to the Committee is given in Appendix 1, the Group was subsequently called to give verbal exposition).

5.9 The Alliance Specific Farmer's Cases

5.9.1 Insofar as the case of Mr. Collins at Garnish Hall was intentionally knitted in with the Alliance's line, his specific details are best subsumed under this head. In fact, due to his strong negotiating position, (opposition to an interchange at Bell Common depended on amending that at Garnish Hall), Mr. Collins did not have a financial input to the Alliance and presented his own detailed case.

5.9.2 The personal tragedy of two motorways merging on his farm and the size and siting of their interchange dominated Mr. Collins' case. There were however certain minor agricultural improvements which could be made. Mr. Collins outlined his farm system in detail, emphasising his high stocking rates and intense capitalisation. The loss of land he argued, would cause a severe inbalance in the system by harming the major dairy enterprise. Mr. Collins emphasised the potential severance difficulties. On both Garnish Hall and the adjoining Hobbs Cross Farms the buildings were well placed for access to all grazing pasture. The road would necessitate a greater dependence on distant pastures used normally for dry stock:

> "Throughout the summer grazing period the cows are in calf, and long distances to grazing areas

causes a loss of milk yield, and indeed in extreme heat or in wet, muddy conditions can even cause distress to the animals."

Mr. Collins felt the best alleviative measure to be the provision of concrete roads with troughs and passing places, one on each farm. These he costed up, at MAFF rates, to £13,000 assuming they were built cheaply by his own farm labour, (as is allowed when MAFF give their grants). (MAFF 1973, para 56) Similarly his labour could replace stream bridges in more suitable positions although this was not costed. He further requested that the side road past the farms be not re-aligned "thus saving a few more acres"; and that the banks and cuttings be regraded in such a way as to allow his cattle to graze up close, "thus reducing the area lost to production and at the same time saving public expense on grass cutting and maintenance". (Proof P188) The last request as we have seen was endorsed by the Department for rural single-carriageway roads and was (we believe) adopted by Mr. Collins after discussions with the Wolfson Group regarding ways of minimising impact.

5.9.3 The Group were thus closely interested in the Departmental response to the ideas proposed, especially the last, and herein lies a minor problem. A rather confused debate ensued and the impression was gained that

ERCU did not feel the necessary earthworks would be justified and were worried that the pollution levels near the carriageway would be high. Such a response would be in keeping both with the rather incomplete research on levels of lead in pasture grasses, most of which has been undertaken by the Wolfson Team (Vick 1975 and 1976, Bevan et al) and Parliamentary statements. Asked in 1974 about hay yields from motorway verges, the Minister replied that whilst steepness was the major problem "glass and other debris, together with high levels of lead residue in the herbage closest to the carriageway would make it unsuitable for fodder". (H.C. Debs 20/11/74 Written Answers).

5.9.4 The Inspector himself was clearly keen on the idea and it was with interest that we noted in his report:

> "The objectors' suggestion for grading out the slopes... and returning them to agricultural use is acceptable to the Department and there could be a saving in cost in the earth works economy of the scheme." (Clinch, p 573)

In his conclusions he expounded further:

> "The attention of other farmers should be drawn to the request of Mr. W.A. Collins that embankments should be so graded as to permit cultivation up to the motorway fence line. A short-term agricultural disadvantage during the constructional

period would be more than offset in the succeeding years; this is a very sound arrangement provided it does not involve the importation of filling material."

Investigation shows that ERCU had accepted the idea by the time of their closing speech (pp 86-7) and it must be presumed that they did so under the Inspector's prompting. The report has only just been issued (October 1977) and the findings are documented fully here in the hope that (with due regard to pollution) a sensible idea is taken on generally by road authorities.

5.9.5 ERCU were also able to satisfy Mr. Collins on the side road problem by agreeing to break out the superseded old road. Perhaps because of the Inspector's known dislike for such dereliction allied to his evident concern for Garnish Hall as perhaps the most affected holding, they raised none of the financial problems they had in Watt's case discussed above. Their attitude on the suggested concrete roads was the familiar one that it was an accommodation matter best left to balance with compensation. It becomes increasingly difficult to hold on to any connecting thread of values or policy behind the decisions we have examined. There is but one more we must look at before trying for conclusions.

5.9.6 The case of Mr. Padfield as an individual, rather than as a founder memberof the Alliance is an epitome of one of the functions of the public local inquiry; that of allowing small difficulties facing persons directly affected to be raised. The administrative theory is that these are raised for the information of the Minister. In practice, as this and Garnish Hall's cases show, the useful function of the inquiry may be better described as providing a sympathetic hearing where such matters receive somewhat better treatment than within the "closed" stages of the administrative process. In both cases we had specific interview evidence in advance of requests that had been denied, or not answered, which were then granted at Inquiry. Great Gregories contains 180 of Mr. Padfield's 420 acres but was farmed as a virtually independent unit. The line of M16 which was first discussed with him by ERCU was, he contended, skirting the development which adjoins the farm and more acceptable in severance terms. This line was altered to move it further from the nearby houses. There is no official confirmation of this. On the proposed line M16 would sever 60 acres and take about 10 from a basically dairying farm.

5.9.7 Because of footpaths on his land he was confident that some means of access would be provided jointly. His concern was that for the value of walkers and himself alike the paths be rerouted and access sited

to fit the field pattern he would adopt should the road be built. In our opinion the concern for walkers was quite genuine and the access provision he requested would suit both. At the inquiry walkers' representatives did indeed accept the point.

Prior to his appearance Mr. Padfield had been unable to obtain ERCU approval, or outright disapproval, of his suggestion, whilst at the inquiry it was agreed by them without dispute. (Proof P214, closing speech p 86 and interview 21/11/74)

5.10 Agriculture at the M16 Inquiry. An Assessment and Some Working Hypotheses

5.10.1 The M16 Inquiry ended on its 91st day, making it the third longest of its kind after the joint M40/M42 sittings (Warwickshire) and the A55 Trunk Road Inquiry (Colwyn Bay). Its scale was such as to cost some £250 per day, not including the salaries of the Inspector and ERCU officials. (Guardian 16/7/75). It was the first time John Tyme disrupted a major inquiry and challenged its legality, and even an experienced assessor like Peter Hall saw it as "the most controversial motorway inquiry yet". (1976 A pp 476-7) There is no doubt that amenity considerations lay behind the organisation of the Alliance, without which, in turn, the logistics and financing of full-scale opposition could not have got off the ground.

The groups comprising the Alliance were:

The Bell Common Amenity Society

The Epping Society

The Friends of Epping Forest

The Roundhills Motorway Action Group

The Upshire Village Preservation Society

The Waltham Abbey Town Council

The Theobalds Park Association

and a previously organised, standing Federation of North East Metropolitan Green Belt Amenity Societies.

There was personal support from householders and landowners but, on our information, only three farmers and the Copthall Estate. The latter's tenants did not appear, nor did tenants of the Church Commissioners who owned lands at the eastern end of the route. Agriculture was but a minor point at the Inquiry and, it might seem, was perceived to be so by those who did not appear.

5.10.2 The National Farmers Union branch was consulted on this question and agreed that their members were tending to be passive due to a belief in their inability to affect matters. This arose from a combination of the considerable public works already carried out in the area and a conviction that because the Forest had to be protected the line was certain. Their objections would arise rather

at a subsequent Compulsory Purchase Inquiry. There seemed little to be gained from systematic, resource-consuming surveys of disinterest where essential co-operation would most likely be poor and our presence resented. We therefore asked NFU to provide us with an example as evidence for this attitude.

5.10.3 This they did and Mr. Wrethall of Theydon Mount kindly agreed to meet us. He outlined his somewhat pessimistic reasoning quite cogently:

a. After other interests, especially government bodies, had had their problems attended to, works ended up on agricultural land, (he marched with an Open Prison).

b. Compensation was miserably low and he could not afford to waste time.

c. Valuer's scale fees were not enough to have them act without pay and constrained them even after notice to treat when they were recompensed (a point returned to in section 3).

d. He could not ask his local contractor to help assess, say, drainage effects. Government payouts were so slow the work was avoided.

e. He looked therefore to the NFU but they could not shift the line from one member to another.

f. M16 should have been routed through the Forest to mask it.

g. The line on his farm was at least away from the farmhouse and he would make do with that.

Mr. Wrethall had had dealings with ERCU and a visit from a "public relations gent". Notably his decision not to appear was IN NO WAY a reflection of contentment as could be argued. He was dissatisfied both generally and with certain specific side-road details.

5.10.4 It is in the nature of the case study approach in social science that generalised conclusions are hard to come by, especially when trying to illustrate inactivity. Indeed the debate over non-decisions, decisionless decisions and the measurement of activity lies at the very core of the subject and its methodologies (Bachrach & Baratz 1970, Frey, Allison 1969, Crenson). The approach has still not been better put than in Schattschneider's concept of politics as "the mobilisation of bias". (1975, see Crenson pp 21-6, 183-4) What follows then must be read with the acknowledged caveat of evidence limitations. Schattschneider's is the best framework in which to fit the Alliance. It provided a unifying force transcending the minor biases of local amenity societies or individual farmers. It mobilised their specific opposition into a broad front and may be seen to have determined the character of the inquiry. Statistics can help us a little in gauging this

character and the table below illustrates, very broadly, the nature of the proceedings.

Table 5.4 : Evidence at M16 Inquiry

Main Subject	Proofs	Special Papers	Deposited Documents
Traffic/Need for the Road	56	26	43
Amenity/ Pollution	99	17	47
Social Consequences	42	3	18
Agriculture	12	1	6

5.10.5 This then is the major working hypothesis to be taken forward, that the character of an inquiry can be determined at least by the response of the major actors, (if not by the nature of the proposal itself), in such a way as to influence the nature of agricultural objections and the treatment they receive. There is no contradiction in the fact that Messrs. Padfield and Wrethall arrived at their respective decisions by an overall similar chain of reasoning. Both agreed that agriculture would have little weight and that both provision made and eventual compensation were inadequate. Such are the complexities of the mobilisation phenomenon however that for one this was an argument to throw in his lot with the amenity-based objectors and withdraw the route through the Forest he originally proposed.

For the other who agreed on all these points including the routing, it was a reason to avoid all connection. The hypothesis to arise is then that such decisions as are 'taken' (technically - 'recommended to the Minister') in the absence of a robust, assimilable framework for agricultural appraisal (or the evidence to erect one) are likely to be <u>ad hoc</u> responses to specific points. Just so, responses (c/f para 5.4.1) were occasionally based on optimisation (Garnish Hall's graded banks, Mr. Watt's redundant road/side road problem). But they were much more likely to be purely administrative with no reference to the road as a good - or their cost (Mr. Davis' tree screen, Garnish Hall's redundant road/side road problem). Most notable of all, there was no point where it was questioned whether agriculture should be costed into the appraisal of the policy end itself. The sole input was the District Valuer's assessment of market value land price - at best a surrogate for national agricultural loss, in reality not on the same basis at all.

5.10.6 Similarly with the individual facets of objections, although there is simply not enough evidence yet to meaningfully compare minor decisions and the table below is constructed for the purposes of comparisons with the ensuing studies. The most important facet is the low number of farmers appearing. Although there is a good deal of non-agricultural land on

the chosen route it is still a fundamentally rural scheme, yet only 7 appearances were made. Evidence from sections of M11 running through Essex countryside with similar size farms is that there 41 identifiable possessors of land were affected, of whom 24 were farmers. Of these, fourteen appeared at the public inquiry, a number (but not individuals) which co-incides with those who may be assessed as significantly affected.

It provides a good point to end this case study. With a reminder of the range of matters raised and the lack of any discernible consistent framework. This state of affairs was the starting point for the Wolfson Group's work to advance agricultural input.

Table 5.5 : Resume of M16 Agriculturalists Cases

Farmer/ Landlord	Case and Requests	Responses ERCU	Inspector	Basis of ERCU 'Decision'
Church Commissioners	Oppose Alternative Routes	Supported	-	Extra land take, better quality
Fowler, Mitchells Farm	General opposition	Sympathy	-	
	Green Belt policy	Traffic	-	
		Reasons	-	
	System disruption	Compensation	-	
	Access inadequate	No	-	Cost
	Drainage	Assurances		
	Food loss	-	-	
Watt, Hill Farm	General opposition	Traffic	-	Cost,
	Side road readjustment	Compensation	-	Counter objectors
	Expand underpass	No	-	£44,000
	Break out old road	No	Strongly for	Costs Cost
Copthall Estate	Pro-Alliance	Traffic	-	
	11½ acre loss	No	-	Traffic
	severance of wood	No	-	Landscape appearance
Mr. Collins Garnish Hall	Intersection Reduction	Yes	Strongly Sympa-thetic	New Design standards
	Intersection moved	Yes		
	System disruption	Sympathy	-	
	Concrete roads	No, for	-	
	Stream bridges	Compensation	-	
	Regrade banks	Yes	For	Cost saving
	Abandon side road plan	Compromise	Strongly for	Not given
Mr. Padfield Great Gregories	Access/footpath Positions	Yes	-	All interests agree
Mr. Davis Quinton Hill	Side road access	Assurances	-	Better gradient & sightlines
	Oppose alternative route	Supported	-	Less land take, reserved line lowers compensation

CHAPTER 6

THE CHELMSFORD BY-PASS

"There is a respectable branch of science called hodology (*hodos* being the Greek word for *road*)... Dull indeed would have been the mind which couldn't be stirred into curiosity by thinking about roadways."

(Morley, *The Great North Road* pp 16-8)

SUMMARY

Chelmsford presented a potentially unique opportunity for the study of agriculture in road decisions. The two viable alternative routes were distinctly urban or rural. The character of the inquiry was thus significantly determined by NFU's decision to co-ordinate a farming case. Three elements of decision-making were sharply focussed; the vital role of centrally laid down road design criteria, the lack of agricultural input by road authorities, and the way agriculture and amenity could be fused as components of a strong 'ruralist' objection, if the circumstances were right.

Chronology of the Chelmsford Southerly By-pass Proposal
(slightly simplified)

	Mar 1968	-	By-pass plan admitted to preparation pool
	23 May 1972	-	DoE announce scheme to be 'accelerated', minimum procedural time
	23 Aug 1972	-	DoE favour southern route
	Dec 1972	-	DoE decide to try-out Public Participation
	Apr or May 1973	-	Public Participation exercise held
	8 Jan 1974	-	Southern route accepted
A	29 Nov 1974	-	Draft orders published
	2 Jan 1975	-	RAPE commission consultants
	9 Jan 1975	-	RAPE submit an alternative central route
	10 Jan 1975	-	Closing date for objections under A above
B	13 Jan 1975	-	ERCU send out notice of inquiry
	31 Jan 1975	-	Inspector appointed
	5 Feb 1975	-	Closing date for alternatives under B above
F	28 Feb 1975	-	ERCU postpone inquiry from C to D below following representations
E	3 Mar 1975	-	ERCU tell local M.P. that RAPE alternative will demolish 130 houses
	5 Mar 1975	-	ERCU tell RAPE they have no such figures as E, nor will any particulars be provided as they are 'irrelevant', complaints should be directed to the Inspector
	11 Mar 1975	-	ERCU appoint Prof. Hopkinson as environmental consultant
C	11 Mar 1975	-	First date for Inquiry,
	8 Apr 1975	-	Second date for submitting alternatives, under F above
	16 Apr 1975	-	Inspector falls ill

(Continued)

Chronology of the Chelmsford Southerly By-pass Proposal (Cont)

D	22 Apr 1975	-	Second date for inquiry under F above
	7 May 1975	-	RAPE receive COBA, realise that central junctions are ill-important
	Between these dates		
		-	ERCU/RAPE agree on what the alternative is
	20 May 1975	-	Inquiry opens properly
	21 May 1975	-	ERCU provide 'preliminary' traffic flows for RAPE route
	30 May 1975	-	RAPE commence evidence
	6 Jun 1975	-	Inquiry adjourned for Inspector to go to hospital
	Around 1 Aug	-	ERCU decide to take specialist agricultural advice
	Between these dates		
		-	ERCU produce actual traffic figures for RAPE's alternative
	10 Sep 1975	-	Inquiry resumes
	7 Oct 1975	-	Inquiry closes

6.1 Context of the Scheme

6.1.1 Whilst the M16 inquiry was attracting major attention in road planning and amenity circles, attention which shaped its character, some 15 miles away ERCU were facing another inquiry. By comparison this was a much more minor scheme. It was for an 8.6 mile looping by-pass to the south of Chelmsford through open countryside most of it farmed (Gardner, para 20.18). The extrication of the factors leading to ERCU's decision to press for a southerly route will be the major task of this chapter. For that decision created the context of the inquiry. Unlike Epping where the route was bound to run into virulent opposition and ran close to, or through, suburban homes and amenities - the idea here was to go for a route avoiding centres of population; that is a route on farmland and therefore we chose to study it as a contrasting example. Ironically, however, it may still have been the Epping Inquiry which influenced the decision. When the Inspector queried the apparent rush and incompleteness concerning the ERCU case he was informed that a major reason for this had been their "preoccupation" with another inquiry. (Ibid para 10.78) Perhaps this preoccupation is the explanation of the poverty of their preparedness. Or perhaps it was the lack of preparedness itself which convinced ERCU to propose a farmland route. That is, one affecting the least number of people.

6.1.2 In simple terms the proposal arose out of the congestion experienced by travellers on the A12, London to Ipswich trunk road as it passes through Chelmsford. It is a worthwhile exercise in this case to study not only the policy framework but the history of solutions prospected. The latter throws light on the strict framework of the decision-process, and in particular its response to certain constraints as they emerged. In the parallel thesis Hearne discusses this decision from the angle of economic appraisal. There is value in the interdisciplinary study here as it permits a complementary approach more suited to public administration andelucidation of its practice. This case is most useful to compare and contrast decisions as the avoidance of constraints with a more 'economic' or 'welfare' approach. This is a long-standing academic debate which, in the final analysis, tends to rest on the values of the scholar but is underpinned by empirical work. It is a potential of interdisciplinary work to recognise such debates and advance them where possible accepting always that they can never hope to match the rigours of the seminal works. (Downs, Little, Arrow, Diesing throws much light)

6.1.3 The first and principle constraint was the conflict between the extant A12 and the standards the DoE desired it to have. These standards were, above all, in terms of speed:

> "There is a need to provide a new route to a standard commensurate with the role of the A12 in the National Strategic Network."

Such a standard was evidently lacking because "considerable delays already occur at times on this road" and, it would be worse in future. (ERCU 1975 Document 3A, para 2.3) This perceived constraint was transformed into an imperative in March 1968 when the Chelmsford By-pass was admitted to the Departmental 'Preparation Pool'. Government policy expressed in the 1970 and 1966 White Papers emphasised the importance of avoiding congestion and proposed by-passes as a means of achieving this with environmental advantages for the relieved settlements. (Cmnd 4369 and 3057)

6.1.4 An important further constraint was added in March 1972 with the publication of another White Paper. This re-iterated the Secretary of State's belief that roads significantly promote economic growth, a belief which must be considered a policy insofar as there is little factual support for it. (Dodgson 1973 and 1974, Cleary & Thomas, Gwylliam) In accord with the policy it was decided to accelerate plans for routes leading to ports. The A12 served Felixstowe and Harwich and therefore, four years after it was put into the Preparation Pool, it was brought forward for speedy implementation. (Cmnd 4942)

6.1.5 If there was then a time-constraint in operation it was exacerbated when Chelmsford was selected as an appropriate case for experimenting with the then new public participation procedures. The exercise was

held in April 1973 and offered the public a choice of three routes. One looping to the north, one virtually along the line of the eventual southerly route and a central line, known after a major roundabout in the town as the Army and Navy route. It was found that some two-thirds of the replies favoured the southern route and in January 1974 "after careful consideration of all the factors involved" the Secretary of State adopted it. In November 1974, six and a half years after entering the Pool and two and a half after being accelerated draft orders were published. (Gardner, paras 2.01-2.13)

6.2 Agricultural Considerations in Planning the Road

6.2.1 The statutory duty to consider the requirements of agriculture has been noted. It was to become an issue of moment at this Inquiry following the decision to take a farmland route. The NFU were to argue that the only influence MAFF had had was via land classification maps. "The RCU" NFU asserted "received no expert agricultural advice on the land quality and farming activities in the area affected by the proposed road". They rejected entirely the "specious reasoning" of ERCU in looking to monetary compensation to take care of the agricultural problems, and asserted that the contrast of expert landscape evidence with lack of agricultural evidence showed a concern with 'form rather than function' in the countryside. Most

importantly, in fact a remarkable piece of evidence as far as the theory of agricultural consideration put to us by government bodies is concerned, NFU were to accuse the RCU of a lack of attention to statutory duty:

> "The agricultural implications of the proposal had not been studied or referred to the Ministry of Agriculture for advice. For this reason alone the proposal ought to be set aside." (Gardner, paras 7.20-22)

This assertion was not refuted.

6.2.2 Counsel for ERCU was forced to try and answer this point and did so on the basis of pointing out that originally there had been seven routes considered, four of which were "rejected for reasons that included greater severance and loss of agricultural land". No evidence was, however, brought forward to sustain this contention. Counsel picked his words carefully but never denied that ERCU had failed to take any detailed agricultural evidence. The Inspector records his submission in terms which may be considered a masterly example of the Counsel's art. From a critical standpoint we must find it a truism worked up into an argument by its very circularity:

> "The Secretary of State was required, under section 7 of the Highways Act 1959, to have regard to the effect a proposal might have on the requirements of agriculture. He asked me (the

Inspector) to reject the implication that the Secretary of State had not done so, as the Act required, merely because the southern route took agricultural land and caused severance."
(Ibid, para 19.04)

The Inspector, an Under Secretary at MAFF from 1953-70 and an Assistant Secretary there for another 8 years prior to that (Horam) rejected this appeal. He found "a certain substance in the criticism made by the National Farmers Union that agricultural interests had been insufficiently taken into account". (Gardner, para 22.30). This is a serious finding and must have influenced the decision to hold a full-scale re-examination of the central (urban) route. By contrast with M16 Chelmsford provides a case where the distinct possibility is that the farmland route will be rejected. (DoE, Eastern Region, Letter CE203/3/26/05)
It will be shown that, in some senses, this decision was as agriculturally unsound as any at Epping.

6.3 <u>ERCU's Agricultural Case</u>

6.3.1 In the original document issued for public consultation in 1973, the last sentence of the section on the southern route was: "It would require the demolition of 5 dwellings, and would affect a number of farming interests, and involve a degree of severance which is considerable." (DoE 1973B, p 7) The same lowly position was occupied by agriculture in the Secretary of State's statement at the Inquiry.

The last sentence of the 16 page document read:

"9. AGRICULTURE

9.1 The proposed road runs across agricultural land and every effort will be made to minimise the effect on agricultural operations."

The only other fact of agricultural interest was the costing of the proposal for a dual 2-lane road, at December 1974 prices:

Roads	£10.67m
Structures	£3.63m
Alteration to Statutory undertakers equipment	£1.35m
Land	£1.01m
Total	£16.66m

6.3.2 The Southern was overall the cheapest of the routes but we do not have comparative figures for the land costs of the alternatives. Comparing this route with M16 (dual 3-lane motorway) we find:

	Chelmsford	M16
Land as % of total cost	6.06%	11.5%
Land cost per mile	£117,400	£238,882
Land cost per acre at 35 acres per mile [1]	£3,354	£6,825
Land cost per acre at 25 acres per mile [1]	£4,696	-
Total cost per mile	£1.94m	£2.74m
Theoretical price if all on agricultural land at 35 acres per mile and £1,000/acre	£301,000	£551,000
Theoretical price if all on agricultural land at 25 acres per mile and £1,000/acre	£215,000	-
Agricultural land as a theoretical % of total cost	1.3% (25 acres/mile)	1.27% (35 acres/mile)

[1] Figures for motorways and trunk roads respectively, See Bell 1978A

6.3.3 These statements were sent out in advance of the inquiry and were presumably prepared somewhat earlier than the Inquiry proof of ERCU's group engineer. After describing the problem of junction delays in Chelmsford and potential traffic flows on a by-pass he went on to describe the effects. Some 312 acres of land would be required, 274 acres (87.8%) of it agricultural. Three acres were common, five and a half woodland and the rest presumed to be 'urban' in some way: - this included an area of gravel pits. The figure of 9.4% non-rural is slightly below national estimates for the proportion in the country which stood at 9.9% of the land surface of England and Wales in 1961. (Best 1976 p 9) The agricultural take is however well above the national figure of 79% for the United Kingdom (MAFF 1973A, p VII). From a reading of the evidence as presented it is reasonable to surmise that the land grouping was done from maps rather than 'on-the-ground'. The paper goes straight on to describe the land:

> "All but a small proportion of the agricultural land is classified as Grade 3 ... but since this is only a general guide some areas of land may be in fact of higher grade."

The issue of land quality came to absorb considerable time later and it is worth our bearing in mind the limit of ERCU's evidence even by the inquiry stage.

6.3.4 ERCU had found there to be 18 farm units affected by the line. Of these six "could be said to be only slightly affected in terms of severance of the unit although of course land is lost from the unit". This left 12 units significantly affected; and the role of the public local inquiry was called into question regarding provision for them. In contrast to M16 where accesses were discussed with Messrs. Padfield, Watt and Collins as well as the Copthall Estate, at this inquiry ERCU eschewed all responsibility for underpasses or bridges as not being an administrative matter. The argument merits quoting fully:

> "Compensation will be payable to affected owners and/or tenants. In some cases the amount of compensation payable may justify the provision of an agricultural bridge or underpass. Compensation is a matter to be negotiated between the affected parties and the District Valuer of the Inland Revenue Service after the line of the by-pass has been confirmed." Emphasis added (Document 2A, para 2.15)

6.3.5 Such an approach to decision-making throws up a range of fundamental questions:

a. How is the road costed if compensation has not been included?

b. What is implied in the figure for 'land cost' if there has been no assessment of the amount of severed land they may be required to purchase?

c. How can this be considered the 'best' route agriculturally (and generally) if the costing of potential loss has not been carried out?

d. Compensation is a matter of before and after valuations. Does the government then accept that the drop in market value at the date of entry is to "justify" or not the provision of long-term agricultural access?

e. The rule we came across elsewhere was whether the value of the land severed was below the price of accommodation. If then land price is the ultimate test and the land could (theoretically) be idle because its discounted present value failed to equal the cost of access to it then logically do the government accept that price as the sum total of agriculture's value? This could occur (other factors such as cost of working being equal) if a substantial area of land was trapped inside an interchange with no opportunity to be thrown in with other such.

f. Following from the above there would appear to be little use for an inquiry into a by-pass through agricultural land. If the maximum loss sustainable by the nation is the price of agricultural land at the date of entry then an inquiry into severance effects which cannot be costed by the District Valuer until after

the Inquiry anyway would appear to be largely a waste of time.

g. Is there not something contradictory about the fact that should the farmer wish to build a bridge or underpass for himself, where the government have refused him one as 'not justified' the selfsame government will give him either 20% or 50% of the cost in grant aid, depending on geographical location? This is an eligible item for Farm Capital Grant. (MAFF 1973, Appendix C item 7)

6.3.6 These are some of the points raised by an 'abdication' of administrative responsibility in favour of a strict valuation test and shall be discussed in relation to our other evidence. The above are points to bear in mind for contextualising the narrative. The Inspector was not satisfied with the ERCU submission on agricultural severance and two further elucidatory papers were submitted on days 4 and 11 respectively. These were not numbered or formally recognised in the Inspector's list of inquiry documents. The farmers and holdings involved will be alluded to frequently and the further, purely factual, evidence is summarised below for reference. All supplementary calculations have been prepared for this chapter.

Table 6.1 : Farms Affected by Chelmsford Southerly By-pass (ERCU Assessment)

(Acres)

Farmer	Interest/Status	Total Holding	Land Required for By-pass (%)	Land Severed (% of remaining holding)
1. A.J. Magness	Owner	274	11.3 (4.1)	43 (16.3)
2. A.H. Currie	Owner	165	10 (6.1)	21 (13.5)
3. D.T. White	Owner	77	6.8 (8.8)	1.5 (2.0)
4. A.R. Smith	Family Tenant	155	0.8 (0.5)	0.5 (0.3)
5. F. Wreathall	Family Tenant	391	20.4 (5.2)	26 (7.0)
6. C.G. Cottey	Owner - part tenant	165.5	14.7 (8.9)	19.8 (13.1)[1]/36(23.8)
7. K.E. Howard	Owner	416	35.3 (8.5)	92 (24.1)
8. H. Killian	Mushroom Farm Owner	35	4.5 (12.9)	4[2] (13.1)
9. D.D. Coates	Owner	165	2.1 (1.3)	0
10. R.J. Hodge	Owner - part tenant	779	45.7 (5.9)	135 (18.4)

(Acres)

Farmer	Interest/Status	Total Holding	Land Required for By-pass (%)	Land Severed (% of remaining holding)
11. J. Barr	Family tenant	240	4.9 (2.0)	9 (3.8)
12. F.S. Cordell	Tenant	59	0.09 (1)	0
13. A.H. Speakman	Various Tenancies	511	13.6 (2.7)	233 (46.8)
14. W.J. Thorogood	Pension Fund Tenant	512	27.9 (5.4)	66 (13.6)
15. E.W. Bucknell	Owner	26	6.5 (25.0)	17.6 (1.7)[1]/90.3(8.7)
16. D. Fleming	Various Interests	171	15.4 (9.0)	13.6 (6)[1]/8.7(3.8)
17. Co-Partnership Farms	Pension Fund Tenant	1015	55 (5.4)	132 (13.7)
		Total	275	772

1 Different figures given by ERCU in the two papers

2 Not listed by ERCU as a farmer

Note: Two under one acre losses were exluded from ERCU's table as they are here

6.4 NFU Evidence and Case

6.4.1 On most road schemes NFU can advise members but have to shy away from objecting to any route because it might mean shifting the route onto other members. In the Chelmsford case, however, they were faced with an opportunity, arising out of the very nature of the proposal, to defend agricultural interests. There was, of course, the need either to proffer an alternative or prove the road unnecessary.

6.4.2 Their tactic, decided before the Inquiry, was to emphasise the agricultural injury which would be caused by the southern route, and the lack of consideration given by ERCU to these aspects. On further study of the proposals and their background important complementary facets arose. From their pressure-group point of view the aspect to be emphasised was the change in design standards which meant that a dual 2-lane road was now applicable where, at the time of the Public Participation exercise, dual three had been required. At M16 the importance of outdated, rigid standards was shown. In the case it was contended by NFU, the decision to ignore a central route was taken at least in part because of the determinant affect of the previous design-standards. A 2-lane road at a more modest standard meant a much less destructive central proposal could be promoted, relieving the constraint of building demolition and associated environmental disturbance.

6.4.3 NFU established that the ERCU comment on land quality was derived from the MAFF Land Classification Maps. The Wolfson Team have closely reviewed the aims, development and use of these maps as planning tools and been disturbed at the potential ramifications of their use in untrained hands. In this case, ERCU admitted, the limits to their knowledge were delineated by the contents of the booklet accompanying the maps. Some of the limitations of the maps were exemplified in the NFU evidence as presented by P.W. Trumper, FRICS. He is a past-chairman of the Chartered Surveyors Agricultural Division and, inter alia, was for five years a member of the government's Agricultural Advisory Council during which time they produced their renowned report on 'Modern Farming and the Soil'. (1970)

6.4.4 Such expertise was to prove vital to NFU's case as, in the absence of any MAFF representation, it was difficult to challenge his evidence. Mr. Trumper had been instructed by NFU a month prior to the inquiry with the brief:

> "to examine the effect it would have on the economy of the farms through which it passes, and to assess the damage which it would cause in national terms to British Agriculture."

In view of the eventual decision on the road and the importance of the evidence given on national effects,

it is worth our remembering that at a line inquiry such as this neither NFU nor any of their members who appeared to support the case could claim any costs whatsoever. (Draith & Lamb pp 285-7). At the Compulsory Purchase stage a 'victory' would have entitled them to full costs. In view of the DTp's comment on the Information Pack (see the Corrigenda Bell 1977) it is worth noting that neither NFU nor individual farmers recovered any costs for their successful objection in this case.

6.4.5 Mr. Trumper accepted that the land affected was shown on the Classification Maps as grade 3 or 4, but, as the explanatory booklet ERCU had used pointed out, there were important caveats. (MAFF 1968). The two most relevant factors were:

a. areas under 200 acres are generally not exact

b. grade 3 on the map covers a broad range of soils

He had therefore taken a specific survey himself and found the market garden soil at the eastern end of the route to be 'misgraded' due to the above constraints. Not only did they grow a wide range of vegetables but also were capable of double cropping. His conclusion was assertive: "It is undoubtedly within Grade I".

The portion of this area lying within the potentially floodable area of the Chelmer Valley he placed in

Grade II. Overall he found:

Table 6.2 : NFU Experts Survey of Chelmsford By-pass Soils

Grade		Route Length (miles)
I		2.0
II		1.0
III (top end)		1.3
III (middle)		4.0
Gravel Pit		0.3
	Total	8.6

6.4.6 Mr. Trumper found himself, despite his breaking-down of grade 3, still unable to discuss routing questions except in terms of the two upper grades. Grade 3 is simply too broad, and covers too much of the map to allow reasonable comparisons. For the second problematic facet of the Land Classification as a routing tool is its exclusive concentration on physical land quality. Mr. Trumper's criticism encapsulates the difficulty:

> "Management of course is a 'short term' factor, in that it may vary from generation to generation. But fixed equipment, farm structure and access are things which endure almost as long as by-passes. They are therefore things which require serious consideration in any proposal to take land away from agriculture."

6.4.7 Mr. Trumper's approach to this consideration is an interesting one, not least because of the mis-

interpretations of it which followed throughout the inquiry. The farms were assessed to have some £3 million in fixed capital not including drainage, machinery, roads or the land itself. Their overall position was then assessed <u>in his expert opinion</u>, taking into account:

- geographical location
- climate and topography
- access
- size, shape and layout
- farmhouse, cottages and buildings
- services
- soil and drainage
- fencing, shelter and amenity

Evaluating all these factors in as objective a way as possible he concluded that farms 16 and 17 (Table 6.1) were "within the best 10 percent of all the farms in the country in terms of quality. I rate the other farms as being within the best 30 per cent". The method of giving evidence to administrative inquiries based on the judgements of experts has certain advantages, not the least of which are its comparative cheapness and its comprehensibility by the ordinary objector. It is a great pity in this case that the Inspector misinterpreted the point being made. In the inquiry record Mr. Gardner appears to have the point in context; (para 7.09) but in his conclusions he loses the thread completely.

6.4.8 "It seems to me", the Inspector wrote, "to be pitching things somewhat high to put them in the top 10% on <u>land quality</u> ... It seems to me to be pitching things even higher to put the remaining farms ... in the top 30%". (Emphasis added) (para 22.36) The logic of the Inspector's conclusions will be discussed later. Before that the secondary damage foreseen by Mr. Trumper should be presented. He listed them.

a. the loss of 280 farmed acres

b. 500 acres would be severed, timing of operations would be interrupted and this might prove important on grade 3 land

c. the balance of holdings, especially in labour requirements, will be upset

d. over-capitalisation is a distinct possibility

e. urban fringe problems may arise in the town side

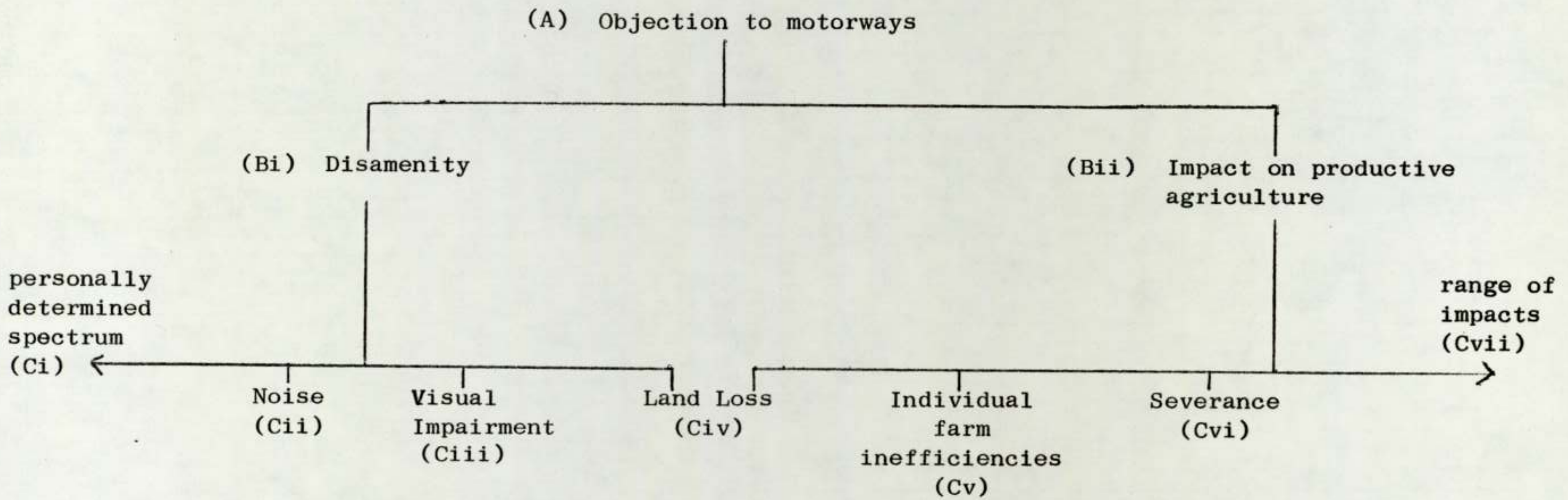
Mr. Trumper refused to try and put a money figure on the loss to British Agriculture. He preferred a formula assuming a fifth loss on land severed and affected. Again this eschewed the incomprehensible and para-scientific formulae advanced, for instance, at the same inquiry regarding visual intrusion indices counted in millisteradions, representing units of solid angular subtense [sic] (Paras 4.37-4.53, Document 3D) Mr. Trumper's formula was based on a strong commonsense notion - a farmer would prefer four convenient acres to

five inconvenient ones. When ERCU's engineer attempted to refute this by saying that a 5% level was as likely as 20% (Final Rebuttal, S. A4) the point could be met in a reasonably objective way by saying that a farmer might choose 4 convenient acres rather than 5 not so, but would not if it were 4 against 20.

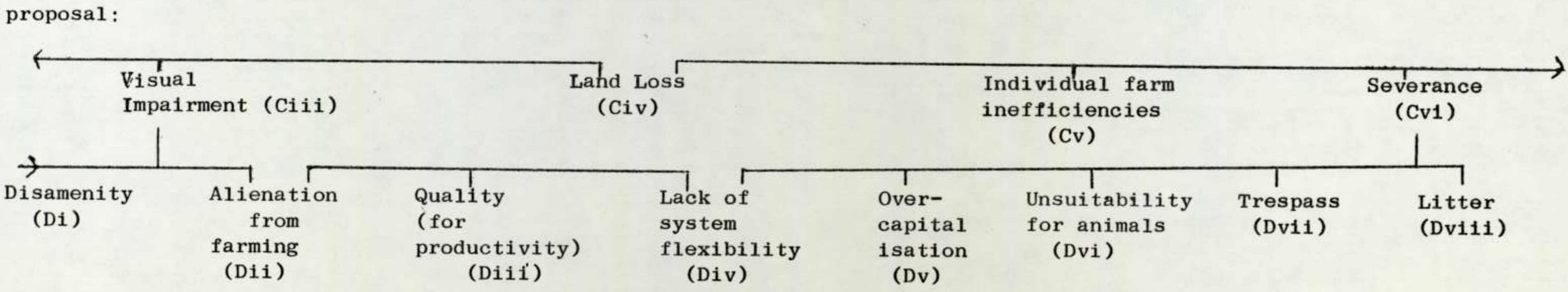
6.5 Agriculture and Amenity. The Rural Association for the Preservation of Essex (RAPE)

6.5.1 Addressing a group of affected NFU members at an initial meeting a headquarters representative pointed to the naivety of a comment from the floor that most local people wanted to protect farmland. If you were facing a proposal for the area to be developed as parkland, he retorted, you would not find a single local supporter. It is an exaggeration perhaps but captures a certain truth. The diagram below attempts to encapsulate this idea which is discussed with regard to RAPE the relevant amenity group. It is feasible to achieve position A via commitment-routes Bi or Bii. Both of these may involve facet Civ (land loss), but they need not. Neither does the exclusion of Civ as an important factor in any way break either commitment-path.

Diagram 6.1 : Commitment - Paths in a Rural Objection



A continuation of the diagram above might be illustrative of the factors perceived by a farmer faced with a road proposal:



The analysis illustrates the range of impacts to be ranked and distinguished in statements describing the critical place of land loss in attitude formation and decision-making. The above, more detailed level helps us see that the farmer's path to commitment at Civ may stem directly from some sense of outraged rusticity fusing with more prosaic factors at Dii, or directly out of 'grass-roots' economic impacts. Diii → Dv merging from Dvi into perhaps the realm of psychological worry which case studies have uncovered. It is feasible for a farmer to achieve an objection position at A without land loss being a concern. However as the Royal Town Planning Institute noted, any discussion of land or its development in general stirs up fundamental emotions and it is therefore dubious if any such objection would be expressed without some mention of it. (1974)

6.5.2 The points made above may help to create an impression in the reader's mind that here is a group merely wishing to shift a road from their own locality onto the central route in a crudely selfish way. This is much too simplistic. The idea of environmental or ad hoc objecting groups as openly selfish has been much discussed (Allison 1975, pp 100-106, see note 22, Lowe 1975B). Yet there is no necessary reason why opposition to a motorway but not to a parkland scheme should not arise from a genuine belief that agricultural land is more valuable than a

by-pass, but amenity space is more important than either. As a value-commitment this is as acceptable as any other.

6.5.3 RAPE itself grew out of a more nebulous moderately active group concerned at the general possibility of a southerly by-pass. When draft orders were published for the line in November 1974, it was reconstituted as RAPE. They met potential consultants only 8 days before the closing date for objections and at that time had no liaison with NFU and considered commissioning their own agricultural case. It is a remarkable reflection of the NFU's place as a puissant and respected interest group that one wonders whether (given equally good consultants) such a case made by an independent <u>ad hoc</u> body would carry as much weight. NFU's emphasis on the 'national interest' and use of the Inquiry "to convey to the Secretary of State" certain points admirably fits the British administrative culture (Gardner, paras 7.03-4, Beer, Potter).

6.5.4 RAPE is particularly interesting because the character of the decision trade-off at Chelmsford was reasonably simple. Once extraneous matters such as ERCU's misinterpretation of what central route was being proposed were finally tidied-up at the Inquiry, there still remained the basic question of urban versus rural. Quite fairly ERCU based their case on the importance of minimising disturbance to homes and people. Their 'Environmental Design Consultant', Professor Hopkinson

(whose evidence on visual intrusion was presented appropriately in Document 3D) summed up the decision context; in the absence of "guidelines on the relative value to the community generally of housing and agricultural interest, a decision had to be made based on what was believed to be the best interests of the majority of the local community". This point, the basis of their case, was made many times by ERCU. (Gardner paras 4.41, 4.52, 7.04, 10.44, 10.71, 19.14)
Opposed to this was the combined rural interest of farming and amenity. Table 6.3 presents a summary of their cases.

Table 6.3 : Cases of RAPE Supporters

Body or Person	Interest	Other Elements of Case	Agricultural Aspect	Importance of Agricultural Aspect
1. Chelmer and Blackwater Navigation Co	Statutory Objector	Amenity of River Some Commercial	None	-
2. Margaretting Parish Council	Statutory Authority	Visual, aural Amenity Drainage Road safety Disturbance	Oppose market value Food production Import dependance	Peripheral
3. Great Baddow Parish Council	Statutory Authority	Amenity (human and rural) Common Land Cost Public participation	Disturbance and Land take	Peripheral
4. East Hanningfield Parish Council	Statutory Authority	Rural Amenity Planning effects	Land take	Peripheral
5. Sandon Parish Council	Statutory Authority	Rural Amenity Access Noise	Support NFU case	Irrelevant
6. Sandon Society	Amenity Pressure-Group	Rural Amenity Planning effect Energy	Land take	Peripheral

Table 6.3 : Cases of RAPE Supporters (Cont)

Body or Person	Interest	Other Elements of Case	Agricultural Aspect	Importance of Agricultural Aspect
7. Danbury Society	Amenity Pressure-Group	Design Standards Recreation Road Safety	Land take	Fundamental
8. Country Land-owners Association	Interest Group	Rural Amenity Public participation	Support NFU case	Fundamental
9. Mr. Gascoyne-Cecil	Resident	Cost Traffic Predictions	None	-
10. Miss Baker	Resident	Economy/cost	Moral/ethical 3rd World malnutrition Sacramental land concept	Fundamental
11. Boreham Parish Council	Statutory Authority	Traffic Rural Amenity Road safety	Land take Gravel working Lack of MAFF representation	Peripheral
12. Mrs. Tate	Resident	Traffic disturbance	None	-
13. Stock Parish Council & Residents	Statutory Authority	Traffic disturbance Rural Amenity	None	-

Key to Final Column

Whilst any personal assessment of someone else's argument must be open to challenge the following working definitions were used:

Fundamental: Part of objection logically derived from these precepts

Peripheral: Extra element in objection unrelated to principal burden

Irrelevant: No evident connection with the overall objection

6.5.5 In Table 6.3 are only those objectors who styled themselves supporters of RAPE. There were a great many others, who gave evidence in similar vein with agricultural arguments occupying a percentage of their objections. RAPE cases alone however illustrate that, with notable exceptions, the general place of agriculture was an easily accommodated, generalised factor given greater or lesser prominence according to the author's whim. It is the very randomness that best illustrates the facility with which the arguments were 'bundled' into a broad ruralist opposition.

6.6 The Constraint of Design Standards

6.6.1 Consultants to RAPE pointed out that such was the strictness of design standards that any other arguments they could marshal for a central route would be fruitless unless the design criteria suited. The 'downgrading' of standards (i.e. higher traffic capacities permissable allied to new lower forecasts of traffic growth) thus became a vital element. The new standards were not published until August 1974 (DoE 1974A). The point being that the public participation stage was past and subsequent decisions were taken accepting the old standards as a constraint. The force of the totality of constraints being to leave the southern route as a preferred alternative. (Gardner para 2.16). The reader might gain from reference back to the 'Chronology'.

6.6.2 There was complex debate over appropriate design criteria. RAPE's alternative being acceptable only after hair-splitting categorisation. (Gardner paras 4.32 and 6.47) The use of a strict technical memoranda was questioned as having excluded a less-destructive central route. (Ibid 6.31). The rejection by Essex County Council in particular of a central route they otherwise preferred was purely due to these standards (Essex C.C. 1973). Indeed, one of the parameters supporting a southern route was that RCU's were still using outdated, illegal speeds for vehicles as part of their model simply because they had received no directive to change them! (Gardner, para 10.08 + 6.35-7)

6.6.3 It merits recollecting that the Inquiry was considering decisions of vital importance for people's lives and livelihoods. Administrative decisions supposedly aided by predictions of populations in specific areas, traffic route-choice, energy availability, car ownership and numerous other variables. The decision, from the Wolfson standpoint, would involve potentially significant injury to a dozen farm units. The Inspector captured the flavour of bizarre, other-worldly, almost surreal incestuousness achieved at road inquiries, the 'planning circus', as a national consultant described it to us. The fetishism of figures sets in and from being policy aids they become ends-in-themselves. The

quote merits its length:

"Mr. Ketley [ERCU engineer] asserted that, from the standpoint of design speed, the A12 should be considered as a whole, as a rural road, though its classification might conceivably give rise to difficulty where it passed through Chelmsford. RAPE referred to the recent Technical Memorandum H5/75 on 'Design Flows for Urban Roads' which, he claimed, superseded the standards in Technical Memorandum H6/74 for a semi-urban road. The appropriate peak hourly flow for A(4) from the table in paragraph 3 of H3/75 was 1,200 vehicles per hour in one direction; and this was well in excess of the highest figure - 1,436 vehicles per hour - in the recent County Council traffic count quoted by Mr. Ketley. Mr. Ketley acknowledged this but called attention to the proviso in paragraph 5 of H5/75, that these flows could only be carried on the road if the adjoining controlled junctions were capable of carrying them. Later he called attention to the fact that the opening paragraph said 'the controlled junction capacity would generally be a determining factor of the capacity of the road between junctions'. The tables only covered cases where working flow levels were not controlled by junction capacity". (Ibid, para 10.54)

6.6.4 The Inquiry was dominated by what might be termed 'anadministration', the deliberate avoidance of administrative discretion in favour of a para-scientific determinism. The details of the dispute simply do not merit close study. What is important is that until the central DoE amended its design standards and traffic growth predictions, then a farmland route was unavoidable. The question could only be one of route optimisation. By changing them, although still rigid, agriculture could be considered as part of the overall balance. In essence, the ERCU central route demanded the demolition of 170 houses, whereas RAPE's - with the reduced constraint of the new standards - would demand 9.

6.6.5 As can be seen from the Chronology the matter was complicated by the Inspector's illness and enforced adjournments. Local pressure, expressed in a somewhat yellow-press editorial, termed the Inquiry "the biggest farce of the century" and screamed for some kind of action from the "Whitehall bunglers" (Essex Chronicle 30/5/75) An objective assessment of the facts points to a rather subtler, and more insidious problem than a simple 'bungle'. It is that under pressure on time and other resources, administrators reacted by trying to put through an imperfectly considered alternative. Not only was Professor Hopkinson, their environmental consultant, not appointed until the date originally fixed for the inquiry, but detailed agricultural advice was eventually sought by ERCU only during the Inspector's second hospitalisation.

6.7 Individual Farmer's Cases at Chelmsford

6.7.1 The character of agricultural objections at Chelmsford was unlike those at other road inquiries in the locality. The routes of both M16 and M11 went through similar areas, but in this case the Union was able to take concerted action and supervise the presentation of individual practical farming details. Once, that is, a viable central alternative became possible. It is noteworthy that farmers here came to give their specific evidence at a 'line' inquiry rather than waiting until the compulsory purchase order stage.

6.7.2 Both the coordination of cases and the lack of any attempt at or ability in refutation by ERCU make it pointless to deal with the cases in detail. They are summarised in Table 6.4, and certain points stand out:

a. The high proportion of affected farmers who attended and/or made out detailed cases.

b. The strongly agricultural context of the objections and the depth of detail they presented for the Inspector and Minister's information.

Comparing it with the table of farms affected, (6.1), shows that all those significantly affected appeared and generally presented strong agricultural proofs. Of the four who did not attend, three lost or had severed less than 1.5% of their land, and the other was quite a small farm with 10% affected. One farm, Barr's, lost little and

was the only one to put in a mainly amenity-based proof. From all those significantly affected there were cases giving detailed - often very detailed - analyses of farm working and severence effects, usually with practical suggestions for alleviation. In terms of the Inquiry they represented the ideal support for NFU's general case.

6.8 ERCU Response to Agricultural Objections

6.8.1 If inquiries are to inform the decision-taker of the merit of objections, the quasi-judicial aspect of their functions as it is usually termed, then ERCU's performance at Chelmsford may be explained. They felt, it would seem, that the effect on homes of a central route far outweighed any potential agricultural costs. They had no need to make detailed assessments of these costs as the NFU and farmers themselves would provide the information. Superficially, such an approach might have considerable cost advantages, saving the public purse perhaps £10,000 in consultants fees. The savings in reality have not worked out so well with work having to re-commence but it is difficult otherwise to excuse ERCU of dereliction of a statutory duty.

6.8.2 ERCU's counsel told the Inspector that they did not formally challenge Mr. Trumper's evidence. As the Inspector very appropriately recorded:

"I would make the general point that it is a pity if expert evidence of any kind is not subjected to cross-examination by someone who is, at least, advised by experts. At the least, the expert

Table 6.4 : Analysis of Farmer's Cases at Chelmsford

Farm/Farmer	Farm System	Disturbance by Previous Public Works	Severance/Effects	Non-Farming
1. Co-Partnership Farms	Detailed	Detailed	130 acres severe Workers Cottage Lost	Peripheral Amenity
2. R.J. Hodge	Detailed	Detailed	135 acres severe Bridge wanted	Road Planning
3. C.G. Cottey	Detailed figures		18 or 36 acres difficult	Footpaths Road Planning
4. A. Barr	General		9 acres vague	Major amenity
5. K. Howard	Detailed	Outlined	92 acres, 2 miles trip: access strip or bridge wanted	
6. A. Speakman		R E L Y O N	NFU CASE	
7. D. Fleming 8. E. Bucknall		J O I N T L Y	30 acres access along diverted river	
9. A. Currie	Vague		21 acres	Peripheral aesthetics
10. A. Magness	Quite detailed "severe"	Outlined	43 acres underpass wanted	

Table 6.4 : Analysis of Farmer's Cases at Chelmsford (Cont)

Farm/Farmer	Farm System	Disturbance by Previous Public Works	Severance/Effects	Non-Farming
11. F. Wreathall		P R O - F O R M A L E T T E R	26 acres	Improve A12
12. W. Thorogood	Detailed		66 acres underpass wanted or 3 mile trip	Economic state of nation-allusion
13. H. Killian	Detailed figures	N F U EVIDENCE ADEQUATE	Many vehicles generated Extra travelling by workers	Aesthetics of Buildings

giving evidence in such a case, may feel less need to verify his references or substantiate his assertions." (Gardner, para 22.35)

In reality ERCU's group engineer attempted to answer certain of the points in his final rebuttal. He pointed out:

a. That management or investment may increase yield, but not alter grade of land, not being long-term factors.

b. That the classification is not likely to be two grades out.

c. That a fifth loss due to severance was questionable, only small areas would be difficult to manage.

d. That if there were problems, they were compensatable.

6.8.3 This attempted refutation, it has been learned, was based on a brief reply letter from agricultural consultants refusing to be called in at so late a stage (see Chronology). The quality of decision-making is little advanced by these counter-assertions on which comment is merited. The first is true but irrelevant, grading is a matter of range of cropping not yield at all. The second is simply wrong, there is ample evidence of, say, grades 2 and 4 adjoining on the map but there being no difference on the ground for the distinction. Square 38/57 of Sheet 165, which we have surveyed contains 3 grades with arbitrary distinctions. MAFF did not

design them to cover such detailed assessment. The third point is correct and Hearne gives the Wolfson Team's view of the state of the art and outlines empirical work we have done. The last of these points merits comment by itself and is dealt with below.

6.9 Compensation and its Place in Decision-Making - Chelmsford Evidence

6.9.1 This series of case studies is not the place to enter into the theoretical complexities of the linkage between compensation to the individual and the taking of national decisions, for this see section 3.

Here the concern is with evidence of the manner of taking decisions in different cases.

6.9.2 The decision to build a road on a green field route involves an amount of damage to agriculture, damage which the national interest must properly take into account and minimise where possible. In a mixed economy it will also injure the private rights of those holding and farming the land. The compulsory purchase of their land is a forced sale, it is not a confiscation and the legal remedy is compensation for those damaged interests. Motorways are an acquisition whose major impact is in severing a holding and thus 'injuriously affecting' it. The acquiree has a right to compensation for this although, in the words of a leading scholar, the law "is in a sorry state because of a statutory neglect and judicial mishandling". (Davies 1972, p3)

6.9.3 Road building is a public national decision, compensation on the other hand is redress for private rights infringed. Subsidiary administrative decisions intended to minimise the former should not be confused with valuations of the latter. At Epping certain matters - Mr. Collins' new roadways and stream bridges and Mr. Watt's side road problems for example - were met by ERCU with the assertion that they were matters for compensation, not administrative decision. Indeed, it will be recollected that in one case ERCU insinuated that the objector would be better off waiting for compensation than having the Minister take an administrative decision.

6.9.4 At Chelmsford there were again examples of this anadministrative approach. The matter of agricultural compensation was not mentioned in the formal opening statement, the only reference was to buildings. The wording is important:

> "The Secretary of State is always concerned about the effects of a new road on people's properties. Demolition of properties has been kept to a minimum and compensation will be paid to those persons affected."

Clearly here, compensation is a fall-back matter and administrative skill has been deployed to minimise harm to houses.

6.9.5 Regarding farmland however it would seem that ERCU started from a land valuation standpoint, which calls into question the decision-process prior to opting for a farmland route. In his opening statement the ERCU engineer referred to compensation as being payable to affected farmers and the possibility that such compensation "might justify" the provision of an access. (Document 2A, para 2.15). In the positive direction (other things being equal) this is perfectly logical. Used loosely, an access might be 'justified' by a number of factors either singly or in combination - good balance of the holding, connection between certain crops and ancillary facilities (hops, fruit) or in this case the reflection of such factors on the market value of the holding. It is when there is the negative use of such arguments that grave problems may arise. Even the positive use of the method in a determinist fashion - rather than as a guideline - however constitutes a lapse of administrative decision-making.

6.9.6 Unfortunately, not only do ERCU appear to have lapsed in that direction but to have done so in a rather limited way; limited by convenience. A very telling exchange for the Inspector and student of decisions alike was between the NFU and ERCU. Picking up the above point NFU asked how the 1973 Land Compensation Act had been accommodated into the decision process, coinciding as it did with thereconsideration of the proposal

following public participation. Reference had been made to the - at that time - Compensation Bill and its importance in the Consultation Document itself. (DoE 1973B pp 2-3) Whilst those affected by noise on the existing town centre route could not receive the benefits of the Act unless some new scheme were made (Land Compensation Act 1973, S9), it was quite rightly pointed out that few people would favour a larger road past their house in order to obtain double-glazing (Gardner, para 4.60). In which case there would seem little point in ERCU's having cited the Act at all.

6.9.7 The NFU attacked ERCU's reliance on compensation arguments on 2 distinct grounds:

a. that it did not fully meet the loss of individual farmers

b. that in any case this was a totally different matter from the loss to the national farm (ERCU, 1975, Document 6A, para 5)

This second point was at the heart of NFU's evidence and they talked consistently in national terms. Their members put the individual side of the case and those who had been previously disturbed by public works were firmly of the opinion that compensation had not met agricultural loss (Ibid, Document 5H + 6B). One farmer pointed out a simple example where compensation and overall loss differed. The tenant of a tied cottage

would lose his home without any right to compensation whatsoever, leaving valuable animal stock and buildings untended. Such facts were clearly not known by ERCU and could therefore not have been taken into account in their decision in favour of the Southern route.

6.9.8 The sorry state of the proposal, put forward with a number of unknown or half-known facts was further emphasised by access discussions. Messrs. Hodge for instance with 135 acres (18.4%) of their 100 cow dairy farm severed, came to the Inquiry to request a bridge. They understood that it might be expensive to place it on their present direct track (crossing slip roads too) and were prepared to adjust to suit. ERCU were less well prepared and could only reply that "informal" discussions with MAFF and the D.V. had taken place to see if a bridge was "justified on compensation or other grounds". If the route were confirmed then discussions would continue. The Minister would thus be taking the line decision in the absence of facts related to the costs of that line.

6.9.9 Mr. Hodge had also supplied the Minister with information on the costs of disturbed field shapes and drainage. ERCU did not appear to welcome this useful information on the farm system and dismissed it as "largely matters of compensation to be dealt with at a later date if the route was confirmed". (Gardner, paras 7.23-31). This is perhaps the most extreme example of such a response, but illustrates the table below which summarises ERCU responses to individual farmer's cases.

Three points stand out:

a. There appears to have been a conscious decision during the adjournment to try and meet cases. Compared to Hodge the question of leaving it to compensation was used a little less blatantly.

b. D.V. information may still underlie most of the decisions to meet points. In all but one case the problem was access, whether by negotiated easement or land purchase, and presumably therefore comparatively cheap. However no reason was ever given why they differed from those accesses (Howard, Fleming/ Bucknall) which could not yet be agreed. In one case however (Thorogood) ERCU fell back on valuation rather than leaving it for the future. Again then, cases vary inconsistently.

c. No reason was ever given why certain points were not answered. Farm system matters were totally ignored.

Table 6.5 : ERCU Response to Agricultural Objections at Chelmsford Chronologically Arranged (Reasons in brackets)

Farmer	Met	Opposed	Delayed	Ignored
Co-partnership		No Reply		
Hodge	Limited Reply		Overbridge. Field pattern Drainage (Compensation)	Income drop Construction disturbance Shoot disturbed Side roads (none)
Cottey		No Reply		
Barr		No Reply		
		A D J O U R N M E N T		
Howard	Access strip across neighbour (none)	Bridge probably not provided (cost)	Access across garden (time) Bridge negotiations to continue (cost/compensation)	Drainage system Farm system (none)
Speakman		Abandonment of A414 junction (traffic)		

Table 6.5 : ERCU Response to Agricultural Objections at Chelmsford Chronologically Arranged (Reasons in brackets) (Cont)

Farmer	Met	Opposed	Delayed	Ignored
Fleming Bucknall	Access strip for Bucknall over Fleming's land. Cattle drove at foot of embankment. Headroom under river bridge. Drainage (none)	Abandonment of lay-by (Traffic)	Access from the strip and drove over water authority land to fields (time)	
Currie		That severance would be severe (present trips)		
Magness		Underpass (cost)	Field Re-organisation (Compensation)	Farm system (none)
Wreathall		No need for road (traffic)		
Thorogood		Land quality (commonsense)	Access with Fleming/ Bucknall (compensation)	Farm system (none)
Killian	Access strip (none)	Alternative route (cost)		Farm system Workers Access road (none)

Note: for the problems of the 'no reply' cases see Table 6.4

6.10 Inspector's Agricultural Conclusions

6.10.1 To take detailed matters first, the most disturbing conclusion concerned Mr. Howard's 92 acres of severance. It was not only in the agricultural sense that there was a strong case for a bridge. There were three used footpaths which could combine to go over it too. The Inspector recorded a strong opinion regarding the County Council who had failed to appear and whose opinions were only known because RAPE had the minutes. This in itself was difficult. What made it more so was that ERCU had contended that Mr. Howard's farm/footpath bridge was probably too expensive and should be dealt with as compensation after the order was made. In fact, according to correspondence supplied to the Inspector (as is normal practice) prior to this ERCU had positively offered a bridge to the County contending it was quite feasible given the connection of interests.
"I am", the Inspector wrote "unable to explain the conflict between this letter of 26 March and the evidence given by the Department at the Inquiry in reply to Mr. Howard's case ... on 16 September." (Gardner, para 20.47)
He was equally unable to explain why he only received the one letter, which was clearly part of a series, when it is normal practice to pass all correspondence to Inspectors. He concluded that on the evidence given to the Inquiry (and not refuted), a bridge was justified by the agricultural disturbance to the "production" and "management

of the holding". Indirect access was "unsatisfactory ... for many reasons". Naturally footpaths should be routed across it too. (Gardner 20.48)

6.10.2 In the case of Mr. Hodge's severance the Inspector felt less sure. There were, however, considerable problems and he was displeased that Mr. Hodge's farm expansion plans (up from 40 to 100 cows and into bulk milk) were held up whilst ERCU had no solutions to offer. This was emphasised in his rather cutting summary of the Fleming/Bucknall track.

"In this case the Department had a positive suggestion to make" The suggestion was no more than to agree to the solution worked out by the farmers themselves. The Inspector recommended that the DoE should take responsibility for serving CPO's on the other authorities concerned (Water Board and County Council) to ensure access. (Ibid, paras 20.32 + 20.08). Again and again the Inspector picked up the lack of constructive proposals. He enunciated the problems farmers faced as much or more from the lack of initiatives on accommodation works than from the fact of the possible road itself. In the case of Mr. Thorogood, for instance, the question of bridge design and whether it could accommodate all appropriate equipment for modern horticulture " could not entirely be left to discussions with the District Valuer". The uncertainty was again blighting their development planning. (Ibid, paras 20.34 + 22.08).

6.10.3 On the bigger question of the road itself the Inspector accepted the point that agricultural disturbance was the main problem on the southern route. The case made out by the Inspector, and before him by objectors, for a virtually complete re-appraisal of the scheme is a unified one with traffic, social, environmental as well as agricultural aspects. It is excellently summarised by Mr. Gardner himself and quoted fully at the end of this section.

6.10.4 The Inspector accepted NFU's assertion that insufficient attention had been given to agricultural requirements. This showed up in the inability of ERCU to meet points raised at the Inquiry when these should have been dealt with as part of the planning process. Investment had been inhibited by a lack of definitely formulated plans. Merely saying that agriculture was 'taken into account' he reported, did not make it so. Neither did saying that every effort would be made to minimise problems during construction do so. Farmers appeared who were affected by earlier by-passes or pipelines. The Inspector accepted that these had brought interference with services and drainage disruption, whilst those concerned had had to devote considerable time to monitoring affairs.

6.10.5 The strong line on lack of preparation before the Inquiry was continued regarding the idea that the main decision could be taken whilst related matters were left

to compensation:

> "Mention was made of the payment of compensation to individual owners and occupiers; but it needs to be said that the Inquiry is not concerned with this but with the damage to farming and food production from the local and national standpoint. A number of matters affecting particular farm units have been left in the air as matters for discussion with the District Valuer. They are also, if unresolved, part of the debit balance against the southern route ..."

6.10.6 The Inspector regretted the lack of agricultural expertise on the ERCU side and felt that, given his MAFF background, it behoved him to offer the Secretary of State the benefit of his personal assessment based on site visit evidence. He accepted Mr. Trumper's working estimate of a fifth loss from severed land as 'not unreasonable', but felt called on to the dispute the assessment of land quality. Unfortunately, it is only correct to say this quibble was founded on wrong premises. Mr. Trumper, it will be recalled, placed the farms as either in the top 10% or 30%, <u>all factors considered</u>. The Inspector misread this as "on land quality" although it made little difference to the conclusion. The Inspector found the fact that (as Mr. Trumper said) management and investment were vitally important to the quality of the units, to be <u>a fortiori</u>

an argument against the road as it would disrupt them. On this he based his conclusions and the relevant parts are given here:

"2. It is generally accepted that conditions on the existing A12 are unsatisfactory and likely to get worse; and that something needs to be done. The alternatives before the Inquiry were the proposed southern route or some form of so-called Central Route ...

4. The proposed new route would be some 8.6 miles long replacing a length of some 7 miles on the existing A12 between Margaretting and Boreham. However, the main need for improvement on the existing route relates to a length of some 3 miles between Widford and the Oasis. So, effectively, one is comparing the construction of 8.6 miles of new road with the improvement of some 3 miles of existing road ...

6. My conclusion is that the Department did not establish that decisive weight should be given to environmental reasons in favour of a southern route, overriding the traffic and economic reasons in favour of a Central Route. Without wishing to minimise the environmental problems that any Central Route, however carefully designed, would cause, my view is that the Department over-estimated them; and that it correspondingly underestimated the damage a southern route would

cause to the environment in general and to agriculture and food production in particular ...

8. A Central Route could be designed that would be preferable to the southern route from the traffic and economic standpoint and that would cause considerably less environmental damage than the Central Routes hitherto considered by the Department ...

9. I accept the desirability of uniform standards; but would not necessarily accept that such uniformity is essential throughout the length of the trunk road in Essex. In the particular circumstances of this case, I would suggest that the possibility of a road to a lower design standard than 70 mph should not be excluded ...

11. In assessing the environmental damage to residential properties from a modified Central Route, regard should be paid to the damage many of them already suffer from traffic on the existing A12 and the limited relief that would be afforded to them if a southern route were constructed ...

12. In relation to the southern route, I have indicated the environmental consequences and have set out, in paragraphs 22.30 to 22.37 the reasons for my conclusion that the Department seriously under-estimated the damage its proposals would cause both locally and nationally to agriculture and food production ...

Recommendation

Accordingly I recommend that the Department should take no action on its proposals for a southern route and that it should re-examine the possibilities of a Central route."

Mr. Gardner expressed the hope that acceptable measures for agricultural impact could be found to match those for noise or environmental disturbance. The impression those which have been devised have had on decision-making will be discussed in the last of these case-studies. The Wolfson Team's review of the methods themselves is presented by Hearne, and conclusions from both studies are drawn later. Before moving on however it is worth repeating here that assessments of development impact on agriculture have been steadily improving since the end of the 1950's. Large-scale studies of projects such as the third London airport (Wibberley and Boddington) and Milton Keynes (University of Reading) were well before 1975 and at the same time as the Chelmsford Inquiry agricultural consultants were appearing for another RCU at the A55 inquiry in North Wales. Any suggestion therefore, as there was at Chelmsford, that the ERCU had no agricultural tools at their disposal is incorrect. Indeed as has been said they tried to take consultant's advice during the second adjournment but were turned down because no consultant, by that stage, could have had a free hand.

CHAPTER 7

THE BEVERLEY SOUTH-WESTERN BY-PASS

"Below me in green fields lay the ancient town of Beverley. There come moments in England when travellers pause in their journey, brought to a full stop of mind and body by a beauty so sudden, so old, so right and so English ... a man should not be ashamed to fall on his knees by the roadside."

(H.V. Morton 'The Call of England' p 24)

SUMMARY

The Beverley case was brought to the Group's notice as one where the RCU's lack of agricultural expertise had driven them to base national decisions on anticipations of individual compensation. The by-pass was strongly desired locally and thus agriculture was the only real concern. Unlike Canterbury in the next chapter, rather than attempt to minimise farm impact, the RCU shied away from responsibility. A distinction is drawn between the superficial fact of sheer bad administration, and the underlying one of MAFF, the District Valuer and the RCU speaking in different terms, drawn up for different purposes.

7.1 Context of the Case Study

7.1.1 The hypothesis carried through from the above cases is that different public inquiries (and the ultimate decisions with which they are concerned) may take on different 'characters'. The identification of such a character may be both an interesting and enlightening way of approaching them when looking at the treatment of a particular aspect. Raphael in his pithy polemic on the ends of political philosophy points out that there is a necessary difference between epistemology and social science, especially when the latter is dealing with dynamics rather than the universals of the former (1970, Ch I). These case studies are looking at a dynamic amongst dynamics, and similarly there is a possibility that the search for a general concept of 'the public inquiry type decision' might well mask the reality. If one end of conceptualising is to explain x in general terms, from y number of specifics then there might well be more gained by looking at varieties of x : x_1 x_2 and so forth. Their essence, what makes them x rather than z is then best dealt with separately, in this case in the section on the inquiry forum in general. (Chapter 9)

7.1.2 Thus far factors identified as being relevant to decision-making on agricultural impact include the style of opposition groups, the perceived amenity value of the area and the predelictions of the decision-maker (particularly Inspectors). There have also been indications

of a tendency among certain administrators to abdicate responsibility in favour of treating decisions as matters for solution on a valuation basis. An extreme example of this approach occurred on the Beverley South-Western By-pass, a scheme proposed by the North Eastern Road Construction Unit. As Chelmsford NFU successfully brought out that the RCU had taken no agricultural advice, Beverley illustrates the problems a fortiori.

7.1.3 It may merit repeating that from the outset the Wolfson Group liaised with both DTp and MAFF, and was officially told from both sides that there was little cause for concern, because MAFF were the 'advising' Ministry to DTp, the 'spending' Ministry. Although MAFF's role was secret because Government must 'speak with one voice' it was nonetheless real and effective. Two examples, from many, will suffice here. Commenting on the Information Pack first edition, DTp wrote:

> "Although the Department do not employ directly those involved in agricultural matters, the Department rely on the advice from the Ministry of Agriculture, Fisheries and Food on the affect of road building on agricultural areas." (Letter from Mr. Carrington, Midland RCU, Ref CM 94/12/001 pt 2, February 1977)
>
> "MAFF, and the Divisional Surveyor in particular are always consulted by Road Construction Unit at an early stage - long before the alignment of a

motorway is published."

(Notes for a Meeting between Wolfson Group and ADAS, South-West Region, 7/11/74) Emphasis Added

7.1.4 As well as the cases described here the Group also attended or reviewed a number of others (M42, M5, M40, A55) and was brought to the view (given the secrecy of MAFF's role) that either the official line lacked something in veracity, or MAFF's role was ineffectual - perhaps due to the lack of an effective input to the decision-framework in turn due to the lack of any empirical work on road impacts.

7.1.5 Beverley was brought to our notice when it was already well in train, in 1976, as a case where an exceedingly tenacious Inspector was (as at Chelmsford) refusing to accept RCU blandishments regarding their statutory duties. The issue was not finally settled until November 1977 (DTp/DoE Press Statement 430). As usual there was a background of alternative routes, and amenity/footpath objections. They need not concern us here for the character of the Inquiry turned on the evident general desire for a by-pass to the winding, historic town of Beverley. The DTp termed the by-pass 'needed', but it was in reality a want - albeit a strongly desired one. The question became then one of minimising the effect on agriculture (this issue dominated), i.e. optimising a given route. Again there was no fundamental costing in the appraisal process.

7.2 NERCU's Agricultural Case

7.2.1 At the Inquiry the Department's case for the road dealt with farmland by what might not unfairly be called the typical governmental generalised assurance:

> "Care has also been taken to reduce agricultural severance and landtake to a minimum and to preserve as much as possible of the existing woodland and other natural features."

No specialists or consultants were employed either on landscaping or agriculture, the two being clearly placed together in a "residual matters" category. It was envisaged that when "detailed design" commenced the RCU's own landscape architect would be called in. No further agricultural consideration was proposed. (NERCU, statement, paras 3.5-6).

7.2.2 The route was some 6 miles in length and had the smallest effect on agriculture possible according to the RCU's Explanatory Statement served with the orders. (Section 5). This was challenged by objectors and three alternative routes were proposed, each of them on the basis of lessened agricultural impact. NERCU adduced no evidence to support their case and the Inquiry lacked details of even the land classification and amount taken intrinsic to fulfilling the policy of as little and as low quality as possible. Neither was costing evidence given although again this was claimed to be in favour of the published proposal.

No consultants were employed by the objectors and these points were not pressed.

It has often been put to us by highway engineers that individual objectors do best when they do not hire consultants and rely on the goodwill of RCU's. This shall be borne in mind.

7.3 The Objector's Initial Case

7.3.1 There were 24 objectors to the proposal, 11 of them with land directly affected. The objections of the landholders were on mainly farming grounds. Although there were degrees of variation between the amount of detail included in the cases the Inspector chose to generalise the objections:

> "The main submissions of the objectors in this group in respectively greater or lesser degree, were: Loss of the best agricultural land for the roadworks, severance of the farms; damage to farm efficiency; loss of productivity; interference with drainage and with water supply; waste of capital invested in farm improvements; loss of value of the remaining land and buildings; hazard to machinery and animals in transit or moving about the fields and loss of amenities in the countryside at large and in the farmlands and farm houses themselves.
>
> "One farmer said he would suffer hardship. Others called it inconvenience. The wife of one farmer

was incapacitated and the roadworks would render her farmhouse untenable."

7.3.2 The objections were unco-ordinated and although alternate routes were proposed there was not the clear choice of alternatives put before the Inspector as at Chelmsford. The Inspector for this scheme, Mr. D. Farrer, OBE, BSc, FICE, FIMunE, FRTPI, FIHE, FInstArb, had no agricultural qualifications. In the absence of a concerted opposition he took on board two levels of agricultural objections. The general, as quoted above, was made even more general and in the absence of any detailed work by the RCU it is difficult to see how he could have built any framework for appraisal himself. Instead he concentrated more on the specifics of the case which were assimilable. The story of the Inspector's attempts to do his job regarding agriculture in the face of RCU apathy is the burden of this case.

7.3.3 Mr. Farrer early accepted the point that compensation was insufficient to "redress the long term damage to the nation's food resources which such facilities [accommodation works, especially accesses] would permanently avoid". There were four of these specific problems:

1. An intensive, high-quality integrated farming enterprise incorporating the Risby Estate and Messrs. Woodmansey's holdings asked for an "essential" bridge and a "highly desirable

tunnel ... The latter could with some loss of effectiveness, be of reduced headroom." They also asked that a grade separated junction be reduced to a roundabout saving 7 acres.

2. Maltas Farm bitterly attacked the RCU's bland compensation related assurances (compounded by the fact that the District Valuer had not actually been involved in the negotiations). They had been asking for the line to be moved to the edge of their farm from first hearing of it, and had gained their neighbours' full agreement. Nonetheless they could get no answer, they complained. They also raised drainage and access problems.

3. Broadgate Farm requested an underpass, the re-alignment of a bridleway and provision for an "extensive drainage scheme now in hand ... with the aid of a Ministry of Agriculture grant" to be modified.

4. ButtFarm would require an extra field access. (Farrer 1975, paras 18-22)

The NFU appeared as a body and emphasised many of the points made by individuals, putting their problems in the context of "Food from our Own Resources" national expansion policy. (Cmnd 6020)

It is the individual cases which dominate the Inquiry however and concentration must be on these. The involved, and at times direful, adminisstative facts of the decision can best be set out chronologically as the Inspector learnt them.

7.4 The Individual Farm Cases and RCU Response

7.4.1 Generally NERCU relied on their statement:

"Care has also been taken to reduce agricultural severance and landtake to a minimum".

Insofar as one can hardly believe that care would be taken to maximise both, this is sophism, if not worse. Yet in the face of specific objections they could produce no supportive evidence that any such attention had been given.

7.4.2 The farming enterprise which may be best subsumed as Woodmansey's was to dominate the Inquiry. The farm was a large, high-productivity unit which nonetheless had undertaken a substantial long-term, grant aided investment programme. The grants had come from MAEF under various statutory expansion schemes (MAFF 1973, 1975, 1975A, 1976A). MAFF, it will be recollected, advise the RCU engineers on agricultural questions. Yet they attended the Inquiry not to support the RCU's case but to endorse the Woodmansey's claim to an access bridge and underpass.

7.4.3 The RCU in no way refuted MAEF evidence but nonetheless argued that "the present day position seems

more relevant. The District Valuer's advice to the Department is that the cost of the bridge would substantially exceed the compensation payable without it. In the wider public interest therefore the bridge cannot be justified." It might be questioned whether there is not something illogical in this. The "wider public interest" being more related to long term agricultural productivity than short term individual interests in land. To this we will return.

7.4.4 The reduction in scale of the interchange (saving 7 acres) was rejected too as it would not be able to cater for traffic at the appropriate speeds. As can be seen from Chelmsford and Hearne's analysis of the COBA method of economic appraisal, the question of time saving is a most critical factor in assessing any road's potential. It is therefore equally the factor which tends to make agricultural costs a matter of secondary optimisation rather than intrinsic to the good of the road itself.

7.4.5 Maltas Farms' request for a shift in the line was rejected by the RCU as was the alternative option of an access bridge. This latter, NERCU claimed would cost some £75,000 and make for 3 crossing places within $\frac{3}{4}$ mile. "Any inconvenience in farm working due to this would be a matter for compensation by the District Valuer". (There are three crossing

places, one of them a very substantial agricultural overbridge on some ½ mile of the M40 section we have studied.) Of the two crossing places remaining to Maltas Farms, one was a roundabout. Near this the RCU would provide him with a new private means of access " which would be suitable for vehicles but not for livestock because that would involve driving animals over a trunk road roundabout: that could not be tolerated." (Quite apart from the disturbing use of the Highway Act power to restrict private access to create a new de facto power to restrict the use of the Highway, in Cumbria a farmer was refused severance provision and told he had to walk his cows round the M6/A6 roundabout.) The animals would have to go round via a side road. Responses to agricultural problems once again seem to lack consistency or an underlying rationale.

7.4.6 The final request of Maltas Farms was for some knowledge of, and assurances regarding, water supply and farm drainage proposals. The reply was that the "Department has always given reasonable satisfaction on these services in the past and had no reason to doubt such would be achieved here too." The farmer was not overly satisfied with this either. On the evidence set out in chapter 3 "usually" might have been somewhat more realistic than "always".

7.4.7 Broadgate Farm's underpass too "could not be economically justified" at a cost of £35-40,000 but it was proposed to provide a track alongside the new by-pass to facilitate the resultant journey. No cost was given for this and like the problem of field re-organisation it would need to be 'taken into account' by the D.V. The bridleway across the farm was not the responsibility of the RCU, except where it was diverted and the farm would have to take it up with the County Council afterwards. The drainage difficulty was not answered.

7.4.8 On the other hand Butt Farm would be provided with the access requested, although no reason or 'economic justification' was given.

7.4.9 The reader needs little guidance to draw tentative conclusions regarding the advantages of avoiding professional consultants and relying on the subsequent goodwill of the RCU. Certainly the Inspector elected to demur from NERCU's lack of proposals.

7.5 The Inspector's Initial Report

7.5.1 Mr. Farrer found in favour of the proposed route because of the evident need Beverley had for a by-pass. The principal factor to be weighed in the balance against the town's needs was the "fact of permanently lost farmland, and of perpetually impaired farming economy". (Paras 118-130). In this finding he encapsulates both the character of the Inquiry and the relationship of his role to agricultural consideration.

The road is a given good and must be optimised by the best possible alleviatory accommodation works (commensurate with the national interest) being provided. His problem was, who spoke for the national interest?

7.5.2 In order to minimise the agricultural effects of the route the Inspector naturally looked to the advice of the Ministry of Agriculture. He was strongly impressed by the argument that access would be required to maintain a planned farm expansion programme. On Woodmansey's he accepted MAFF's words that "the savings in economic return would be sufficient to justify a bridge". The RCU's rejection of MAFF advice was, the Inspector concluded, not valid "because the farm unit is committed to heavy capital expenditure now and cannot go back". The bridges and an acceptable smaller underpass (8' high by 14' wide) should be constructed.

7.5.3 On Maltas Farm the Inspector again accepted the agricultural need for a bridge. (As a highway engineer himself he could not see that "it would be an unwarrantable expense to provide a farm access bridge" over a road in a 15' cutting).

7.5.4 Broadgate Farm's underpass did not seem to be as well justified, particularly in view of the offer by the RCU to provide a hard road alongside. The amendment of the bridleway should he felt have been dealt with by

the RCU, the Inspector found it a very dubious argument that the amendment could not have been agreed by them with the County Council when they were considering all the other requisite footpath diversions for "the extra severance does arise out of the order line". Again, at Epping Mr. Padfield's footpath diversion was dealt with at the Inquiry.

7.5.5 Butt Farm's private access had been acceptable to the Department and the Inspector duly moved on to wider considerations. He had been impressed by the NFU's argument that agricultural considerations could be better dealt with procedurally if:

a. the District Valuer was available for direct consultation and negotiation from an early date

b. "an authoritative and knowledgeable agricultural liaison officer were appointed to guide and smooth relationships between farming interests and road interest, from the beginning".

These suggestions were commended to the Minister as important facets of the balance between benefits for Beverley and disbenefits for its farming hinterland.

7.6 The Initial Decision and Re-opening of the Inquiries

7.6.1 Normally an Inspector's Report is submitted to the Department, theoretically considered by the Secretary of State and ultimately issued, accompanied by a 'decision-letter' setting out which recommendations are acceptable and which not. What made Beverley so unusual was that the Inspector, disturbed by the lack of any

noteworthy rebuttal by NERCU, made his recommendation in favour of the road dependant upon agricultural contingencies particularly the accesses for the Woodmanseys, being met.

7.6.2 DoE found it necessary to consult him as to whether a rejection by them of his agricultural recommendations would alter his overall decision. Mr. Farrer was not expecting such an unusual move and expressed his feelings on the point:

> "I thank you for your letter of 12 August 1975. I am surprised at the implication that the modest changes I proposed to ease the adverse effects of the scheme upon agriculture might prove unacceptable to the Secretary of State. I would have thought they were such that he could readily have accepted them all, and that still may well prove to be the case." (Appended to Farrer, 1975)

Given the request however he felt "compelled" to reconsider and gave the following conclusions:

Regarding Woodmanseys:

> "a. If both the bridge and the tunnel were not to be provided then the damage to agriculture would tip the scales against the road scheme and in those circumstances I would recommend that the Orders be not made.
>
> (b) If the bridge were provided and not the tunnel I would recommend that the Orders be made."

Regarding Maltas:

"Whilst I would regard it as a misfortune for agriculture and for the road system if the farm bridge were not built ... I would still conclude that the overall advantage to the community would dictate that the Orders be made."

Regarding Broadgate:

"To make a hard farm-track on each side of the by-pass at Broadgate Farm is relatively a trifle; even if such were not included in the Works the matter could be redressed by compensation and accordingly my conclusion would still be that the Orders be made." (Ibid)

7.6.3 On the 23 February 1976, nine months after the Inquiry opened and six from when the Inspector was re-consulted, the decision-letter was issued by the Yorkshire and Humberside Region of the DoE.
The Secretary of State accepted the Inspector's conclusion that a by-pass was required and that the order line was superior to alternatives.

7.6.4 The qualifying recommendations could not "all" be accepted however. In fact, it is only true to say, the logical nexus of the Inspector's reasoning was broken and the decision in reality disagreed with his reasoning. Far from there being a quibble over whether "all" extra works could be provided the Secretary of State fundamentally rejected the Inquiry findings regarding the

balance of advantage of the road generally and the appraisal of agricultural requirements in particular.

7.6.5 The Secretary of State noted the belief of the objectors that without accesses on Woodmanseys compensation would exceed the cost of either bridge or underpass but the estimates available indicated that, on the contrary, the cost of either the bridge or the underpass would so far exceed the difference in compensation payable that, even after making full allowance for the long-term advantage to farming, it would not be in the economic interest of the community at large to provide them.

7.6.6 Leaving aside the fact that this may be some comment on the differences between farmers' expectations and the reality of the Compensation Code it remains interesting how this decision could be reached. Although the farm had been sent details of the calculated figures, these could only outline the "valuation" bases. But more than this was claimed, as it says "full allowance for the long-term advantage to farming" had been made. It would seem to be an unusual case where the Environment Minister (or in reality probably his Yorkshire and Humberside Regional Office Staff) holds himself a better judge of long-term agricultural need than MAFF.

7.6.7 In the case of Maltas Farms, figures were cited and no allusion made to any wider factors of long-term need, although these obviously exist whether the farm has a formal, grant-aided development plan or not.

"Similar considerations apply to the accommodation bridge recommended for Maltas Farms Ltd. Recent estimates indicate that such a bridge would cost between £40,000 and £60,000 rather than the £75,000 quoted at the Inquiries, but even this figure would be substantially in excess of the difference in compensation payable with and without it."

7.6.8 It was only on Broadgate Farm, concerning the matters which in the Inspector's words, were "relative a trifle", that the Department could agree. An access road and a bridleway diversion could be provided. The former had been offered anyway and, of course, application would have been made to the local authority for the latter, it is the rejection of responsibility which disturbs. Neither amounted to a reason for feeling that the Inspector's conclusion could be interpreted other than as disagreement on the broadest grounds. Without the accesses the Inspector concluded that the balance of advantage swung away from the road. Such a belief in the closeness of the decision must mean one of three things:

a. that the cost difference between constructing a bridge rather than a tunnel, plus the compensation difference (say £20,000), expresses the closeness of the decision to go ahead with the road or not. A most remarkable situation.

b. The Inspector assumed considerable benefits for the road, counterbalanced by an even more considerable cost to the economy of the farm. This cost could be substantially cut by the provision of a bridge, enough to put the road back almost as strongly in credit. Units of say 3 : 5 : 2 for instance might fit the equation, and allow an economically optimum solution.

c. That the Inspector adopted an entirely different style of "interest-balancing" decision-taking. Rather than looking at precise costs he thought of the Beverley "interest" having gained substantially. Against this it was felt the agricultural interest would lose and if it was not to be provided for then the balance became, in some quasi-ethical sense, unfair and to be rejected. On a close reading and "feel" of his Report this interpretation seems most likely. It is a perfectly proper approach to the problem, taking into account more facets of the human condition than the merely economic and allowing for optimisation in the sense of maximising the pleasure and minimising the pains.

7.6.9 The DoE evidently did not accept any of this broad project-level appraisal and sought to treat the access decisions discretely on a valuation basis. The decision-letter alluded to post-inquiry valuations which had

influenced the matter. As it would probably have been contrary to natural justice to take the final decision on post-inquiry confidential evidence, objectors were given the opportunity to challenge the interim decision. This was done and the Inquiry re-opened on 16 November 1976 to investigate the specifics of the decisions, and most illuminating they are.

7.7. The Re-opened Inquiry : Agricultural Submissions

7.7.1 If, at the initial inquiry, affected farmers had chosen not to make detailed cases supported by professional witnesses they certainly did so now. It may not be stretching surmise to presume they were somewhat dissatisfied with NERCU's detailed consideration of their case to that date. The Woodmanseys had employed counsel who co-ordinated all the principal agricultural objections, including those of Maltas and Broadgate Farms.

7.7.2 What was new in NERCU's opening submission were the valuation details on which their case rested. Treating all the Woodmanseys' holdings as one, they argued that a bridge would cost £70,000 and an underpass £20,000, whereas the extra compensation for severance in their absence would be no more than £20,850.

7.7.3 Naturally their chief witness had to be the District Valuer (D.V.) whose figures these were. And herein began the detail of astounding confusion of evidence, responsibility, but above all modes of working between different authorities. For rather than speak to the

RCU case, in the Inspector's words:

> "The District Valuer now gave evidence however to the effect that the Compensation Code would not permit of his treating [the Woodmanseys' holdings] as one farming unit [he] now thought this was the correct legal basis upon which he must base his estimates."

The figures thus revised showed only £2,400 extra compensation for the lack of a bridge. As the D.V. admitted, there figures were all based on the present, as the law made no allowance for potential growth.

7.7.4 This was the sum of the RCU case, the bulk of the Inquiry was concerned with the objectors' case in which counsel ranged widely and mordantly over the inadequacies of the authorities' behaviour. The concentration here is on the main thread of the argument.

7.7.5 The Minister, it was argued, in order to show justice being done, should reject an Inspector's advice only when there was a clear case for so doing. Here there was no viable or visible case at all. It emerged that MAFF, <u>prior</u> to the original Inquiry, had made a case to NERCU regarding the Woodmanseys' access.

7.7.6 MAFF's appraisal technique rested on comparing the anticipated actual farm profit <u>with</u> a bridge, to that without and illustrating that even at present levels of activity the cost of the bridge would be surpassed in 12 years. The expansion plans would reduce this length

of time. NERCU had not previously acknowledged the existence of any advice other than the D.V.'s (Farrer 1977, paras 23-5).

7.7.7 MAFF's evidence was "based on the Ministry's normal method of making such forecasts" (Ibid, para 26). Here is the nub of the issue. If questions of sheer maladministration, secrecy and behaviour generally beyond the pale of statutory duty and administrative rectitude alike are put on one side; the wider problem emerges. NERCU's task is to build roads - for which they must employ set appraisal techniques laid down by headquarters as policy - there is no set technique for agriculture. The D.V.'s task is to carry out valuations, as requested by other government departments, of individual property within the terms of compensation law. MAFF's job is to implement government policy regarding agriculture including land loss. It is no-one's task to develop an appraisal framework for impacts on farms wherein land-loss is a comparatively minor element compared to the question of re-adjustment. Thus, although MAFF's 'normal forecasting method' goes closer to the heart of the problem it does not reach it. For it is a method developed to fit E.E.C. policy under FEOGA (Fonds Européen d 'Orientation et de Garantie Agricole). E.E.C. farm grants are based on socio-economic rather than husbandry aspects and are designed to replace the British system of efficiency-spur grants, with one of funding to raise individual profitability. (Bulletin of E.E.C, 1975, supplement 2/75; Huguet 1977)

In this sense MAFF's method no more reflects 'national' loss than does the D.V.'s. It is an improvement in the sense that at least it deals with losses to the farm as an enterprise, rather than as an interest in land. The most glaring omission from the method is thus the question of discounting national investment; nor is there any distinction between productivity and profitability losses. The question of an appraisal method tempered to the problem at hand is best discussed in the next chapter, it was more important here that the reader be made fully cognisant of the analytic facts underlying the narrative.

7.7.8 The reality of the decision at Beverley was that theoretical rectitude had to dance attendance on the Woodmanseys' need to win their case by refuting NERCU. Thus counsel marshalled forces including the landlord's agent (to deal with the unity of the holding and investment), the Woodmanseys' agent (to challenge the D.V.'s interpretation of compensation law and the amount) and MAFF (to cover the investment of public funds). These were worked-up into a unified case which might not fully stand up to analysis; but as counsel said the RCU had not, and could not produce any contrary evidence as "they had no agricultural adviser other than the Ministry of Agriculture", and they were on the other side! (Farrer, 1977, paras 32-45)

7.7.9 The effectiveness of the case made out for the Woodmanseys was illustrated by the RCU's final response.

They had had every reasonable ground of argument removed and chose to rely on two unreasonable ones; the first shoddy and the second downright nasty. Firstly it was argued that despite their evidence resting on it, an Inquiry was no place to discuss compensation detail. Secondly that if the Minister were to provide a bridge, rather than relying on compensation "he would be tacitly admitting that the law was defective". As it was no part of the Inspector's job to deal with legal problems he should accept that the Minister had had regard to agriculture and withdraw his recommendations (Ibid, paras 47-51).

7.7.10 The cases of Maltas and Broadgate Farms basically re-iterated their original position. The most relevant new fact to emerge was that under challenge NERCU accepted that the bridge for Malpas would cost only £25,000 as against £40-60,000 previously quoted, and the underpass for Broadgate £20,000 (£35-40,000 quoted). Neither case had much else to add and were subsumed under the Woodmanseys organisation.

7.8 <u>The Inspector's Conclusions and the Decision</u>

7.8.1 The Inspector's findings of fact were blunt:

"f. The evidence of the Ministry of Agriculture was not rebutted.

g. The evidence of the District Valuer could not be rebutted because it gave no details."

(Ibid, para 87)

7.8.2 His conclusions were in equally firm terms and the Inquiry had served only to strengthen his previous conviction that "the issue before me [was] one of land use, not of compensation". The Woodmanseys should have a bridge and underpass, without either the road should not be built. Malpas should have their bridge, although he would still recommend for the Orders to be made were one not provided. "I say this, not because I think it not proper to provide the bridge, but rather in recognition of the fact that, bridge or no, much farm traffic will have to cross" local side roads. Broadgate Farm should have a hard-road built alongside the by-pass to give it access.

7.8.3 Almost exactly a year after the second inquiry a final decision was issued accepting all the recommendations in order that "some alleviation" of agricultural impact be made. The by-pass was to be built as the Secretaries of State had done their duty and, as the decision-letter put it, taken "into consideration the requirements of local and national planning, including the requirements of agriculture."

(DoE/DTp, Yorkshire and Humberside, Letter DYH 5060/09/12/TR 70/S1, paras 36 and 38)

7.9 Beverley: Some Conclusions and Hypotheses

7.9.1 A critic of the institutions of planning has written of "central government where the British system of departmentalism had made the development of policies

affecting the development of land arise in several different departments at the same time (e.g. in Transport, Agriculture and Trade)". (McLoughlin 1973)
The relevance of this to Beverley is evident in that the approach of the civil service tends to be one dominated by fulfillment of the word of statutory duty rather than broader initiatives. It is not necessarily a criticism to say this, it depends very much on what the nation wants of its non-elected permanent officials. There are many who would question any reforms intended to place any power of policy initiation in the hands of civil servants. Indeed it is a major concern of the recent Expenditure Committee Report on the Civil Service (HC 535-1, 1976-77) that it be more obedient to direction and show less initiative.

7.9.2 More than one question then needs to be asked and tight definition will help:

1. Has the overall system itself broken down? Has the division of function produced a situation where important aspects of planning have been no-one's particular responsibility? This is what McLoughlin above is mainly looking at from his system analysis position. It was this aspect which was so strongly criticised by the seminal Fulton Report on the Civil Service when they found that "the structures and practices of the Service have not kept up with the changing tasks". (Vol I, para 14)

2. Have those responsible succeeded within the terms of policy as laid down, have they produced appropriate responses, methods and administrative techniques in the circumstances? These questions are obviously only relevant where division of function is clear.

3. As Hanson and Walles put it in their study of change and adaptation in British government; "no amount of reorganisation ... will be effective if the quality of the people staffing the Government department is insufficient and their morale low." (1970, Ch.6)
To which we could add if there is no will to carry out functions or responsibilities in anything but the most basic and rather pointless of forms.
This is a different question from the two above insofar as an administrative device may be employed conscientiously and still be inappropriate.

7.9.3 The starting point for a discussion of authorities' roles in the construction of roads across agricultural land must be policy itself. Evidently if it is stated policy to construct a road network without cognisance of agricultural impact, leaving compensation to 'tidy up' difficulties, the questions above become irrelevant. The questions appropriate in such a circumstance would be broader ones of social justice.

It is now accepted by those responsible that the nation has lacked a clearly thought - through transport policy for years. The late Anthony Crossland, then Secretary of State for the Environment wrote in a 1976 Consultation Document that "by common consent, we still lack a coherant national transport policy". The opening words of the document proper are "Transport policy has not been comprehensively reviewed by Government since the late 1960's" (pp v and 1). Still less has there been any clear link between transport and its all-important land-use connotations.

7.9.4 This point is of the essence for, as Richard Rose found government officials often

> "could not answer a seemingly simple question about the objectives of their unit, because they did not think in such terms. When the question was rephrased to refer to their functions (i.e. statutory duties) their answers came readily."

Generalising a little

> "middle echelon public officials are not expected to define their role in terms of wider means - end relationships. The concentration of attention upon narrow statutory requirements does present difficulties for systems analysis, in so far as officials do not see (or are not trained to think about) statutes as means to further ends. Their statutory duty is an end in itself." (1971)

The question then becomes, what are the statutory duties? Who is responsible for the agricultural effects of road planning? And the answer appears to be, no-one.

7.9.5 Arguably the most important finding of the Wolfson Group has been that their initial hypothesis was correct, agriculture had been left in an 'administrative vacuum'. The principal reason seems to bear comparison with certain national-level decisions which have been made on specious or irrelevant grounds, the Concorde as a diplomatic exercise (Gardyne & Lawson; Sunday Times 8/2/76); or on no clear grounds whatever like the question of a Third London Airport (Self 1970A, Roskill 1970-1 especially Buchanan's dissent). At the risk of over-emphasis the fact remains that no-one actually asked even about the 'best'way of taking agriculture into account. Let alone the most relevant, most compatible, cheapest, or any such more precise formulation. The next chapter examines the problem in some detail.

CHAPTER 8

THE CANTERBURY BY-PASS

"It is difficult to explain the preference shown, as it would appear, by the pilgrims of later times for a route which avoided the towns, villages and more populous districts ..."

(A.P. Stanley, Historical Memorials of Canterbury, p276)

SUMMARY

Canterbury resembled Beverley in being a historical town where a by-pass was desired, the major problem being agricultural impact. The execution of the schemes was however a marked contrast. At Canterbury efforts were made to meet farm requirements and, not for the first time, the regional RCU took specific consultants' advice. The Group helped prepare the agricultural input for Canterbury, and were thus given a useful 'behind the scenes' understanding of MAFF advice in an area where they have a renownedly interested team of surveyors. The question of speaking in different terms still arose, and an example of the type of calculation which might overcome these problems is given.

8.1 Context of the Study

8.1.1 Cases such as those above and similar ones reviewed led to the formulation of ideas regarding the most relevant and robust input to road decisions. In the course of reading up on work elsewhere in the agricultural economics field contact was made with M.A.B. Boddington, an academic and consultant who had faced the problem in the course of his work.

8.1.2 Boddington had never had the time nor opportunity to either work up his methods in detail, nor carry out the post hoc study of a road's actual effects on farms which would be necessary to prove them empirically. As our ideas were moving along similar lines Boddington became a supervisor of the project. The relationship had developed during the M40 and M5 surveys (see section 3) and it was whilst these were being analysed and throwing up interesting guidelines that he was retained by the South-Eastern RCU as agricultural consultant for their Canterbury By-pass scheme. It merits specifying at this point that Boddington had been employed by road authorities on a number of occasions previously, and there was thus even less reason for ERCU or NERCU to find themselves in difficulties.

8.1.3 The Canterbury By-pass's character as a road decision was primarily notable for its almost universal acclaim. SERCU faced little more than a routing problem. It is interesting then to note that although

the government's reviewed transport policy emphasises environmentally advantageous schemes, especially by-passes, (Transport Policy 1976, paras 3.16 and 9.19), the appraisal techniques used can take no note of such benefit. Hearne's review of the DTp's economic assessment shows the decision process to be one where even the most deeply felt wants of potentially infinite numbers of people are irrelevant. Although frequently alluded to in Ministerial pronouncements and the publicity of those, often justifiably, propagandising in favour of greater road construction, the relief of those who do not travel can do nothing to help the road pass the all-important economic return criteria. That road A which gives great relief may be built before B which gives little although has a higher rate of return is not in question. We are merely saying that where road X has no time/accident or similar savings but relieves an infinite number of people of infinite disbenefits, thus fulfilling perhaps their deepest social want, it will not be built according to current economic decision criteria.

8.1.4 It is only due to such questions of economic return that the A2 could have waited so long for relief. Of all the by-passes constructed in recent years, that round Bridge in Kent on the A2 must rank as one strongly encapsulating the elements described above. Open campaigning for a road continued for many years before one opened in June 1976. A want-regarding decision system

would surely have recognised the problem earlier (Hill 1976). In opening it, the Minister emphasised that there were two aims of the road programme: "to provide the means for swift, reliable, safe, and pleasant travel by all types of road users; and to improve conditions for those people who suffer by living or working too close to heavily trafficked roads". It was quite clear that the first was the more important of the reasons. (DoE Press Notice 606)

8.1.5 The Bridge By-pass was designed to join Canterbury's, indeed both ends of the Canterbury By-pass were fixed in advance by preceding schemes and consultants were appointed as early as 1971 with the end points fixed (SERCU, Consultative Document, paras 1-5). It may be nothing more generalisable than a simple will to do the job well on SERCU's part, or it may have been that with little opposition in principle they had nothing to hide, but from the outset they appeared determined to do what was necessary to establish the best route.

8.1.6 The Public Consultative Document issued in late 1973 was perhaps the best of the early ones, being well-presented and clearly written. Care was taken to point out the openness of the process to suggestions, but also to indicate its limits. For instance, describing the place of agriculture, it was said that "particular attention has been paid to the effect on property, existing plans for the development of the area, the need to avoid dividing existing farms, the quality of

Table 8.1 : Route Comparison - Canterbury by-pass

(from Public Consultative Document, 1973)

	ROUTE A	ROUTE B	ROUTE C
DATA			
Total length	4.5 miles	4.7 miles	5.2 miles
Cost (including land and property) 1972 prices			
Single carriageway	£3,200,000	£3,300,000	£3,350,000
Dual carriageway	£4,950,000	£5,000,000	£5,100,000
Junction with Wincheap Radial and A28	£ 250,000	£ 250,000	-
Economic benefits	Good	Good	Fair
Property demolished	21 houses	18 houses	-
	1 shop	1 shop	-
Agricultural land taken (Acres) Grade 1 (very good land)	47	38	32
Grade 2 (good land)	30	44	64
Grade 3 (average land)	-	-	9
Grade 4 (poor land)	5	5	-
Total	82	87	105

(Continued)

Table 8.1 : Route Comparison - Canterbury by-pass (cont)

	ROUTE A	ROUTE B	ROUTE C
ADVANTAGES	a. Good value for money b. Shortest route for by-passable traffic c. Could be used by local traffic as well as through traffic d. Least intrusive in landscape e. Marginally cheapest route	a. Good value for money b. Short route for by-passable traffic c. Could be used by local traffic as well as through traffic d. Leaves adequate green belt to City	a. Avoids demolition of property b. Leaves wide green belt to City
DISADVANTAGES	a. Involves some housing loss b. Possible serious severance effect on farms c. Passes close to hospital and school site d. Passes close to urban area leaving limited green belt	a. Involves some housing loss	a. Least value for money b. Longest route c. Takes most agricultural land d. No benefit to local traffic e. Very intrusive in landscape

agricultural land and the effect on the landscape ... It should be emphasised that should a decision be taken to proceed with a preferred route, the details (including junctions, effects on houses and levels) may be varied at the design stage." (Ibid, para 9).

Thus in a sense this was an ideal scheme for testing certain of our methods. The DTp appraisal system does not recognise wants against its economic traffic 'needs' and in this case there were few opposing wants, - leaving one of the 'purest' routing problems it might be possible to construct.

8.1.7 Perhaps because it stands out for its own advantages but also because there seems a slight favouritism in the writing of the document Route "B" of three had a certain primacy. The description of it began:

> "Route "B" would minimise some of the disadvantages of Route "A". It would leave ... a viable area of agricultural land between a by-pass and the city." (Ibid, para 13)

The 'Route Comparison' tabulation made no attempt to trade off factors.

8.1.8 In terms of the decision-process, its openness, and the ability of agricultural aspects to influence it, three matters stand out as meriting discussion.

a. A possibly misleading slight over-emphasis on how much was open to question..

b. Probably incorrect (and underestimated) land-take figures in the Consultation Document.

c. The fact that MAFF advice on the routing was not received until after the Consultation Document was issued.

They will be taken in order as a useful introduction to the detail of the decision.

8.2 Design Standards

8.2.1 This aspect may be dealt with briefly but is minor only in the sense that it is in no way peculiar to the scheme. In broad terms it cannot be over-emphasised that the place of agriculture in decisions is related to the manner of their taking. For as long as government operates by catering for such projected, unrestrained traffic as can be speeded up enough to generate time-savings adequate to pass the requisite economic tests, by building "roads engineered to the highest levels of design and safety" (DoE Press Notice 606), then the place of agricultural considerations needs must fit that framework. This has been the starting point for developing assessment methologies.

8.2.2 That being said, the problem at Canterbury can be quickly dealt with. The determinist nature of design standards means that the scale of the route (vertical and horizontal curvature, breadth, junctions and so forth) was a good deal less open to question than was implied. There are two difficulties. Firstly saying

that "details (including junctions ... and levels) may be varied" somewhat overstates the case. Despite a later paragraph on standards a layman or affected farmer might still be misled into a belief that such details could be 'sorted out' later and misunderstand the limits to useful comment. Secondly and directly connected, it is a severe constraint on the most fair-minded respondent's ability to comment usefully if he does not know the scale of the proposal. Perhaps because most people's responses are want-regarding, then a single carriageway might be acceptable where a dual 3-lane motorway is not. Similarly a farmer can be significantly limited in his ability to assess relative impacts if the scale of the road and/or especially junctions is not known.

8.3 Land-take

8.3.1 The above comments rest on the idea that there is a significant difference in the scale of, in this case, a single or dual carriageway road. In the Consultation Document reproduced above, however, the land-take of the two options is given as the same, possibly because the option of later upgrading is desired. Insofar as there was known to be derelict land, housing etc, on the route, it was difficult to know what the "total" land-take figure for "agricultural land" only implied. The first task in assessing the road's potential impact was thus to check the land-take

on Route "B", that 'preferred' by the Secretary of State. (DoE Press Notice 167)

8.3.2 The By-pass was planned to be of single carriageway standard. Design specifications for the road being drawn from the guide "Roads in Rural Areas", (DoE 1968) and its supplements. This specifies a 24' carriageway and 12' verges including 3' hard strips as appropriate, a land-take figure is thus yielded of

5.8 acres/mile

As this figure is, to say the least, considerably below those found on other (motorway) schemes which begin at 28 acres/mile and range up to 49 acres/mile (Bell et al 1978A) it illustrates how little of the land-take is actually for the road itself.

8.3.3 The land-take of the completed dual-carriageway Bridge By-pass was therefore calculated as a check by tracing onto graph paper. Land-take by the 'line' only was included in these figures, junctions being dealt with as a special issue. The section examined yielded a figure much closer to empirical expectations for a high-grade road:

27 acres/mile

8.3.4 The Consultation Document gives the same land-take figure for single or dual-carriageway, it has therefore been assumed that the option of later upgrading will be retained and land taken accordingly. The above figure is therefore a useful benchmark. For the 4.7 mile Route "B" this gives a figure higher than that in

the Consultation Document.

Document Figure : 87 acres agricultural land

Calculated Figure : 126.9 acres in total (4.7 miles)

" : 101.25 acres agricultural land (3.75 miles)

The method used was then validated by detailed study of land-take from the consultants' 1:2500 maps. For Hospital Farm which stood to lose the highest proportion, this gave a total loss of 13.81 acres. Included in this figure is the land taken for new access tracks. The actual figure was within a 1% error of the figure gained by measuring the length of road across the farm and factoring. The method was used for all the significantly affected holdings as a check on our overall figure and the findings are reproduced as Table 8.2. They total 104.6 acres, an error of about 3%.

Close testing of the methods then still showed some 17% above the official figures, and this excluding junctions. Even working closely with the RCU it never was determined how they arrived at theirs.

Table 8.2 : Land Loss to Individual Farms (Route B) (acres)

	Present Size	Loss to Road	% Loss
China Farm	328	13.8	4.2
Hospital Farm	136	13.9	10.2
Tonford Manor	106	2.7	2.5
Whitehall Farm	-	3.1	-
Wincheap Farm	436	11.2	2.6
Smallholding	-	4.9	-
Stuppington Hill Farm	30	1.3	4.5
Merton & Stuppington	404	15.3	3.8
Nackington Farm	744	17.1	2.3
Renville Farm	270	21.1	7.8

(1) All exclude loss to junctions, except China

(2) Excluded due to minor impact: Merryweather and Milton Manor Farms

8.4 MAFF's Input

8.4.1 It is certain that SERCU did not receive land-take details from MAFF as their first comment was not received until after Public Consultation had begun. Although too late for that exercise the response itself was a considerable improvement over the simple presentation of land grade to which MAFF officially say they limit their responses. On the contrary it examined the 3 routes in terms of their effects on individual holdings and systems. An example of the style and approach is as follows:

"Wincheap Farm - The road ... crosses this farm through a 48 acre hop garden. The wirework is

> Butcher work, which although more easily adaptable to alteration is by far the most costly type. The garden would be severed into two areas of equal size. Hop-picking machines would be severed from both oasts and farm buildings, with no alternative access available nearer than a gate in Iffen Lane nearly a mile away."

This critique exemplifies the idea of expert analysis taken to a level of detail suitable for route choice. Whilst not detailed enough for individual farm questions of access or so forth, nor useful for fitting DTp's appraisal process the information did give a solid base for selection.

8.4.2 After the holding analysis MAFF gave brief descriptions of the major crops in the area and their requirements with particular reference to severance. The especial susceptibility of hops and fruit to becoming uneconomic unless arranged in good sized fields on correctly positioned rows was emphasised. In particular the fact that routes A and B would sever three sets of hop gardens from their oasts was held to be a major fact weighing against them. Of the three routes the longest, Route C, did, however, have the advantage that the sunken chalk lanes so characteristic of the area would remain comparatively undisturbed, thus maintaining much of the access. By taking this individual farm approach MAFF did indeed find themselves running into conflict with their own official line of preserving the best

quality land. They concluded in favour of C.

> "Both the inner routes A and B will cause serious damage to farm and field structure, and in the short term to the orchard and hop crops in and near to their paths. Construction of either, and A in particular, will put pressure on land between by-pass and existing city boundaries for development. In view of the high quality and intensive cropping of the areas involved, this is agriculturally most undesirable.
>
> Route C will cause least damage. Its alignment gives scope for manoeuvre at the sensitive points of Iffen and Renville Farms, and the fact of its further distance from the city will remove some pressure for development possible in the other two cases. The preferred order of grading is C,B,A."

Iffen Farm is not in the table, being missed completely by Route B.

8.4.3 The submission by MAFF included the basis data on the farms : ownership, acreage, stocking and cropping. Insofar as this reinforced a holding-based approach and emphasised the importance of avoiding certain easily disturbed crops, the information was useful. It was not, however, presented in any structured way, given context or tied to the paper's arguments and could have little practical, as against propagandist value. Willing as SERCU were to incorporate agricultural concerns they found that MAFF had moved off land grade but given them nothing

they could directly compare with other factors. This was one reason why they felt it necessary to hire consultants.

8.5 The Route Decision

8.5.1 It would be a study in itself to know how influential public participation was on any eventual Ministerial decision, let alone how influential agriculture is as a factor in public participation. What we can say is that the final decision cannot be made worse by improving the initial information. Looking back to the summary page from the consultation document we see that agriculture is there treated as having no disadvantages from Route B, whilst Route C chosen by MAFF has its land-take as a listed disadvantage. One can only presume that had MAFF's assessment been requested or received earlier then the layout would have been different, these being presumably reversed.

8.5.2 In March 1974, four months after the consultation exercise, the Minister announced that Route B had been selected (DoE Press Notice 167). The wording was the usual civil service terseness and naturally "all the relevant factors" had been taken into consideration. It was accompanied by a less formal note discussing the Consultation. Nearly 3,000 people had visited an exhibition and 800 responses had been received from the public, more than half in favour of Route B. The views of various interested local authorities were given, and

the opposition of both Countryside Commission and Nature Conservancy to Route C on visual grounds was noted. Nothing at all was said of MAFF, possibly due to a rather stringent interpretation of the 'government speaking with one voice' rule. The terms used regarding farming were rather strange:

> "All possible routes require some good agricultural land but it has been decided that this loss is a price worth paying for the improvement of the environment within Canterbury."

8.5.3 This really is a non-comment in its irrelevance to the routing question as it clearly deals with the question of need. The loss of land was implicit in the idea of building. The routing stage is concerned with the next step on - that of minimising impacts consequent to the decision to construct. Possibly because of the MAFF opposition the press release avoided the faming issues.

8.6 The Detailed Design Stage

8.6.1 Agricultural questions were being dealt with behind the scenes however for it was at this point - with MAFF and SERCU disagreeing and the former offering no further input which might be useful for detailed design that Boddington was instructed. His brief originally was to deal with the specifics of farm objections on Route B; that is, he was to answer points as they arose and not do full farm assessments or suggest alleviatory measures in advance. Neither was there any suggestion of a full route appraisal of B versus C

until just before the Inquiry. Two members of the Wolfson Group were retained by Boddington's firm to work on this brief.

8.6.2 It is not the intention here to stray too far into the actual appraisal methods involved. These are reviewed and assessed by Hearne. A short example of the work will be examined from the angle of applicability to the decision process, but generally this study is more concerned with the type and range of decision inputs than the economic rectitude of them.
Let us therefore recollect that at Chelmsford the ERCU chief witness on environmental matters was given the task of dealing with agriculture too, as if it could be subsumed under that head. He refused to do it as being beyond his scope, but more than this he submitted:

> "There were no guidelines by which the disturbance to agricultural activity could be measured for comparative purposes."

In his conclusions the Inspector duly deplored the "lack of some generally acceptable measure" for severance and similar agricultural impacts. (Gardner para 22.37)

8.6.3 Against this backdrop it illustrates a remarkable lack of cross-scheme information even within the specialist DTp/RCU structure that work done by Boddington on road schemes from around 1971 onwards (let alone the range of more general work on agriculture

in planning decisions) was not known. Whilst circulars, briefs, design guides, the Transport and Road Research Laboratory, DTp's Technical Liaison Committees and other regular formal and semi-formal meetings on the more direct and engineering aspects of roads keep practitioners informed, it seems that secondary aspects are dealt with in an ad hoc way. Certainly in the case of agriculture it seems that the balance between internal work, MAFF replies, D.V. assessment and the final decision to call in specialists often at short notice varies dramatically but not in ways that can be directly related to agricultural requirements. It was not until March 1976 when Jefferson, deputy director of the South-West RCU produced his 'Route Location with regard to Environmental Issues', that there was any considered attempt by DTp to produce a framework for such issues. The report treats agriculture as an amenity rather than as an economic issue, has never been released from the confidential cateogory and may be presumed 'shelved'.

8.6.4 At Canterbury the matter was at heart one of optimisation again, but done with a will. The route was chosen and the consultant could then consider questions of length of working rows, design of junctions to maximise usable land, windbreaks, rabbit fencing, frost pockets and a number of other problems. The Consulting Engineers (Brian Colquhoun and Partners) had a wide degree of independence within a framework

of meetings with SERCU to settle decisions. For instance, numbers of alternative design drawings were produced for a complicated junction in order to give the farmer time to assess which would leave the most usable land. Possibilities of help by regrading the land were included.

8.6.5 The Information Pack evidence notes the frequent complaint of farmers that a number of matters were "decided" by default in that they never had visits from anyone in a position to help accommodate them into the design process. At Canterbury, however, after initial formal contacts the essence of the information/liaison method was the site meeting, set up by the agricultural consultant, usually via agents and taking place on the farm. Equally important was that such meetings were attended by men in a position to take positive decisions. At Wincheap Farm, the one we shall take as our example, the two consultants primarily dealing with the by-pass attended as did a representative of the RCU, Boddington, the farmer and his agent. This is not to say that on the spot decisions were taken, both because they were complex and because the genuine problem of authority to take decisions in government organisations does not disappear because of greater interest. It has been a strong facet of our farmer interviews, however, that a feeling of justice and being properly done-by is more a function of procedure than of money, or in any

similar sense getting all their own way. A similar meeting was held, for example, on Hospital Farm, and it was clear that the major difficulty could not be resolved by SERCU at all. It revolved around an unusually complex intra-family holding relationship and meant that capital gains roll-over relief could not be gained. The meeting record has it that: "These are all matters of compensation and taxation law and there is nothing the RCU can do but sympathise". Whilst it is always upsetting to find cases where the Compensation Code "fails", it is gratifying too, to know that this was explained clearly and early by the authority concerned. Thus those things which could be taken on board into the design stage (regrading of land, row length, windbreaks) could be concentrated on. Let us now look at the approach to a particular farm in a little more detail.

8.7 The Example of Wincheap Farm

8.7.1 MAFF's initial assessment of the 436 acre farm was quoted above. After route selection MAFF met the SERCU and Consultants again to debate more detailed issues (Meeting 19/8/76). An initial problem to be thrashed out had become MAFF's position. The fact that agricultural objectors would dominate any public inquiry could prove embarrasing to both departments if MAFF had to give evidence of their opposition. It was decided that the new Inquiry Rules (S.1. 76/721)

should be applied in their minimal sense and that MAFF would only appear where they were statutorily enjoined:

1. If they had given a supporting view, in writing, that was included in the RCU official statement.

2. If the Inspector ordered them to appear (Ibid, sections 7 & 13).

8.7.2 Regarding Wincheap the meeting record reads:

"MAFF were very firm in their resolve that this, of all farms on the by-pass must be provided with a farm crossing. They explained that there was a lot of internal traffic, evidenced by the number of existing tracks. Cattle must be able to cross the by-pass between the farm buildings and the grazing areas. In the opinion of MAFF the same mixed farming could not continue without a crossing and without such a facility it would be almost inevitable that all buildings would have to be re-established south of the by-pass, at a cost surely greater than that of an underpass. In the national farming interest this would not be desirable as there would then be great pressure for urban development to spread up to the by-pass on best quality agricultural land."

Undoubtedly prior to the meeting MAFF had consulted their standing file on the farm and possibly talked to field officers. The meeting was then attended by the Divisional Surveyor and his appropriate Area Surveyor.

When looking at the economic assessment carried out it is only fair to bear in mind that, given MAFF's pre-existing files anyway, the cost of their style of input is the time of the appropriate employees. This extremely low-cost input is on the other hand inexact, a matter of expert opinion rather than arguable costs and virtually as unchallangeable by the farmer as by the RCU. The yes/no input is very easy to take on board by the RCU (and equally easy to reject given MAFF's clear desire to avoid imposing the sanction of overt conflict). It is also an easy method for an Inquiry Inspector to deal with should it come before him. These are not insignificant virtues. We were aware before starting on appraisal that they should not be exchanged lightly for para-scientific economic calculations unless there were good reason.

8.7.3 In the ironically self-reinforcing way such things occur a scheme where the RCU are genuinely concerned will have the MAFF strongly involved, as well as detailed evidence from the farmers. In such a case there is less likelihood that the anadministrative valuation methods will be fallen back on anyway. Nonetheless the great advantage of calculating gives a base in money terms on which to challenge the figures produced for valuation purposes. It cannot be dismissed as an incalculable against a definite. At Canterbury it looked as if an amenable RCU might have settled things on the basis of MAFF expert assessments, in which case the Group would

have been content, albeit that its role was ended. Yet recollect the Wentworth case alluded to earlier (1.6) where assurances given by a very amenable authority including the provision of access were later overturned because the Treasury preferred a valuation basis.

8.7.4 In a sense it may be not only a conflict between ways of assessing agricultural impact but a deeper conflict between arms of government on <u>who takes the decisions</u>. As has been so often a topic of academic and practical discussion in recent years, there are good reasons why the logic of those approaching the problems from different angles should differ (Deising). Executive difficulties to an RCU administrator (Sharp) may be interpreted in cost-flow terms by the Treasury (Heclo and Wildavsky). The same accommodation works might be desirable in the national farming interest and therefore perceived to be a good within MAFF's remit but only those justified by comparative compensation levels would be considered by a D.V. Terms of reference roles and contrasting responsibilities can combine to produce totally different styles of logic and thereby decision taking.

8.7.5 The approach of the detailed agricultural assessment, for instance, rests first and foremost on detailed information of the farm system and in that it corresponds to MAFF's. But it then needs to model and assess possible alternatives because its logic is to present appraisal for scrutiny at many levels of decision-taking - RCU, Inspector, the farmer and eventually up to the Secretary

of State or his advisers. MAFF's role is rather that of the executive department who take such figures on board and then add in intangibles based on policy-interpretation in order to produce a balance of factors decision.

8.7.6 Thus at the farm interview information was collected on the details of stocking and cropping (by field), farm planning, machinery, tracks and output, amongst others. It was abundantly clear that hops were the major feature of the holding demanding attention. The proposed route of the road split the hop garden (see diagram 8.1). The farmer had a letter from his factors stating that his hops were of the highest national standard. In 1976 his whole quota passed as Grade 1, and in 1975 98% passed as Grade 1. His factors stated that they wished to forward contract for as long as possible. The Farmer felt that all possible hop land on his farm is currently under hops. The one potential exception being a 20 acre cherry orchard which was to be grubbed out in winter 1976.

8.7.7 Unfortunately for assessment purposes hops are a very strictly controlled crop with a quota system administered by the Hops Marketing Board and long-term forward contracting. As Mr. Hall of the H.M.B. kindly explained the tremendous capital investment in wirework and specialist buildings added to picking expenses make hops a very risky crop and EEC income support has been paid to many growers in recent years. The East Kent Goldings of Wincheap Farm are however in such demand that no support has been necessary. Despite the demand for the particular

hop, quota allocation changes slowly and if a factor is lost he may take a long time to win back. Thus an increase in travelling overheads could not be met by capital investment even were it available as the quota system controls output.

8.7.8 The travel and access question was the principal one and very detailed information was extracted at the farm meeting. It is recorded that:

> "the hop enterprise is rather scattered (in terms of the picking shed and the oasts rather than hop gardens) so that a considerable amount of travelling is involved. Some 40 to 50 trailer loads per acre of hop bines are transported to the picking shed from the hop gardens. The total output from the picking shed is about 8,000 green bags and these are transported over some 20 days, from the shed to the oasts. About 70 green bags make up a trailer load. ... In 1975 the farm produced 431 pockets of dry hops. Each pocket contains 168 lbs (1.5 cwt). The total production was thus 658 zentners (1 zentner = 50 kg = 110 lbs, thus 1 pocket = 1.53 zentners approx). In the picking shed there are two picking machines which have been installed and built up over the last 10-15 years. The installation was completed in 1974 and is ideally suited to the acreage grown."

8.7.9 This was but a small part of the farm system detail required to permit realistic calculations to be made. The meeting had, of course, another aspect than a simple

information-gathering exercise. It could let the farmer and his agent see the genuine interest and concern shown early for their case. This was enhanced by the receipt of a check copy of a detailed meeting record. As a completely different style of administration from that usually adopted by secretive, taciturn RCU's it is a most interesting phenomenon. As the Wolfson Group have argued to road planners and the Leitch Committee on Trunk Road Assessment proper agricultural assessment is impossible without openness and good working relations with the farmers concerned (Appendix 1). In this example, the openness was easier because the assessment was only undertaken well after the time the line had been fixed and was therefore concerned with impact minimisation. The response from farmers all along the line was very good and they welcomed the opportunity of being represented in the decision process even though they could claim back no expenses for their agents' or their own time.

8.7.10 Once the information had been collected analysis could begin to estimate the comparative costs of different solutions. We worked on two scenarios - to continue as at present or to replace the cherry orchard with hops. The calculations were based on the assessments of the number of trips to be generated by the husbandry requirements of different crops and the different travel distances with and without access. Extra work was

calculated as time which could then be costed. All in all, the study ran to 16 A4 pages and took some 12 man hours. That figure represents simply desk-time on the sums and maps, not the original collection and collation of the information. A typical example of the type of calculation involved is reproduced below.

8.8 Assessment of the need for an access on Wincheap Farm

8.8.1 At the time of the Inquiry the farm comprised 436 acres and had a labour requirement of 8633 Standard Man Days. If Route B was built 9.6 acres of the farm would be lost and a further 330.5 acres severed. Route C would not affect the farm as it passes further to the south. The main objective for this farm is thus to assess whether it would be economically viable to build an agricultural access bridge.

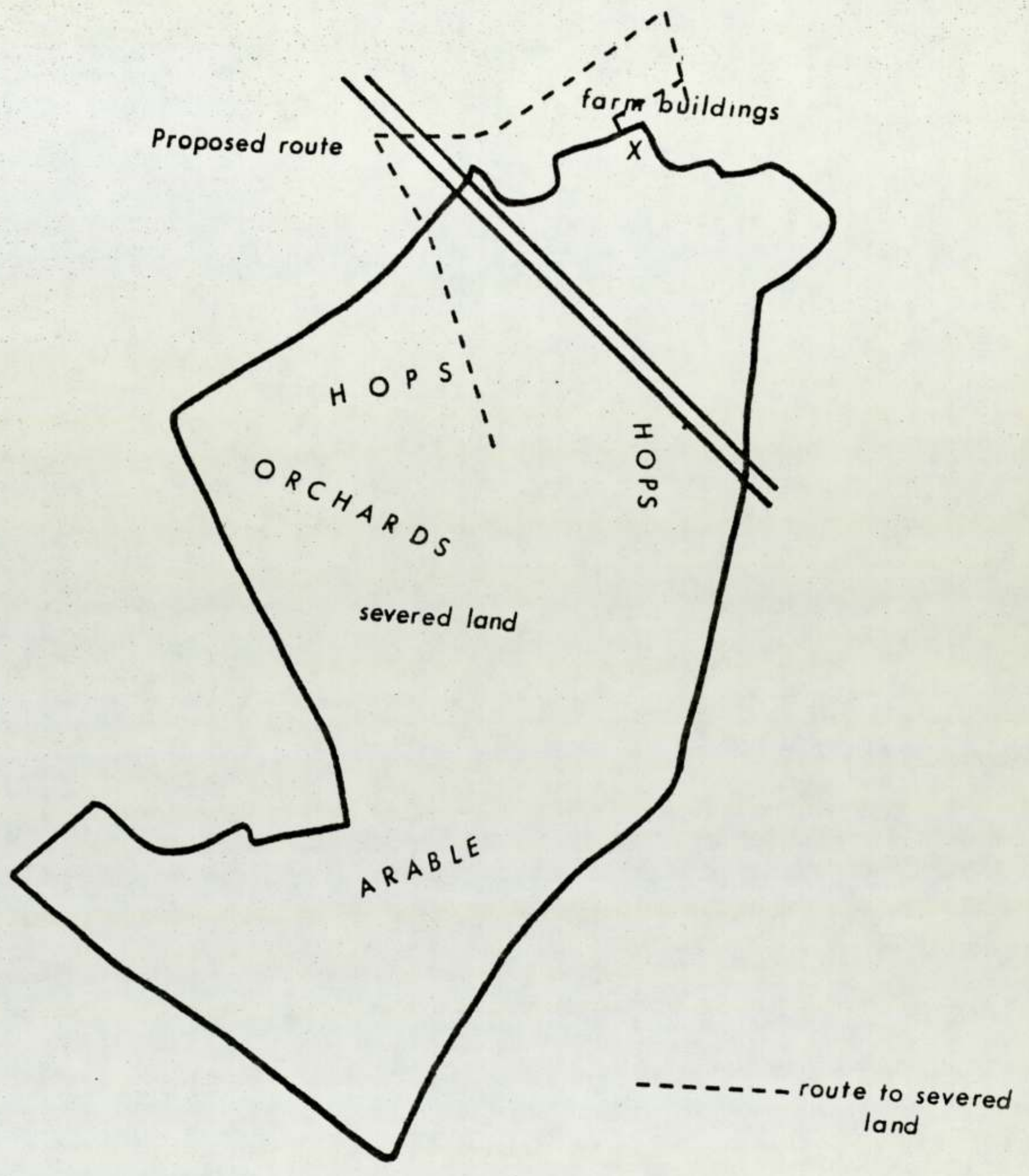
8.8.2 The best way to calculate this is to work through the severance costs for each enterprise in turn, on the assumption that the present farming pattern is retained. The figures are based on empirical work to be updated and published in 1978 by Boddington and Hearne.

1. Hops

   a. There are no additional problems of travel from the hop garden to the south of the proposed by-pass to the picking shed for hops.

   b. There are no additional problems of travel from the farm buildings to land to the north of the proposed by-pass.

DIAGRAM 8.1 : Winchcap Farm.



c. There are an average of 20 husbandry operations per annum on hop gardens; there are 0.08 return trips per acre per operation at a work rate of 3 acres per hour and four hours per week.

d. There are an average of 50 return trips per acre for carrying hop bines from the gardens to the picking shed.

e. Assume an average tractor speed, round by the road, of 3 mph.

f. Assume an average cost of £2 per hour for tractor and driver.

g. Present output from the picking shed to the oasts is 8,000 green bags.

h. Given the possible loss of land, future output will be expected to be 7,000 green bags.

j. Of this, 5,320 will go to the Bretts Yard Oasts (as at present) and 1,680 to the farmyard at 70 bags per trailer.

k. Additional distances to be travelled are calculated as:

farmyard to southerly hop gardens	1,140 yards
northerly gardens to picking shed	890 yards
picking shed to Bretts Oast	540 yards
picking shed to Farmyard Oast	1,130 yards

m. The areas of hops included are:

gardens south of line 37 acres

gardens north of line 15.5 acres

Therefore the cost of extra travelling time for hops is:

a. Husbandry operations for hops south of the line

$$\frac{\pounds(37.0 \text{ acres} \times 0.08 \text{ return trips/operation/acre} \times 20 \text{ operations} \times 1,140 \text{ yards} \times 2 \text{ trips} \times \pounds2)}{3 \times 1,760}$$

$$= \frac{\pounds269,952}{5,280}$$

$= \underline{\pounds51 \text{ per annum}}$

b. Taking bines from hop gardens north of line to picking shed

$$\frac{\pounds(15.5 \text{ acres} \times 50 \text{ return trips/acre} \times 2 \times 890 \text{ yards} \times \pounds2)}{3 \times 1,760}$$

$$= \frac{\pounds2,759,000}{5,280}$$

$= \underline{\pounds522 \text{ per annum}}$

c. Taking green bags from picking shed to Bretts Yard Oast

$$\frac{5,320 \text{ bags}}{70 \text{ bags/trailer}} \times \frac{2 \times 540 \text{ yards} \times \pounds2}{3 \times 1,760}$$

$$= \pounds\frac{11,491,200}{369,600}$$

$= \underline{\pounds31 \text{ per annum}}$

d. Taking green bags from picking shed to Farmyard Oast

$$\frac{1{,}680 \text{ bags}}{70 \text{ bags/trailer}} \times \frac{2 \times 1{,}130 \text{ yards} \times £2}{3 \times 1{,}760}$$

$$= £ \frac{7{,}593{,}600}{369{,}600}$$

= <u>£21 per annum</u>

The total annual cost for hops is thus:

a.	Husbandry operations south of line	£51
b.	Hops from garden north of line to picking shed	£522
c.	Green bags from picking shed to Bretts Oast	£31
d.	Green bags from picking shed to Farmyard Oast	£21
	Total (£ per annum)	£625

2. Cherries

a. It is assumed, for the purpose of these calculations that the farm will continue to grow cherries.

b. There are 20 acres of cherries.

c. The whole area is south of the line.

d. Cherries require about 30 return trips per acre.

e. The additional distance is 1,100 yards.

f. The usual assumptions are made about tractor speeds and costs.

The additional annual cost is thus:

$$\frac{(20 \text{ acres} \times 30 \text{ trips/acre} \times 2 \times 1{,}100 \text{ yards} \times £2)}{3 \times 1{,}760}$$

= £500 per annum

3. Grassland (including animals)

   a. Assume all grassland is south of line.

   b. Additional distance from farmyard 990 yards.

   c. The following return trips per acre are relevant:

beef cattle	5
ewes/lambs	8

   d. Assume that visits take place to both sets of animals at the same time.

   e. There are 40 acres of grassland and assume a further 20 acres of grazing elsewhere = 60 acres.

Thus additional annual cost may be calculated as:

$$\frac{(60 \text{ acres} \times 8 \text{ return trips} \times 2 \times 990 \text{ yards} \times £2)}{3 \times 1{,}760}$$

= £360

4. Arable (1)

   a. 73 acres of arable land.

   b. 990 yards additional distance.

   c. 2.4 return visits per acre per annum.

Thus the additional annual cost may be calculated as:

$$\frac{(73 \text{ acres} \times 2.4 \text{ return trips} \times 2 \times 990 \text{ yards} \times £2)}{3 \times 1{,}760}$$

≈ £73

Arable (2)

   a. 30.5 acres of arable land.

   b. 1,320 yards additional distance.

   c. 2.4 return trips per acre per annum.

Thus the additional cost per annum is:

$$\frac{(30.5 \text{ acres} \times 2.4 \times 2 \times 1{,}320 \text{ yards} \times £2)}{3 \times 1{,}760}$$

≈ £73

Orchards

a. There are 115 acres of orchard on the farm

50 acres of dessert apples

50 acres culinary apples

15 acres pears

b. Only about 15 acres of orchards are north of the line: About 100 acres are thus south of the line.

c. There are about 77 acres of fruit on Farm A leaving by deduction, 33 acres south of the line on Farm B. (Wincheap is farmed as one but is technically two units.)

d. Extra travelling distance is taken as 1,150 yards for all orchards.

e. It is calculated that 1 acre of fruit takes 25 return trips per annum: on Farm A all fruit is sent direct to Sandwich and District Growers, thus saving about 5 trips per acre per annum.

Thus the calculated additional annual travelling cost for fruit is:

Farm A

$$\frac{(77 \text{ acres} \times 20 \text{ trips} \times 2 \times 1{,}150 \text{ yards} \times £2)}{3 \times 1{,}760}$$

= £1,342

Farm B

$$\frac{(33 \text{ acres} \times 25 \text{ trips} \times 2 \times 1{,}150 \text{ yards} \times £2)}{3 \times 1{,}760}$$

= £719

Aggregating all these costs indicates that total severance costs will be of the order of £3,750 per annum. If we add in an extra 15% for maintenance trips the overall annual total reaches £4,312. Discounted at 10% for 30 years this gives a capital sum of £40,649.

8.8.3 SERCU informed Boddington that to provide an agricultural overbridge for this farm would cost in the region of £40,000. Therefore, in order to economically justify such provision the total potential severance costs would have to rise above this figure. This they just about did and so SERCU agreed that a bridge should be provided. (In fact, Boddington in the final presentation of data at the Public Inquiry decided to discount in perpetuity, rather than over 30 years. This gave a net present value of £43,120, which left no doubt that the £40,000 barrier had been crossed.)

8.9 Conclusions from the Canterbury Study

8.9.1 No final decision has yet been made (January 1978) on the Canterbury scheme and it would be pre-emptive to attempt overall conclusions on the full-scale route appraisal Boddington was ultimately invited to do on routes B and C. Hearne assesses its economic rectitude and explains the development of the Group's ideas since then.

8.9.2 It behoves this thesis to ask certain hard questions arising from the Canterbury work. Is such detailed calculation a) necessary and b) useful to the decision process. The first must be answered negatively

except insofar as the process purports to be open, caring and interest optimising. A system based on governmental will might not need it, but Britain's does claim to be all three things and therefore does merit the detail. To the second the answer is a clear yes. Not all RCU's are like SERCU, neither do all MAFF regions respond like Kent. It is on record that MAFF felt the detailed calculations not relevant and not required. Yet it may be argued that not only are such checks a useful guide to expert opinion but they could be 'useful' to the process even if they ended up agreeing 100% with MAFF. Kent is an area where the MAFF surveyors have developed something of a reputation for their active involvement in planning matters. This is an urgent task for them because of Kent's extreme importance in terms of land quality and cropping potential. The County Structure Plan contains arguably the best agricultural input of any yet formulated (Trask 1975). On the other hand the cases above, and the poverty of MAFF's M6 access study (section 1.5) imply that even if the MAFF/RCU relationship at Canterbury shows the best the present system can achieve, that system cannot be relied upon to function at such a level.

8.9.3 The most telling points would seem to be:

a. that MAFF's input is always secret and unchallengable, contributing nothing to helping the farmer anticipate and meet disruption;

b. that even in this case SERCU found it necessary to have a consultant because when they disagree with MAFF the 'expert opinion' assessment gives them nothing which can be transitively ranked against other elements in the decision; and

c. that other RCU's and MAFF areas have not shown this degree of commitment.

Above all remains the problem that the different arms of government, looking from their own disciplines or professions are simply not speaking in the same terms. The next chapter essays some broader assessment and some ways out of the impasse.

CHAPTER 9

AGRICULTURE IN ROAD DECISIONS: OVERVIEW & ASSESSMENT

"You may as well be dead as far as we are concerned, What you people must understand is that this road is going through" (Highway Engineer, quoted by Sharman, p293)

"Look, we just want to get on and build it. We only do this public exercise because we are told to" (NERCU official to the author, Guardian 28/7/75)

SUMMARY

This chapter attempts to draw conclusions along the lines specified in Chapter 4 regarding the place of agriculture in the decision-process. It is argued that matters have conspired to make the time of writing (January 1978) a potential watershed in inquiry procedure. A distinction is thus drawn between a change in appraisal practice, and an improvement in present practices. In line with IHD aims, suggestions for better agricultural input are put in both a practical and academic context. It is concluded that the most significant single alteration possible is not mechanical, but rather a will to do right on the part of authorities.

9.1 The Place of Agricultural Considerations

9.1.1 Three stages in the development of the interdisciplinary study of these decisions can be discerned; analysis of existing procedure, development of feasible alternatives, and lastly an assessment of the academic and practical lessons of the preceding stages. Insofar as the alternative framework rests on economic theory and methodologies it falls to be described by Hearne in the parallel thesis. The important decisions concerning what stage of the road planning process to pitch it at stem directly from the analysis of public administrative realities and must be discussed here.

9.1.2 It is integral to IHD-style research that it be practical and relevant. The concern is with methods which are usable and fit the systems at which they are pitched. Thus it was necessary early on to draw the fundamental distinction alluded to throughout, between treating agriculture as a cost to be assessed as part of the appraisal of the road as a good, or simply part of the optimisation process subsequent upon an acceptance of 'need' within the DTp's framework. That framework, based heavily on costed time saving benefits, has now been fundamentally appraised and attacked by the Leitch Committee and there may be a place for agriculture to be costed in more fully. In most cases however the comparatively low stream of benefits obtainable from farmland will ensure that

any economic appraisal framework which includes discounting will always have agricultural costs as a virtually irrelevant item.

9.1.3 Yet, as has been seen, agriculture has had a major impact on some decisions - albeit that the selected cases of Chelmsford and Beverley are exceptional almost unto uniqueness amongst the many examined or monitored during the course of the project. It was argued in Chapter 4 that the value of a subject-specific study of various decisions was that it permitted the drawing of more general conclusions, the one principal facet being used to illuminate others. It is to be hoped that the reader will have found this borne out by the eclectic decision-criteria of the four contrasting studies. To focus on analysing one aspect however is to rely on others for help in synthesising that aspect into the wider critique an academic should aim at. The decision to regard agriculture as primarily an optimisable element concentrated attention on the decision-stage around the line-order public inquiry. In which case this attempt to broaden the view must start with the work of Wraith and Lamb.

9.2 The Inquiry in Perspective

9.2.1 Wraith and Lamb's study for the Royal Institute of Public Administration is a generic antidote to specific studies. They look for underlying threads:

> "Public Inquiries are a very British institution, both in the literal sense that they are not found elsewhere, and in the wider sense that they reflect

English history and tradition." (p 352)

They are an open feature within a normally closed administrative process and have two basic functions: "the collection of information and the resolution of conflict". Herein lies their importance to this study, that they occur before final decisions are made and provide the ideal forum for agricultural problems, which are at once questions of collecting information on national loss and resolving conflicts regarding individual impact. Despite the tremendous autonomy of the RCU system (Brant; Kay), they are still a 'deconcentrated' level of a central department and work within a framework of national policy (Hanson & Walles p 210).

9.2.2 The case studies have shown agriculture in an administrative void so far as relevant central policy is concerned, leaving regional administrators with considerable discretion of interpretation. The literal irresponsibility of much regional administration has become a virtual truism of British Government (Kilbrandon, especially the minority report; Stacey; Street 1968). Wraith and Lamb identify two precise areas where the inquiry may be stretched too far in order to cover up these deficiencies of responsibility. The first is when an inquiry is made to collect information and resolve conflicts on complex matters beyond its competence. Technological developments and population are cited. This has clearly been a major feature of recent

controversial road inquiries revolving around traffic predictions, culminating in the case of Bushell (1977). The second is what they call mistakes at the "edges" of the system (pp 307-8). This latter is evidently meant to cover the place of agriculture where its national loss aspect is supposedly MAFF's responsibility and its individual aspect the D.V.'s, what we have preferred to term an 'administrative void'.

9.2.3 The difficulty with being at the edge, or in a void is that the British administrative culture fights shy of discretionary initiatives (Ganz; Donnison 1977) and the onus is shifted onto the objector who often has not the resources. Despite DTp's reply to the Information Pack our research failed to uncover one successful line objector who recovered costs. A solution put forward by Wraith and Lamb, interestingly, is that mooted by a former Head of Land Use at NFU. Mr. Wallace costed the amount of work done by NFU for a large scale inquiry at up to £10,000 (late 1960's prices) and for Roskill at perhaps £20,000 (p 349). By far the greater part of this money was spent on collecting and presenting the basic information on agriculture. NFU would have preferred, and Wraith and Lamb endorsed, a procedure akin to an Environmental Impact Statement which might be as follows in practice:

1. An advisory process by experts in all aspects of the subject meeting in private, who could invite help from any quarter and would be under

an obligation to consider written representations.

2. Publication of their advice, followed by a public inquiry (at each site if that were applicable) based on what the experts have had to say.
3. Reconsideration by the experts in the light of the public inquiries, whose reports would be made public, and a statement to the Minister of the pros and cons of the various alternatives, but not necessarily including a firm recommendation.
4. Decision by the Government. (Ibid)

9.2.4 At present the problem of the inquiry forum for agriculture lies in the confusion of the national balance between the road and the damage it does, and the impact on the individual farmer.

Whilst both aspects might gain from the adoption of a procedure like the above, (assuming the experts would be paid from public funds), a timely reminder comes from the Q.C. representing ERCU at Chelmsford who subsequently wrote of "the Public Inquiry which the public sees as the only place where they will have a hearing, they would hope a hearing which will have a fair chance of being heeded." (Spokes).

If the inquiry is to work, expert evidence must be presented in such a way that it is comprehensible to all concerned, and can be dealt with by the public too when they make their own points. The potential clash between inquiries as

public debating grounds and forums for addressing individual grievances achieves a consummation regarding agriculture, which has elements of both. The debate is arguably a timeless and impossible one resting on fundamental differences in the logical approach of political and legal minds. Compare, for instance, the ethicist politician Mill 'On Liberty', and Sir Desmond Heap the planning lawyer:

> "Man is capable of rectifying his mistakes by discussion and experience. Not by experience alone... Wrong opinions and practices gradually yield to fact and argument; but facts and arguments, to produce any effect on the mind, must be brought before it ... reliance can be placed on [human judgement] only when the means of setting it right are kept constantly at hand" (p 109 and pp 104-10, passim)
>
> "The holding of the inquiry is a statutory procedure but not a justiciable procedure ... The only thing which is binding on the Minister is Government policy" (Times, Letters 26/7/76)

9.2.5 In this clash of approaches it seems clear that the former is much more in tune with the attitude of the objector and public-at-large (Sharman; McAuslan 1971). Sharman argues that in spite of the restrictive new rules for road inquiries (S.I. 1976/721) the trend generally is from minor optimisation to overall appraisal as the focus. In this he appears to be supported by recent major pronouncements of the Environment Secretary:

> "In France and Germany recent events there have shown that difficulty and delay can arise if people feel,

rightly or wrongly that there has not been adequate public consultation ... Our inquiries and our systems of consultation must be adequate for the needs of today and the concerns of tomorrow. And I shall be prepared to modify or extend our systems if this becomes necessary."

(DoE Press Notice 482, 20/9/77)

9.2.6 Evidently if open full-scale appraisals were the order of the day as Mr. Shore proclaims then any attempt at developing relevant agricultural input could concentrate on early discussion and costing of different routes. That the Group put such methodologies second to those relevant to access and other optimisation facets (see Hearne) is a direct result of realistically interpreting the evidence from our studies. This shows that in spite of such generalised prognostications the inquiries held by DoE, and now in tandem with the Transport Secretary have been secretive, confused and evidently people have felt, rightly or wrongly, inadequate. A few examples, of many, will suffice:

- at Epping requests for details of vital economic rate of return data at an early stage were refused by ERCU. The Inspector agreed that he had no control over this and objectors should wait until it came out in evidence. The Alliance then suggested that expert details could be clarified in advance between ERCU's and their own

traffic witnesses. This was refused. Yet more disturbingly a request for explanation of an earlier statement was met by the ERCU Counsel opposing the question forcefully. He pointed out the costly and time-consuming nature of the extra work put on the Department in producing answers to supplementary queries. In fact, it emerged, all the work under discussion had already been done in detail - producing results which were contrary to ERCU's case. It would not be going too far to say that there was an attempt at suppression (Wolfson Group, 1975, Days 4, 5 and 21)

- at Chelmsford essential details of the economic modelling were only obtained well into the Inquiry. The Inspector accepted that had he not fallen ill he may have had to suspend the Inquiry until these matters could be dealt with.
- at a compulsory purchase inquiry which was used for early field trials and interviews the objectors eschewed disruption and were rewarded by a poverty of information. In a letter to the Guardian they pointed out:

  "If construction of the Water Orton section of the M42 - at a cost of £18.2 millions for 2½ miles - is in the general interest, would it not be democratic to publish details of the economic appraisal so that all can see that

this is indeed the case. But the Department of the Environment, despite continued representations from ourselves and our Member of Parliament, have consistently refused to make available even the results of the economic appraisal, let alone the detailed basis on which it was carried out."

(25/9/76)

- even at Canterbury which must be counted a comparatively good example of RCU behaviour overall their agricultural consultant found them "almost paranoic" about MAFF opposition being public. Although prepared to make every effort to accommodate farmers on the preferred line they would not permit a full-scale appraisal of both routes until circumstances forced it upon them.
- The DoE/DTp have been taken before the High Court at least four times in the last two years on the grounds of having suppressed information. Not a task lightly undertaken given the cost and confused nature of British administrative law. (Cases of Waters; Bushell; Ostler and Shoreman. See also De Smith; and Griffith, 1977)

It is against this pessimistic background that any consideration of improving procedures must be set.

9.3 Quantitative Methods and the Place of Experts

9.3.1 The second problem facing any realistic assessment of how to incorporate theoretical agricultural costings is that of expertise. The methods developed as evinced by the Canterbury example, and discussed further in Chapter 12, are reliable - but complex, detailed and statistically-based. Carrying them out is costly even in resource terms, without counting in any consultancy fees. In reality any such assessments would need to be sponsored by the Department, and the challenging words of a University physicist who became involved in a local planning controversy apply equally to public and private developers:

> "My conclusions are that present procedures are highly inappropriate for a sensible technical discussion and are such that a developer with sufficient resources to hire consultants who are competent in the ways of Public Inquiries should not have too much to worry about from objectors and local authorities, regardless of any real merits or de-merits of the plans put forward." (Dombey)

Dombey's solution was to equip the DoE Inspectorate with neutral experts after the manner of a Planning Inquiry Commission, for which specific provision is made in planning legislation but which has yet to be invoked.

9.3.2 The nearest approach Parliament has made to a review of transport policy in the last decade was a Commons Expenditure Committee on, mainly Urban, Transport Planning. A review of their work and similar aspects of modern government asserted:

> "The use of quantitative methods as aids to decision-making is spreading ... They can be used to exclude the non-comprehenders, to confuse issues, to present aspects of a problem selectively."
> (van Rest)

The Expenditure Committee had taken cognisance of such developments in the field of Transport Planning and put it forcefully to the DoE that:

> "The assumptions made and the methods used in the transportation studies should be made more comprehensible to the layman."

When they returned to the subject in a later session, the Committee were appalled to learn that the DoE's reaction to growing difficulties at the inquiry stage was to consider "whether it would be appropriate to put any limitation on that sort of discussion". The Committee rejected any such limitation and the right of objectors to question the fundamental need for a road was established. (H.C. 1973; Cmnd 5366)

9.3.3 The continuing debate regarding the style of inquiries evidently has great moment for agricultural decisions. As a subsidiary matter agricultural treatment

is strongly influenced by the general character of the decision. Thus the differing nature of the four cases examined. If inquiries are to be yet more dominated by complex traffic and economic statistics then there will be correspondingly greater need for agriculture to be professionally assessed in a similar manner.

9.3.4 The role of the road inquiry is in flux at present. The DoE/DTp's own booklet for public distribution captures the story to date. Up to July 1974 the relevant section read:

> "The merits of Government policy may not be questioned at inquiries into specific proposals."

After representations from pressure-groups and the supervisory Council on Tribunals, DoE agreed to amend the wording to:

> "the Inspector may disallow questions to Departmental representatives which in his opinion are directed to the merits of Government policies." (DoE 1974, para 20. Original edition withdrawn)

In the rules recently made for inquiries this has been tightened further to:

> "the appointed person shall disallow any question which in his opinion is directed to the merits of government policy." (Emphasis added)
> (S.I. 1976/721, S 6(2))

Since then the Leitch Committee has reported on the imprecision of much of DTp's forecasting, Sir Douglas Frank has ruled in Bushell's case that such forecasts are matters of fact not policy (this case may go to

appeal) and the Transport Secretary has announced a line for the 'M40' (Oxford-Warwick) but left its size and type undecided; including whether it will be motorway at all. Any assessment of whether road inquiries will continue to be itinerant statistical 'planning circuses' as their more jocular participants proclaim is fraught with caveats.

9.3.5 Nonetheless it behoves this chapter to essay a viable model. Suppose then the RCU have brought minimal evidence on agriculture, merely a list of land-takes and grades. It is desired to object by calculating details of the considerable range of impacts there will be. According to the Rules MAFF only need appear if they are supporting the scheme, have said so in writing and are cited by the RCU (Ibid s7).
So the agricultural objection cannot rely on them. Assuming that there was a viable non-farmland alternative, then a case might be organised by NFU. But like Chelmsford (where there were grave modelling errors by the RCU) then the farming objection would have to overcome traffic arguments. There could be no questioning of the scale of road or its design speeds as those are policy matters, although they might well be the strongest determinants of agricultural impact. In the extreme, if the RCU issued a statement saying that after full consideration, and balancing policies on traffic and land conservation the Minister felt the road to be required it is doubtful if agriculture could mount a serious challenge.

9.3.6 The assessments carried out to date (Rural Planning Services 1973, 1975, 1976) and the method developed by the Group (Hearne, chapter 12) all rest on aggregating individual farm impacts measured by the most appropriate national standards - net farm income and gross margins (Britton, Nix). It is not necessary to go into these here to make the general point that given the procedural rules they could be readily disallowed by the 'appointed person', or the Minister, because policy only rests on no more and no better quality than necessary.

9.3.7 It was accepted above that the detailed individual farm assessments proposed had the drawback, compared to MAFF's expert judgement that they may make it harder for some individual farmers to participate. That it may tend, in Self's well-turned phrase to "convert genuine political and social issues into bogus technical ones" (1970A). Given that cost will ensure that on major schemes it must be the authority who commissions the expert appraisal, it may be open to what a computing specialist who observed DTp's use of figures at the Archway Road Inquiry in London, termed 'Sosiping': Sophistical Obfuscation of Self-Interest and Prejudice (Stern).

9.3.8 The argument is a fair one. Nonetheless it is felt that evidence collected by the group justifies the use of calculations dependant upon technical expertise for two reasons:

a. MAFF's input, for all that it is assimilable by non-experts is also inappropriate to the

decision the highway engineers are facing. Thus the Jefferson Report mentioned above, DTp's attempt to draw up an appraisal framework for environmental issues used a points system for trading off land quality. The highest grade had a 20-point weighting, the lowest only 1, thus giving some basis for trading-off. MAFF's input similarly is confidential - thus removing much of its assimilable value. Confidentiality is normally very strict, and Beverley - useful as it was for research purposes - a probably unique example. Indeed the Chief Surveyor's department at MAFF headquarters denied it could ever have occurred that one of their regions publicly opposed DTp.

b. Any idea that the vagaries of inquiry appearance without expert or quantitative support must rest on one or both of two aphorisms; either the individual farmer or the nation is better served without it. The first is almost an article of faith amongst highway engineers, that organisation and group objections have interfered with their policy of looking after individuals (Brant 1976). The point was made at Beverley, and is borne out by schemes not used as cases because there was only

peremptory dispatch of individual farmer's objections, that RCU's generally do not meet requests or requirements unless pressure is brought by a well-organised case. Examples will be found in the M40 and M5 cases below, both of which went through without formalised agricultural objection, of farms singularly ill-dealt with and some arguably over-provided. It is the sheer ad hoc approach of the present system which refutes the national optimisation point. When similar problems on different schemes receive different treatment, both cannot be correct.

9.3.9 The evidence cited above of suppression of information, the strong feelings evoked by road inquiries recently and the pressure which has led to formalised inquiry rules, the Leitch Committee, DTp's announcement that it will draw up new rules in conjunction with the Council on Tribunals and the Transport Secretary's announcement that in "a post-Leitch era" he will publish schemes which are much more open to challenge ('World at One', BBC Radio 4, 21/1/78), all point to the same end. The system of road inquiries has changed and is now being formally accepted as so by government, the reasons are many and complex but the essence is captured by Derek Senior's observation of how planning inquiries shifted

their function in the selfsame way; he wrote of

> "the power of public opinion, without benefit of legislation, to transform in 10 short years the whole nature and function of a piece of governmental machinery, merely by misconceiving its purpose ... A public institution is not what its creators intended; but what it has become in the public mind." (Sharman, pp 297-8)

How could inquiries develop then so as to permit agricultural inputs to be best used?

9.4 Whither Public Inquiries?

9.4.1 What has been wrong with them to date? How, in the Council for the Protection of Rural England's words, have "DoE Ministers themselves contributed to the disruption by failing to recognise the genuine anger and frustration which has led reasonable people to adopt these tactics?" (Planning Newspaper 3/8/76)
Firstly, as Wraith and Lamb warned (9.2.1) they have been made to do jobs far beyond their capability.
As the respected Journal of Planning and Environment Law wrote:

> "Whilst we unreservedly condemn the activities of people who set out intentionally to wreck local inquiries into highway schemes, we feel the new rules (like the old practice) contain the ingredients for continued dissatisfaction with

procedures for the approval of major highway proposals ... unless there is an alternative opportunity ... to debate the regional and sub-regional implications of a national policy, local inquiries into major highway proposals will continue to satisfy only the few." (1976 JPEL 540)

9.4.2 Farmers ought to be of those few. Public local inquiries, by definition, are designed to inform the Minister of specific effects of a proposed scheme. Affected farm units are a case, par excellence. If inquiries are to serve the dual purpose of being overall planning forums and dealing with specific route proposals too, then perhaps an editorial in the Times had the most useful suggestion. It is a point frequently aired but none the worse for it:

"A case can be made out for a different kind of inquiry earlier in the planning process. In fact the Town and Country Planning Act 1968 created machinery that would probably serve the purpose. Its 'Planning Inquiry Commissions' would examine matters where "considerations of national or regional importance", or difficult technical questions make ordinary processes unsuitable. The device has never been used." (19/8/76)

9.4.3 Perhaps with a chairman appointed by the Lord Chancellor's Office and skilled assessors for different subjects, such a Commission might hold out a good deal more hope for rational agricultural debate. The 1976 Rules,

in the words of Lord O'Hagan praying against them were "merely fossilising an already unsatisfactory situation", the worst aspect of which for full-scale farm appraisal is the so-called 'wet end' argument. It is one a Planning Inquiry Commission (PIC) is specifically designed to solve. By publishing schemes in discrete sections it has often been that the majority of farmers between points A and B are prejudiced by the approval of schemes up to those points with the line between all but pre-determined. By looking at a longer section earlier there are clearly more options available and it was with this more major appraisal in mind that the Group developed a methodology for costing alternative routes (Hearne, chapter 12).

9.4.4 Such an investigation requires specific, detailed farm information and thus, openness in the planning process. The counterveiling administrative pressure is concerned with the blighting effects of promulgated options. It is thus a major finding of the Wolfson work, described in section 3, that blight rarely occurs on farms. Farmers, in fact, are more likely to be disturbed in their planning by the 'bad taste' left by excessive secrecy and an all-but determined line. Burroughs (1970) found the same rancour at electricity powerlines built in stages. As Lord Foot put it in a recent debate on the new Rules, for objectors to be "obliged to confine

their attention to a short strip of road between two fixed points" is one of "the serious limitations imposed on inquiries" and should be overcome forthwith. (H.L. Debs 2/7/76, cols 995-1001)

9.4.5 A PIC, with the power to call for and commission evidence itself, specialist assessors to aid a chairman independent of the promoting authority, and the power to press points and lead discussion that Structure Plan Examination chairmen have, would seem to solve many of the present procedural problems. An inquiry along these lines, commissioning an agricultural appraisal or testing DTp's, carried out before they chose a preferred route, would open the way to a useful agricultural input. Without such a major change in administrative practice however, farming would seem to be constrained to remaining at the level of a secondary optimisable input, rather than an aspect of the appraisal of the road as a good. If there is no adoption of a PIC style, then two problems have arisen from the fieldwork and case studies which interfere with the working of inquiries as they now are; costs and authority behaviour.

9.5 Costs at Public Inquiries

9.5.1 Some estimated costs to the NFU of a major inquiry were quoted above (9.2.3) and certainly for major objection groups at 100-day or more inquiries these represent a substantial underestimate. Asked to quote for consultancy work on a small-town by-pass scheme

the Group estimated the cost of agricultural appraisal at around £4,000. This is a considerable sum for even a large farmer or group of farmers. The problem has a long history which should be reviewed before any conclusions or recommendations are drawn out.

9.5.2 Following the renowned Franks Committee's deliberations one of the major proposals to emerge was that there ought to be a supervisory body on tribunals and inquiries (Cmnd 218, ch 11). A Council on Tribunals was duly established and in 1961 it began a major investigation of the position regarding costs at statutory inquiries. (Cmnd 2471)

At that time the award of costs was ruled by the 1933 Local Government Act (s.290 (5)), this allowed the Minister almost total discretion in payments. The practice in England and Wales however was "for the Minister concerned to award costs only in exceptional circumstances such as the case of unreasonable behaviour ... The power to award costs is very rarely exercised." In fact, it was submitted in evidence, about 3 awards per year were made from 6000 inquiries. (Ibid, paras 11 and 22)

9.5.3 We shall return later in this review to the fact that Scotland appears to lead the way in inquiry practices. In this case Scottish procedure distinguished between:

1. expenses of an individual defending his interest against public authorities; and

2. expenses of a party pursuing an application he originated.

Expenses were normally awarded to successful objectors of the first category much as in the courts. In both Scots and English systems the award was of estimated reasonable costs not actual expenditure. (Ibid, s.14)

9.5.4 The Council distinguished between awards for unreasonable behaviour and awards in general. With regard to the former it was felt that they should be used more widely and guidelines were suggested; three of these criteria stand out:

"24 (ii) It is reasonable to expect a higher standard of behaviour from planning authorities than from appellants, because the former ought to know more about the procedure and the strength of the arguments on both sides of a particular appeal

25 We accept that it should be regarded as very exceptional to award costs against the citizen where a local authority or statutory undertaker initiated the proposal."

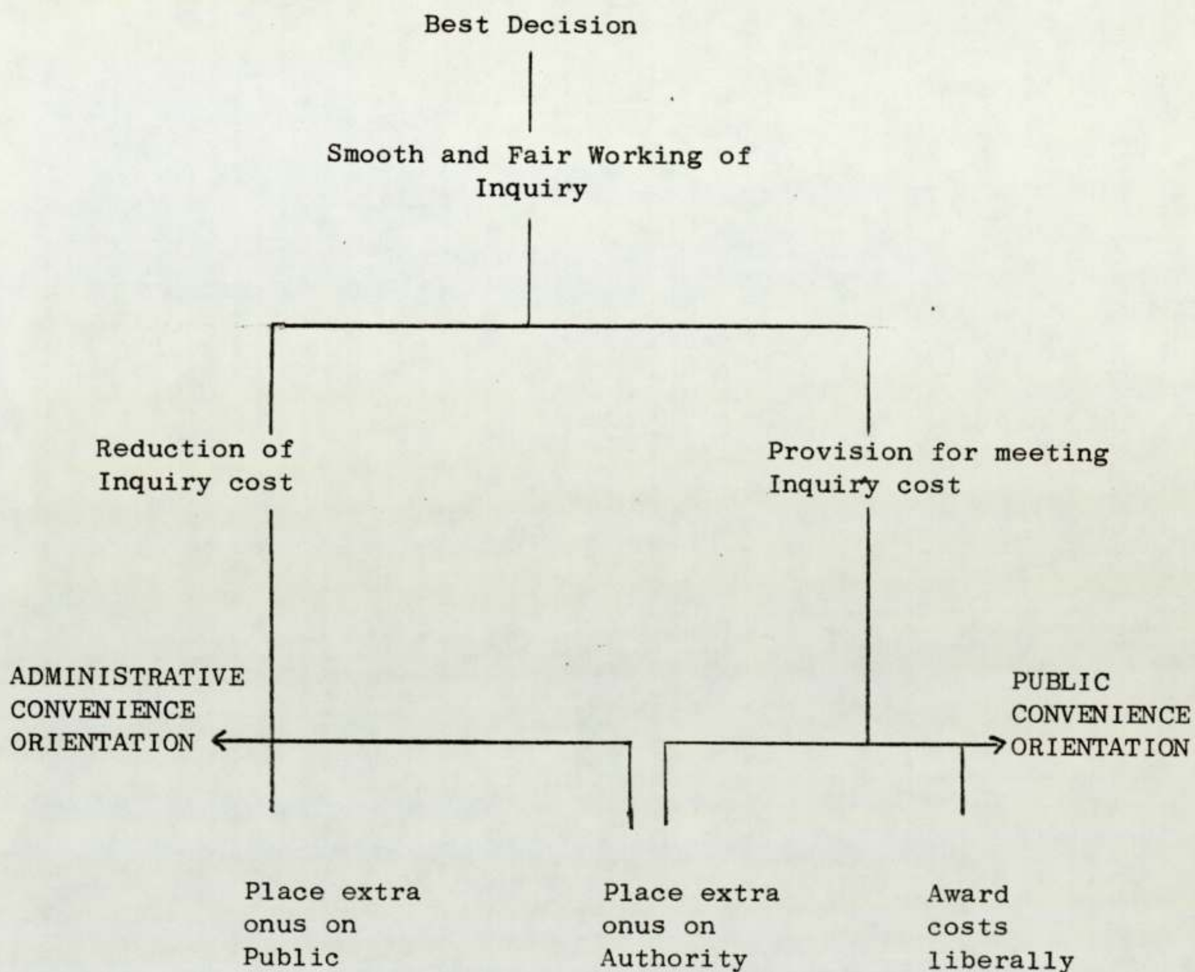
Unreasonable conduct can also be isolated:

"28 (iii) Where one party has refused to co-operate with the other in settling agreed facts or supplying relevant information before the inquiry, thus unnecessarily prolonging the inquiry."

Very little progress has been made with these recommendations, whether in terms of costs or generally. It is normal practice for an RCU to withhold the greater part of its case until the inquiry commences.
At Beverley, for example, farmers complained at how little settled information they could obtain before the inquiry opened. Although the Council went on to say that the recommendation in paragraph 28 should be interpreted much more strictly in the case of the authority than the citizen, in fact quite the opposite has occurred. The 1971 Highways Act involved a tightening of the rules, necessitating an objector supplying details of his objection in advance, at the same time reducing the minimum objection period from 3 months to 6 weeks (section 14).

9.5.5 It can be said that there is a clash of approach between the Council and the Department, illustrated in diagram 9.1.

Diagram 9.1 : Potential Approaches to Inquiry Decision-Making



The diagram is necessarily a paradigm and does not admit of all possible options. But it does help show that where the Council on Tribunals leant toward the right-hand orientation the DT have since tended to the opposite.

9.5.6 It is an important part of the argument which ties costs and authority behaviour together as a single orientation that the problem of unreasonable conduct and where to draw a dividing line between that meriting an award of costs and that which does not is generally an irrelevancy.

If the Council's stiffer tests were employed then there would more likely be an upgrading of behaviour rather than a mass of cost awards. This is of moment when an individual is faced with an attempt by a rich and expert authority to take his property, albeit with compensation. The Council indeed established as its "General Principle":

> "the objector to a compulsory purchase order or clearance order is in a special position and is deserving of sympathetic consideration as regards costs." (Cmnd 2471, para 30)

9.5.7 However a major split was found between submissions received from government departments which were "without exception, opposed to any rule that costs should generally be awarded to successful objectors", and most other bodies. Despite that opposition the Council had "no hesitation" in recommending that the idea of costs be implemented, just as the Franks Committee itself had some seven years earlier. (Ibid, para 37 and Cmnd 218, paras 322-3). Remember that only the compulsory purchase order stage is being dealt with, not the line order stage too :

> "We are not unmindful of the fact that because of the cost involved some perfectly valid objections may not come to the inquiry stage. The delicate business of reconciling the claims to costs of successful and unsuccessful objectors in this class of case where both are justified in protecting their rights to

property and where success or failure may depend on policy reasons, or on a chance has been one of our most difficult tasks. The conclusion we have come to is that costs should not normally be awarded to unsuccessful objectors in compulsory purchase and analogous cases, subject to this qualification that where there was little or no merit in one objection over another and policy or chance was the determining factor as between one objector and another, the unsuccessful objector, who had not behaved unreasonably, vexatiously or frivolously, should be awarded his costs, and we so recommend." (para 39)

9.5.8 Despite careful reading it remains very difficult to see what this recommendation means in practice and not surprisingly the subsequent Ministerial circular rejected the idea:

"In view of the impracticability of discriminating with obvious fairness between objectors in the manner proposed it has been decided not to make an award in cases of this kind." (MOHLG 1965, para 8)

9.5.9 As mentioned above the discussion so far had confined itself to statutory objectors at compulsory purchase inquiries. In reality if a major agricultural case is to be mounted it must be at the line order stage for there will be little chance of avoiding a CPO after the line has been approved and detailed design carried out. CPO stage is more important for settling individual holding accommodation details. The nearest the Council

came to debating the wider aspect of costs was in connection with the appearance of 'third parties', or non-statutory objectors as they have come to be known. Payment for them was rejected out of hand on the basis that they should not be deterred from appearing by the possibility of having costs awarded against them for unreasonableness, and as "a logical consequence" could not receive costs. This was one of the poorest argued sections of the report and the question of general objections at an early stage was ignored.

9.5.10 The specific point of the Council's recommendations was accepted by the Minister, and the introduction of costs for successful objectors commenced in 1965. The tenor of the report and its definitions of unreasonable behaviour were not taken on board (Ibid, passim).

In all the fieldwork no farmer ever indicated that the possibility of an award of costs has inclined him to object, although the expectancy of not winning at CPO stage and impossibility of reclaiming any cost at line order stage _have_ put people off employing expert advice, and even off appearing. In general however the farmer stands the cost of his agent's appearance.

9.5.11 Reviewing the workings of the procedure after nearly ten years the Journal of Planning and Environmental Law pointed out several specific defects, but above any detailed problems however was the more general recommendation:

"Lastly, we believe it may be time to consider ...

whether those subjected to compulsory purchase orders should be able to claim from the acquiring authority the cost of obtaining preliminary advice from a solicitor or other professional adviser ... A suitable procedure might involve prescribing a maximum sum for which the acquiring authority would be liable." (1974 JPEL 442-3, 689)

9.5.12 The provision of some kind of aid to, amongst others, the farmer faced by a road proposal has been proposed not only by planning lawyers but planners too. (It is perhaps not unduly cynical to suggest that the sight of solicitors filling out their workload with legal aid cases helped jog social consciences.) The discussion of the question of planning aid by a practitioners' (Lowe and Worboys: Foley discuss the influence of professional pressure) seminar showed an intermingling of questions of how with how much. (Town & Country Planning Association 1973, pp 78-9).

9.5.13 How far could this help farmers & the national interest remains the essential question; the answer is probably quite a lot. Quite enough to cover the cost when a single access bridge may be £40,000 or more. Say, on a given route are 20 farmers, there would be practical difficulties, but it would aid the quality of objections to have, say £100, to put to agent's fees, just as £2,000 would probably hire a good consultant for an overall appraisal.

9.5.14 In the end however any such system must be a substitute for correct initial assessment. To spend any figure on helping the objectors at such a late stage in the proceedings would run counter to the much more important necessity of getting things right at the (more appropriate) earlier stages. That is the essential theoretical difficulty in the way of payment. Practically the problems are many and varied. Three major ones would seem to be:

a. limitation on who may appear for whom and what fees they could claim

b. questions of combining, and especially of combining with "third party" non-statutory objectors like the Alliance Against M16

c. whether a farmer would get "two bites at the cherry" with costs at both line and CPO inquiry stages. If only the latter, is this not too late anyway?

Such theoretical and practical hurdles point to there being little chance of 'planning aid' being taken up seriously in the immediate future and it is an inadequate substitute for the proper appraisal, early enough to be influential which might follow a move to a PIC mode of working. If the system is not to change however there is still, on the evidence presented, room for the significant move of recompensing successful line order objectors be they the NFU at Chelmsford or specific farms at Beverley. For, by definition, they have aided

the national interest by informing the Minister of relevant facts.

9.6 Authority Behaviour at Public Inquiries

9.6.1 In chapter 3 the point was made that the Information Pack became a firm possibility once it was learnt that there were no outstanding technical problems; it was basically a matter of communication and understanding. The idea was brought forward as a hypothesis into the sphere of decision-making. As will be shown in chapter 12 it was disproved insofar as a major research effort was required in order to establish a viable method of calculating farm loss. That this occurred is not, however, to say that the above cases show merely a want of a method. Far more do they show a lack partly of will, partly of initiative, to step outside inappropriate frameworks, and occasionally it must be said a simple lack of administrative decency. A lot more could have been done within the existing framework.

9.6.2 Aldous, the Times environmental correspondent, captures that framework well, In his down-to-earth 'Battle for the Environment' he places highway inquiries in a category of their own:

> "The distinguishing feature of these is that they are proposed by a public authority (often the Ministry) which is also to a greater or lesser extent the body sitting in judgement on them." (p 241)

9.6.3 He points out, quite rightly, that inquiries have a long history and that there are few new points to be made. That they may appear a little too formal for some is all part of a balance between the sometimes unjust informality of the pre-Franks Committee days and very strict courtroom legalism. It is only a pity that one of the most fundamental recommendations of Franks was ignored. The Committee considered the problem of independence at the inquiry closely and balanced the administrative argument that an internal Inspectorate (the Minister officially 'invites' members of a special panel) allows them to be closely aware of policy, against the public value of perceived independence. They summed it up rather cogently:

> "Some may say that [transfer of inspectors to the Lord Chancellor's aegis] would be a change in name only, but we feel no need to argue the point because we are convinced that here the appearance is what matters. This change, by no longer identifying the inspector in the minds of the objectors with the Department of the deciding Minister, would emphasise impartiality at an important stage of the adjudication and thus do much to allay public misgivings." (para 303).

9.6.4 The actual independence of some inspectors, as well as their theoretical position, has been called into question (Transport Report, January 1978, p2). Yet this remains only a minor, although conspicuous aspect of the partiality

of inquiries. Much more serious, and responsible for most of the disrupted inquiries which attracted publicity has been supression or misrepresentation of unfavourable evidence (Guardian, 23/9/76, p11; Kay 1976; Tyme 1975).

9.6.5 It was mentioned above that Scotland appears to have led the way on public inqruies as regards costs; and again it seems that while in England inquiries have been debated and disrupted the Scots have tried improvements. In early 1975 the Scottish Development Department sent out a circular and memorandum recommending:

> "ways in which inquiry procedures could be made quicker, cheaper, more informal and more efficient"

Quite a tall order indeed. Yet the intention was approached determinedly and the accompanying letter emphasised the Secretary of State's concern that the following five points be given especial note.

> "(a) The importance on the one hand of applicants giving full, public explanations of their proposals and their effect and, on the other hand, of planning authorities discussing the proposals thoroughly with applicants and with objectors to improve public understanding, open the way to compromise and perhaps even avoid the need for an inquiry at all;
>
> (b) The need to circulate in advance of the inquiry as much written evidence as possible and to discourage the use, for tactical advantage, of surprise evidence, with reserve sanction to treat such action as unreasonable behaviour to be taken into account for the purpose of award of expenses;
>
> (c) The avoidance of repetitious cross-examination;
>
> (d) The importance of the role of the Reporter in directing the proceedings. It seems to the Secretary of State that he should not

" necessarily be a silent listener to the proceedings: he should be free to seek any clarification he deems necessary or to direct questions to issues which he thinks will be important to the Secretary of State's decision, but which may not have been adequately covered in the evidence;

(e) The desirability of the maximum informality of procedure, so that the ordinary person does not feel inhibited from making a contribution without professional representation."

A "Reporter" is the Scottish equivalent of an Inspector.

Briefly the principal innovations involved were:

1. the proposing authority should provide full details of the scheme well in advance

2. the parties should exchange all their primary written material before the inquiry with a view to agreeing basic facts

3. the Inspector should order the production of possibly relevant information

4. the Inspector should have no truck with jargon

5. the proposing authority would not have both first and last word

6. transcripts and tape recordings are to be encouraged

7. after the inquiry the Inspector's draft report will be open to comment before it is submitted

(S.D.D., 1975)

9.6.6 This quite radical reform, with its implied rejection of the adverserial approach has attracted comment, generally favourable to the proposals (1976 JPEL 313.4; Young 1976). It has been emphasised how much the same were recommended for England in the Dobry Report

but never implemented (Dobry 1974 and 1975). In the end the guiding principles for inquiries, as the Scottish circular reiterated, remain "openness, fairness and impartiality" - the key words produced by the Franks Committee.

Franks had come out in favour of public written statements of case "in good time before the enquiry" (sic) an independent inspectorate run by the Lord Chancellor, full explanations by promoting authorities, public inquiries rather than private hearings and the publication of Inspector's reports followed by an opportunity to comment (Cmnd 218, parts IV & V). It is a great pity that governments since then have paid lip-service to "openness, fairness and impartiality" but not seen fit to implement many of these proposals. There can be little doubt from our interviews that farmers would appreciate such changes and the satisfaction of an affected individual would rise (or dissatisfaction drop).

9.6.7 But these are matters of form, system and appearance in the local inquiry as it stands today. Whilst opening the decision-process on a particular route or scheme for greater probing they would do little or nothing to improve the agricultural input at an early enough stage to be efficacious. To enhance the opportunity for criticism might <u>indirectly</u> force the proponents to prepare better plans for affected holdings, but not of itself raise agricultural appreciation. In the end

we can but echo the words of the Franks Committee's vital caveat, only too often unread by governments. 'Wrong approach' should be read to mean lack of will to devise and accept appropriate methods as well as bureaucratic arrogance:

> "We wish to emphasise that, whatever our recommendations under either part of our terms of reference may be, nothing can make up for a wrong approach to administrative activity by the administration's servants. We believe that less public resentment would be aroused against administrative action if all officials were trained in the principle that the individual has the right to enjoy his property without interference is unmistakably justified in the public interest. For example, the attitude of an owner or occupier may well turn on whether he receives reasonable and courteous notice of a proposal to inspect the land." (Ibid, para 405)

PART III : THE EFFICACY OF COMPENSATION

CHAPTER 10

THE SOCIO-LEGAL BACKGROUND, AND LITERATURE REVIEW

Mr. Carmichael: I have received no evidence of the inadequacy of compensation and will give attention to any there is.

(H.C. Debs. vol 871, 3/4/74, col 1257)

Mr. Freeson: I will consider worthwhile extensions to the Land Compensation Acts if they are put to me.

(H.C. Debs. Written Answers - 8/12/76, col 225)

SUMMARY

As an introduction to this section, which is intended to be a critical appreciation of the workings of compensation, a general review of the statutes, practices and their relevance to agriculture was undertaken. This chapter analyses the appropriate statutory bases of compensation and its assessment, seeks to provide the non-specialist reader with an understanding of technical terms and illustrate the close relationship between compensation and politics on which the tests of efficacy in this section are based.

10.1 Place and Aim of the Compensation Study

10.1.1 It became clear during the course of early fieldwork that probably the least explored area of the subject was the role of compensation. An extensive literature review was undertaken as it seemed that many political decisions were abrogated, because administrators preferred to leave matters to a legal remedy. As Diesing has pointed out, there is no necessary and adequate reason why a legally derived principle should suit political circumstances. Not only did the question of compensation appear intrinsic to decision-making generally, but it seemed an irresistable interdisciplinary challenge to enquire if compensation was just.

10.1.2 The academic and practical ends of IHD research are subtly intertwined, never more so than on this topic. On the one hand it would be of little use to collect detailed evidence of compensation payments, and then analyse them in depth, if one had no further way of judging the results. On the other, to dwell completely in the ethereal realms of whether, philosophically, justiceis based on emotive or epistemological considerations (Ginsburg 1963) is to leave onself open to the trenchant criticism of Davies:

> "In the public field ... the important central questions are those of compulsory purchase and planning. Land law in the Universities should reach the subjects in the twenty-first century." (1972, p Vll)

10.1.3 As with other aspects of the work there are substantial bodies of knowledge on both the theoretical and practical aspects, but very little praxis, the empirical testing of theoretical ideas. The Encyclopaedia of Compulsory Purchase (Brown) and Rawls on Justice(1972) alone cover some 2,000 close pages between them, but neither would find place to fit in the other. This is not necessarily criticism of either or both, the end of each opus is different. It is simply a formal statement of the IHD role in testing theoretical hypotheses whilst at the same time judging the realities of practice. The great danger, of course, is falling into a yawning logical chasm, that of self-reinforcing tests. If theoretical ideas of justice are tested by how they correspond to people's treatment in real compensation negotiations, and we duly test that treatment against formal statements of conceptualised justice or ministerial pronouncements regarding compensation, then there is set up a potentially closed circle. The point where the loop welds is thus all-important, and that link connects justice and compensation. Without the extraneous touchstone of justice then we can be easily trapped within a legal positivist approach. The subtler level of positivist criticism, the actual compensation paid measured against formal statements of legal intent (principally 'equivalence')

will be of interest. But if the study's findings are to be placed amidst their wider social context the extraneous concept of justice is required.

10.1.4 The reason for choosing justice as the test is simple. Society as a whole respects certain individual rights and expects government to deal justly with them. Whether the voice of society speaks in parliamentary debate, letters to newspapers, Royal Commissions or via expropriated farmers giving their views, literature reviewing has found no occasion on which anyone suggested any other ultimate theoretical basis for compensation than justice. These many voices do not agree on how the relationship should be effected in practice, that is in law, but they agree on the concept at stake. The fundamental methodological question then becomes <u>where</u> to look for the meeting place of justice and compensation. The answer is surely that the places where theory and practice meet are the legislature and higher judicial courts. That is, what Parliament or the appropriate Court say is policy, must be considered to be so and is therefore the 'correct' theory to apply. Where practice differs it may be noted and analysed in its own right but will not be taken as necessarily more 'true'. The position adopted is stated explicitly because this thesis seeks to avoid the debate with 'behaviouralism' rather than to enter it. The split between behavioural approaches with their

rejection of secondary theorising, and more formal approaches which treat variations from stated policy as 'errors' is less virulent than it used to be. Sibley's analysis of the limitations of the behaviouralist approach captures the spirit of the reapproachement:

> "The politicist, we are maintaining, must be much more than a behaviouralist - he must be a historian, a lawyer and an ethicist as well. Much will turn, of course, on what one means by 'understanding' in the political sphere. Here it will be suggested that to understand politics implies the kind of insight characteristic of the artist as well as the precision which we usually associate with science." (p 383)

It will be recollected from the methodological discussion of case-studies (chapter 4) that the drawing together of the artistic and scientific aspects of political and administrative scholarly work is central to the interdisciplinary approach of this thesis. With Stanyer it is held that the essence of political studies lies in its very diversity.

10.2 The Relationship between Politics and Land Compensation

10.2.1 As the methodology developed in this section is a unique one it may be worth dwelling a little on the justification for the tools of political and social analysis to a legal superstructure. With the exceptions to some extent of constitutional studies and civil liberties the relationship between politics and law has

a story of sad neglect since Bentham. In recent years Friedmann, Drewry and now Griffith (1977) have made great strides, but in all the paucity of supportive material comes across strongly (vide, Drewry pp 166-8).

10.2.2 All three works are excellently analytical. There is an attempt here however, especially in chapter 15, to be synthetic too. To examine what compensation principles would be built from political conceptual bases. The idea underlying the attempt is that compensation is a specific application of the more general problem of land values and particularly the question of distributing shares in the product of that value. The literally thousands of pages of statute and case law detail are all ultimately circumscribed by the way society chooses to distribute the costs and benefits of planning. There is no objectively correct figure for compensation. The most basic rules of assessment can be overturned at a stroke by political decisions, as indeed the Community Land Scheme is specifically designed to do (Cmnd 5730). Compensation is a function of compulsory acquisition, is a function of planning, is a function of government intervention, is a function of social decisions. It is about who gets what, when, where, and how, and that renowned phrase of Harold Lasswell's remains one of the best working definitions of politics.

10.2.3 That is not to say, of course, that society has fixed any detailed or actual figures for compensating individuals. In the relevant law the only figures are simply maxima or minima for certain special payments. Rather there is an attempt to tie the price to an external standard - the key idea of market value. In the words of the 1961 Land Compensation Act (LCA), the underlying code for compensation assessment:

> "The value of land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise."

Although the hereinafter provisions amount to another 40 sections, not counting subsequent legislation <u>that</u> one sub-section is at the heart of the matter. Indeed, most of the following sections are not qualifying the principle but dealing with the complications of valuing market price. Complications such as assumptions of planning permission and certificates of appropriate alternative development, which arise solely from the fact of our having a comprehensive system of planning control. Even the market value benchmark is a product of social decisions.

10.2.4 The provision of compensation for the compulsory acquisition of agricultural land and buildings is governed primarily by the Compulsory Purchase Act 1965, and the Acquisition of Land (Authorisation Procedure) Act 1946 as regards the method of taking. The Land

Compensation Acts 1961 and 1973 then cover the assessment. The usual appeal and remedy in the courts on matters of law, and not on any matter of policy is open (Cases of Edinburgh and Dalkeith Rail Co; Stockdale; and R.v Graham-Campbell). Questions of appropriate amounts of compensation may be referred to the Lands Tribunal which is a final arbiter.

The exposition of the details of the law is dealt with by legal experts in numerous publications. Brown (updated) is fundamental, Davies (1972) gives analysis whilst Hamilton (1974) specialises in agricultural land. Here concern is with the law in context so as to provide a basis for analysing practical findings. For this purpose discussion will be at once broader than a mere recounting of positive law but very limited in detail concerning such provisions.

10.2.5 The six basic rules of the 1961 LCA (part II, s5) are:

"1. No allowance shall be made on account of the acquisition being compulsory.

2. The value of land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller might be expected to realise.

3. The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which

it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers.

4. Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or the public health, the amount of that increase shall not be taken into account.

5. Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Land Tribunal is satisfied that reinstatement of some other place is bona fide intended, be assessed on the basis of the reasonable cost of reinstatement.

6. The provisions of rule 2 shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

10.2.6 It can be argued that the most fundamental and related points at the very heart of the link between compensation theory and practice are, firstly that compensation can be only claimed where there is a

statutory right to it, and secondly;

> "A person seeking to obtain compensation ... must once and for all make one claim for all damages which can be reasonably foreseen ..."
> (Chamberlain's Case, p 617)

The importance of the former is that many of those who have an interest compulsorily acquired or suffer some disamenity (whether compensatable or not) abstractly think in terms of just recompense.

It will prove impossible to discuss either theory or potential practice outside of the existing system without involving concepts of abstract justice and right. Yet the political philosophy of Britain is unequivocal on the matter, Parliament is supreme and compensates or not, and fixes the level, high or low, without any but political challenge. The justness must then lie in the procedures laid down by Parliament, and thus the importance of the second element becomes clear. The rule laid down by common-law analogy and never contradicted by statute, that the claim is once-and-for-all is a casting of compensation as an administrative device. The possibility of claim relating directly to the acquisition but unforeseen is specifically excluded in favour of a rule aiding simpler administration.

10.3 The History and Origins of Land Compensation

10.3.1 Compulsory purchase, it is argued, can only be fully understood within the social culture which gives rise to it. Absolute monarchies and communal societies at

the extreme do not have it at all, but even within less extreme cultures it is strongly interactive with the form of political organisation. Thus, whilst it may be historically interesting to seek out early compulsory purchase in enclosure acts and defence works for what they tell us about their time there is little relevant to be discovered in them until modern purposes are involved. The development of compensation provision following compulsory purchase really began in the late eighteenth century with canals, but boomed in the nineteenth as railways, gas lighting and similar public amenities were installed. Before 1845 Private Acts were used for each particular scheme, but in that year Parliament passed a simplified basic code for the future, the Lands Clauses Consolidation Act. This Act has never been repealed but after 120 years was all but superseded by a new code in the 1965 Compulsory Purchase Act. Around the 1845 Act steadily grew an impressive array of case law as the courts became called on to settle the disputes which arose from the growing volume of 'public' works. Whilst there has been a growth of statutory detail too, that detail is mainly concerned with <u>land price</u> - above all with deciding on artificial 'market' conditions. In the words of one commentator "the principles evolved by the courts with respect to incidental heads of compensation are still largely untouched by statute." (Davies, p19)

10.3.2 Until the vast growth in State intervention consequent upon the first World War (Marwick 1964) the Government continued to foreswear statutory guidance on the assessment of compensation and the courts evolved working rules, including a 10% addition to the market value of land (Case of Re Athlone Rifle Range). This common law rule will be returned to later. Perhaps the working rules of the courts appeared too generous in an era of expanded government purchases. Certainly since the 1919 Acquisition of Land (Assessment of Compensation) Act, the price to be paid for land has been strictly limited to market value with all the effects on it (positive or negative) of the scheme in question excluded. There is, in fact, no statutory exclusion of a positive increase in value, but the only practical increase is covered by the seminal 'Pointe Gourde' rule (named after that case) which excludes any extra value which would not exist were it not for the scheme.

10.3.3 An immediate problem is the question of assessing the tenant's compensation where "notional" lease for life has no clear market value (other perhaps than that value the landlord might offer him for vacant possession - but that would depend on the landlord's individual reasons). There has been debate on the artificiality of any such calculation (Hamilton, p25). Such debate would seem to ignore the basic artificiality of the entire market value operation where the skill of a valuer (in both

assessment and bargaining) has to produce a price for a piece of land probably already <u>de facto</u> in the authority's possession as if it were a deal between a free and willing seller and some abstract potential buyer with no particular use in mind for the land. As Parker reminds us, compensation arises when land is compulsorily acquired, if there is no compulsion to the purchase then there is simply a market price.

> "An owner will only sell his land for development provided he obtains for it more than it is worth to him in its existing use. If, for reasons of equity, or saving in cost to the public, or on any other grounds, the extra value is taken away from him, he will not be willing to make his land available and the market will break down."
> (In Hall, 1965, pp53-4)

10.3.4 Compensation, then, is a feature of social distribution and its administration within a mixed economy. This was the approach to the problem adopted by the Uthwatt Committee which, along with the Scott and Barlow Committees and the Beveridge Report, produced out of the social dynamic of the second world war, that rational, comprehensive and interventionist approach to social problems which has been such a feature of British post-war society. The Uthwatt Committee sincerely believed that compensation was really a mathematical exercise in shifting around a fixed amount of development value which resided in the nation's land: "as

planning does not destroy this quantum", they wrote, " it does not destroy land values but merely redistributes them over a different area." (Cmd 6386, para 38c). The philosophy of the Uthwatt Committee was embodied in the 1947 Town and Country Planning Act. So far as compensation (as distinct from the other side of the coin, betterment) was concerned, the major principle included was that of development value residing in the community. In practice it meant that local authorities could generally order a landowner not to realise the full potential of his land by refusing planning permission. And, more importantly, that it could do this without paying compensation for it. Equally, authorities could acquire land at existing use value, notably for the new Special Roads an act for which was passed by the same government. All this was allied to 100% 'betterment' levy on profits arising from planning permission. That is to say, the 1947 Labour Government was quite prepared to abolish the market. The 1951 Conservative Government was not. First, the betterment levy was repealed, and so, inevitably, compulsory acquisition had to go back to full market value which it did in 1959. It was, 'inevitably', because a situation in which people bought at open market value and were then forced to sell at existing use was clearly intolerable. Equally, and of greater relevance, it was unjust because of a prior political decision - to

abolish the betterment levy and re-instate the open market in land. The 1947 scheme, like its Labour Party descendant, the ill-starred Land Commission, and the half-implemented Community Land Scheme, (which have likewise aimed to control the market price and cheapen public development), might have been many things, ineffective, foolish, irrelevant, an interference with property, the thin end of a Communist wedge - but not necessarily unjust until 1954 when the market was reinstated. Only when some people were forced to pay one price and receive another, lower sum did it militate against what H.L.A. Hart calls the "leading precept" of justice, "Treat like cases alike" (1961, p155).

10.3.5 There is an importance to our study in the above argument beyond the straightforward emphasis on the volatile and political nature of the whole field of land value. It is this. The compensation provisions on the 1961 Act were little more than an attempt to codify the case law relating to the original 1845 and 1919 Acts. The vast bulk of the legislation was devoted to establishing the marketable position of the land once market value was restored as the basis. This thesis concentrates on agricultural land, most of it with no planning permission at all, most of it indeed being literally acquired at low, existing use value. Other things being equal, competent cost-

conscious engineers will route roads through cheaply acquirable land in the absence of any contrary constraint. As Hart aptly points out the vital 'rider' to treating like cases alike is to treat different cases differently. But compensation law, certainly prior to the specialist provisions of the 1973 Act, (and even now insofar as its basic rules are concerned) has been an afterthought of the wider land value political battles. Parliament has been much more concerned regularly adjusting the balance between interference with individuals and easy profits for speculators, than with ensuring that each minor claim fully reflects the injury done. British law has not, until 1973 really tried to come to grips with the matter of proper compensation for the small man, including the small farmer whose interest is expropriated or injured by some development in the wider public interest. A situation which is the reality of most compensation matters in interventionist Britain, even if it has less of the political punch of the wider points. In the words of the White Paper preceding the 1973 L.C.A., the "balance in too many cases has been tipped against the interests of the individual". (Cmnd 5124, para 5)

10.3.6 There is, of course, no Bill of Rights in Britain, (Stacey 1973; Scarman). Equally there is no constitutional guarantee that property will not be taken uncompensated by the State. As with the rest of

British Law, it is necessary to point to some actual statutory right to compensation for a particular ill. The Courts, however, have made their feelings quite clear; the usually quoted statement of support was made in 1927 when the Appeal Court found:

> "a statute should not be held to take away private rights of property without compensation unless the intention to do so is expressed in clear and unambiguous terms." (Colonial Sugar case)

More recently, in 1960, albeit in a statement which was obiter dicta Lord Radcliffe went further and spoke of "the general principle accepted by the legislation and scrupulously defended by the courts that the title of property or the enjoyment of its possession was not to be compulsorily acquired from a subject unless full compensation was afforded in its place". (Belfast Corporation case). This latter could well be described as rather panglossion view of a situation which does not always fully merit it. Whilst there may have been a viable argument relating to the taking of property, regarding the enjoyment of it, his Lordship was, it may be argued, a victim of his own rhetorical flourish. Certainly the Government disagreed, for in 1972 they accepted that:

> "substantial injurious affection can be caused by the use of public development where the landowner has no redress because the use is immune from such action. This is particularly true when the use is for a road or an aerodrome." (Cmnd 5124, para 22).

10.4 The Basic Principles of Compensation for Loss of Farmland

10.4.1 Given the 'six rules' of compensation assessment set out in 10.2.5, the question then is what is being assessed? It is land. Land in British law is primarily a territorial concept (Davies, p 76). It is concerned with the rights and interests over a geographically definable area, rights which can be divided, let, sub-let, and so forth, but still remain interests in land. Provisions of the 1973 LCA have taken the concept on to include people whose enjoyment of an interest is disturbed where no land is actually taken but it is still clear that no interest gives rise to no compensation. Notably this includes farmworkers' tied cottages. The value to be valued for compensation is the value lost to the interest. In recent analogous cases the Lands Tribunal refused to allow blight notices served in regard of road schemes because the interest affected was in one case a right of way only and not land as statutorily defined, and the other it was not in an appropriate use. (Ley's and Lake's cases). The relevance of this concept is two-fold. Firstly and generally, it shows that the basic principles behind compensation are the same over the whole range of interests (it will be argued that home loss and farm loss payments and their ilk are a conceptually different type of compensation). Secondly and immediately it puts into context the fundamental division of the study area - tenants and

owner-occupiers. The basic valuation of interests rests on identical prémises for both, but care is needed to isolate the peculiarities of each situation from the generalities.

10.4.2 These matters came to the forefront of compensation law between 1968 and 1973, and the 1973 Act can be regarded as incorporating the intention to redress an imbalance in the just allocation of compensation. In 1968 Pettit's case came before the courts to be followed in 1971 by the Rugby case on the same theme. The first concerned dispossession due to a road scheme, the second due to a water development, but in each the issue was the same - the distribution of compensation between landlord and tenant. The essence of the question was whether a tenant losing land to development could be served a 12-month notice to quit and receive only the compensation appropriate. In the second case, Lord Denning, M.R. reviewed the law as established in Pettit:

> "In that case we considered the compensation payable to the tenant of a farm on its compulsory acquisition. The majority of this court held that the tenant would get only small compensation because his compensation would have to be assessed on the basis that he could be turned out on 12-months notice. That decision is in full accord with the Agriculture (Miscellaneous Provisions) Act 1968. Section 43 of that Act provides, in effect, that the tenant's compensation shall be

assessed on the basis that he has to go on the expiry of 12-months notice to quit."

However, he felt that it was only reasonable that if the tenant got small compensation, then the landlord should get large compensation as he could have at most 12 months to wait for vacant possession. This was redressed by the 1973 Act, section 48, which excluded the landlord's right to serve such a notice to quit. The Minister introducing the clause was quite explicit regarding the Government's reasoning: "We have done this by having regard to the fact that although he is usually in law a tenant from year to year, in practice, he has virtually security for life." (H.C. Debs, vol 851, 22/2/76, cols 805-6).

10.4.3 Whilst the Government were clear that they were re-allocating the value of the interest, in doing so they perhaps moved slightly away from it and created a situation where the sum of all interests in land could well, in practice, be more than the unencumbered interest itself; a point made by Sir Frederick Corfield in the debate, and one which will be returned to (Ibid, cols 818-9; Davies pp2-3). This fact is isolated here, however, as it is a central feature of compensation with relevance to the methodology adopted. Unless and until the contrary is officially stated, the compensation received on the compulsory purchase of agricultural land will be understood to be the market value of the interest acquired (plus disturbance and injurious affection).

A discussion of the method of such valuations is therefore needed.

10.5 The Valuation of Agricultural Land

10.5.1 The six rules are designed to achieve the fundamental legal principle of equivalence: Scott L.J. in the major case of Horn v Sunderland Corporation summed this up from the owner's view point in the often-quoted phrase as

> "... the right to be put, so far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains the right to receive a money payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater."

The leading work specifically dealing with the valuation of agricultural interests comments on the maxim in no uncertain terms:

> "Unfortunately, with agricultural property it so often happens that money cannot do it, generally because alternative land as convenient and suitable is not available - if, indeed, alternative land is available at all. Tenant farmers especially, who are dispossessed will be hard to put to it to find another farm to rent." (Hamilton, para 4)

The veracity of this comment was tested empirically, but it was also felt important to ascertain more broadly not only whether money can do it, but whether it does.

The six rules all throw up particular questions and aspects of the problem, (quoted in 10.2.5).

10.5.2 The 'no allowance' rule

We have already mentioned what Lord Denning, M.R., has described as "the added sop (which was in the old days always given in these cases) of 10 per cent to soften the blow of compulsory acquisition". This rule he felt was designed to outlaw the practice (Harvey's case). Ten per cent had been settled upon by the courts as an optimal and just level in the development of pre-statutory practices. Notably the principle was maintained in a 1902 case, Re Athlone Rifle Range, when an attempt to obtain 20% instead was rejected. The concept of a sop or sweetener is one often raised by those affected and a wide range of figures is suggested, few of them, as low as 10%. Evidence is presented in the reports of fieldwork studies, suffice it here to note that the decision to take market value alone was not merely an abstract one not to allow any extra payment. It was rather a deliberate rejection of a principle developed by common practice and accepted by common law. Rather a different matter it might be argued so far as justice being seen to be done is concerned.

10.5.3 The 'willing seller' rule

The most important and fundamental effect of this rule is the reinforcement it gives to the notion that land value as assessed for compensation purposes is an abstract and conceptual value; to be distinguished from

a price simply reflecting the market. In practice willing sellers are a result of tempting prices, not, as in this concept, where the price is to be decided in the paradoxical situation of a forced sale. For instance, the most immediate difficulty is the lack of any market price benchmark. Every sale is a matter of special factors to buyer and vendor. The spare capital of the one, the desire for it of the other, the conformity between the land and potential use the individual desires it for and a myriad other details, rational or irrational, go into the psychological background to any actual purchase. The valuer must abstract from these specifics a general figure, a notional, conceptual figure for the price. Actual sales of similar land are only aids. There is some guidance to the complexities in a finance case which centred on the matter. Open market conditions were taken to be those where land "is offered under conditions enabling every person desirous of purchasing to come in and make an offer". A willing seller likewise was to be seen as "one who is a free agent" as against "a person willing to sell his property without reserve for any price he can obtain for it". (Inland Revenue Commissioners v Clay and Buchanan). The paradox is thus strikingly brought out. People under the threat (as it is commonly seen) of a C.P.O. do not tend to regard themselves as free agents. It is with respect to the judges in the case to suggest that the distinction they draw is a form of words only, and nebulous to the point of

losing all meaning. They did, however, hit on the truth of the matter, in both theory and practice, elsewhere in the judgement when, with great realism, they accepted that the value of land for C.P.O. purchases is what experienced valuers can agree on it being. In their own words it is a matter of,

> "the expectations of properly qualified persons who have taken pains to inform themselves of all the particulars ascertainable about the property, and its capabilities, the demand for it, and the likely buyers."

This concept has been borne out by research. Allied to the complexities of the law and assessment practice, is the lack of any onus on the government's agent - the District Valuer (D.V.) - to inform people of their 'rights', to use the word loosely (Valentine's case). The level of compensation for land therefore comes to depend on skilled valuation and valuation is not a precise science. The words of Ungoed - Thomas J. would seem to be closer to the truth:

> "It has been established time and time again ... that there is a range of price, in some circumstances wide, which competent valuers would recognise as the price which 'property' would fetch if sold in the open market." (Re Hayes Wills Trusts case)

Although the work has brought hearty concurrence with Davies' assessment of ability and professionalism of valuers (p 4) this does not mean that the system they

work is not one open to a fair degree of what is either give and take or horse-trading depending on point of view. There is thus concern with how fair the eventual result is <u>and</u> how fairly the negotiating system works.

10.5.4 The 'special suitability' rule

The concept of an open market price discussed above and the paradoxical situation in which it arises inevitably raises the question this rule answers. It clarifies rules one and two by excluding value due to its special suitability for the purpose the authority desires to use it for. If a development such as an atomic power station or water facility demands certain scarce conditions - remoteness or specialised topography say - then the rule specifies the value of remoteness or topography as their general value (probably very little in the case of these factors), not their value to the authority. The converse would evidently be a situation where the acquisition price of an otherwise productively lowly-valued site might well be astronomical. One could only surmise that it would be just below the total net sum of potential benefit to society, balanced only by the availability of other sites. In many cases there are no, or few, other sites. It is an interesting intellectual exercise to estimate the value of, say, the next fifty yards of land in front of the existing Heathrow runways in the absence of this rule.

10.5.5 The atomic station or water facility cited above were selected because they were cases (Trawsfynydd Power Station, Tryweryn Reservoir and Tanygrisiau Generator) examined in the only serious suggestion that land value should be so assessed reviewing has found (Jones 1972). The idea advanced by Jones is that justice was not served by the (pre-1973) law in an area of hill farming. To counter this it is suggested that compensation could be decided on the following basis:

> "where the value of the benefits to be derived from the new use of the land can be assessed, as appears to be true in the case of the schemes studied, then it is upon this basis that the price of land should be determined."

This, it is asserted, would "be related more closely to economic and social realities" (pp 13 and 1). A number of points stand out dramatically, the first being the ludicrous position in which the word 'compensation' is left. As Hearne shows the estimated value to the community of many road schemes may run into millions of pounds. There would be no compulsion about the purchase if such a method were followed. Let us assume for the moment that the benefits would be fully distributed by some just criteria (amount of land? grade of land? percentage of farm lost? Jones gives us no guide) amongst the affected landowners. It is difficult to conceive of any other factors which might outweigh the desire to sell for the price thrown

up by a calculation along the following theoretical lines:

Length of road	10 miles
Land take	30 acres/mile
No of farmers affected	10

Assume that all the farms are equal in all relevant factors (enterprises, capitalisation etc), and that all the land take is (as far as possible), at the physical margin and of the same grade. For a group of 100 acre farms affected by a road producing a net present value of £3 million the following results are obtained:

Farm Number	Land Loss (acres) %age of Farm	Share of NPV (£)
1	1	10,000
2	4	40,000
3	5	50,000
4	10	100,000
5	10	100,000
6	20	200,000
7	25	250,000
8	50	500,000
9	75	750,000
10	100	1,000,000
Total 10	300	3,000,000

10.5.6 Although situations could be conjured up by fantastic minds where a man might not want to sell it is clear that for all practical intents and purposes everyone on the length will be well satisfied. Or at most dissatisfied in the sense of wishing more of his land had been required. It is equally clear that there would be ten truly 'willing sellers' and that no compulsory acquisition would be required. It is ludicrous both theoretically and

practically to imagine anyone attempting to claim disturbance or injurious affection, the secondary loss elements of a compensation claim proper in the above situation. In fact the matter is already covered by the rule laid down in the leading case of Horn v Sunderland Corporation that claims for development value immediately exclude claims for the secondary elements too where the development value is higher than all the other elements put together. For that would clearly impute a desire to sell. It would be most unfair to the public interest were there to be massive payments in the absence of this rule. Yet the very fact that it has to be there because a number of general public purposes do yield massive returns leads to questions about whether or not considerations of justice might not point to a little more of the benefits from such schemes being allowed to offset the distress of those who must make way for them.

10.5.7 The 'noxious uses' rule

This rule does not seem to have thrown up any difficulties at all in the agricultural field, although it may have significant effects on the amount paid, say, for cleared houses.

10.5.8 The 'equivalent re-instatement' rule

The most important facet of this rule is the way it, on the one hand, recognises that there may be purposes where the market value does not replace loss, whilst on the other it recognises no shade of grey. Either there is a general demand, or there is not, the law says. Interestingly the rule originated as a response to the

old 1845 Lands Clauses Consolidation Act rule which set up 'value to the owner' as the yardstick. This could only be satisfied in some cases by producing an estimate of cost of rebuilding replacement premises. Churches and hospitals are excellent examples of this kind of use. When the rule was changed in the 1919 Act to 'market value' the provision for equivalent re-instatement was specifically enacted, to be maintained in the present 1961 Act (Leach, 1972). The rule has come in for criticism recently for being applied to some churches regardless of their actual condition or size of congregation (Ibid p 56, c/f Festiniog Rail case), but in general the rule is widely accepted as a useful one. The official committee which recommended the equivalent re-instatement rule felt it was necessary because "market value ... might result in the owner receiving only a small proportion of the sum he might necessarily expend in order to re-instate himself on another site" (Cd 9229). This offers another conceptual tool with which to approach the present system, within its own terms. In a situation where a farmer has lost certain buildings, say, which had a value to his farm and system over and above the general market price for such structures, could equivalent re-instatement be a potential alternative remedy instead of market value 'topped up' by disturbance? At present the rule is strictly delimited but points to a field of investigation.

10.5.9 The 'disturbance' rule

This rule serves to distinguish compulsory purchase from an ordinary purchase. On the one hand it makes clear that severance and injurious affection are matters directly related to the "value of the land" and to be assessed as such. On the other it introduces the key concept of a supplementary disturbance allowance over and above land price.. In practice what constitutes "disturbance or any other matter" has not proved at all simple. Like much else in the basic rules the concept of disturbance payments arose in common law, from what could well be seen as the courts' leaning over backwards to broaden a private act in 1846 so as to allow a brewer compensation for loss of trade on top of purchase price (Jubb's case). Recent years have seen the courts much concerned with the question of remoteness of loss as cases at the margins continue to arise. Most important from the agricultural aspect was Horn's case mentioned above in which the Court of Appeal held that it was not possible for a dispossessed farmer to claim disturbance compensation where the land price had contained a development value facet. The latter implied a willingness to sell which militated against receipt of the former as that was assumed to compensate for the 'forced' nature of the sale. Speaking generally, items of disturbance which can be claimed include loss of profit, forced sale charges and loss of goodwill, removal expenses (although farms now have special provision available in certain cases of total loss), adaptation

of new premises and professional fees.

It is the last of these which has been raised as a significant issue during the research. The courts seem to have been reasonably clear and firm on the matter but practice has not necessarily followed. In a Ministry of Transport case Lord Denning, M.R., asserted (regarding the "any other matter" provision):

> "This includes, I think, the fees which the owner has to pay to his surveyor, valuer, or agent to prepare his claim." (MoT v Lee)

In the earlier case of London C.C. v Tobin, Morris L.J. had put the point even more forcibly:

> "... whether in this particular case it is necessary to have legal assistance ... or the services of an accountant, will be a matter for decision having regard to the circumstances of the particular case. But if such assistance and such services have properly and reasonably been obtained, then I see no reason why the expense incurred should not be included as part of the compensation claimed."

Evidence will be presented nonetheless that some affected farmers have in fact been bearing these costs themselves.

10.6 The Tenant's Position

10.6.1 The disturbance rule just examined is in the odd position of being one of the fundamental rules of land valuation, yet not being part of the land-owers' claim in the case of tenanted land. Here the tenant may claim for such disturbance as his farm business suffers. The

landlord in his turn should incorporate such matters in a rent review and claim the difference. The 1968 Agriculture (Miscellaneous Provisions) Act and the 1973 Land Compensation Act have had significant effects on the tenant's position, particularly his security of tenure. Nonetheless it is a working hypothesis that Hamilton may be right in his pessimistic conclusion that "there may still be many cases where the tenant may not receive enough to enable him to set himself up again." (p21)

10.6.2 If an annual tenant's land is required for a road scheme the authority has two options to dispossess him. The first option is the 'normal' one of serving notice to quit either at the end of the year or usually in a shorter time as allowed under resumption clauses if the land is required for development. Dispossession can also be effected rapidly by the service of notice of entry (minimum of 2 weeks notice). Naturally the latter procedure, being much more disruptive opens the way to a greater claim depending on the value of the unexpired term. A major reform in the 1973 LCA (Section 59) was to allow the tenant a right to choose this, often higher, amount of compensation. The great question which dominates the issue of tenant compensation in any overview is at the heart of the choice a man affected by a road must now take. The 1973 LCA, section 48, gives the tenant an all-important assurance of security but how is it to be assessed? Technically the tenancy is annual but as the desire to take the land for a road

is not to be considered to automatically overrule that security, the tenancy is restored to its 'real' position of being virtually for life. Or, indeed, under new legislation to be inheritable by relatives.
The government set out unequivocally to make the law conform closer to the real world when it introduced section 48. In the House the minister said:

> "We have done this by having regard to the fact that although he is usually in law a tenant from year to year in practice he has virtual security for life." (H.C. Debs 22/2/73 cols 805-6)

10.6.3 The move had become necessary following a series of inter-related cases. The first of these cases, MoT v Pettit concerned a 58 acre tenant farm in Leicestershire affected by Britain's first major motorway, the M1. The Minister had, in the words of Lord Denning, M.R., "driven the motorway right across the farm severing it completely". The Lands Tribunal awarded Mr. Pettit who had been tenant for 18 years £976, made up of £250 for the interest in the land taken, £250 for drainage and disturbance during construction and £312 for severance. Small specific amounts made up the rest. Perhaps because it was one of the first of many proposed motorways and the ministry wished to ascertain the correct position the case was taken by them not only to the Lands Tribunal, but eventually, (seven years after Mr. Pettit lost his land), to the Appeal Court. The ministry objected to all three

major items. By a two-to-one majority the Court found that the law did allow the amount awarded for the interest in the land to be reduced because the motorway interrupted what was otherwise a secure tenure, and Mr. Pettit eventually received £843.10.0. The Court had no truck at all with the ministry's other arguments and Russell L.J. pronounced a most important dictum regarding disturbance:

> "The Minister agrees that, if the claimant had, instead of working harder and longer, engaged and paid labour, he could have claimed the wages paid as 'loss', but he contends that, since the claimant paid nothing out, he cannot claim compensation for the fact that the working of the farm was seriously inconvenienced. I do not accept this. The words 'loss or injury' are wide." (pp 355-6)

10.6.4 A number of comments could be made about the public good to be gained from a powerful ministry taking a small tenant through seven years of claim and litigation over quibbling amounts. Ironically, however, the matter rebounded on the public purse almost immediately. The two Rugby Joint Water Board cases turned on the fact that it did not take long for a landlord to realise that what was sauce for the government goose was equally so for a private gander. Lord Denning (who had dissented in Pettit's case by making a distinct attempt to put a sense of justice above legal

wording summed up with only part-suppressed glee:

> "This point would seem to be covered by the decision in Ministry of Transport v Pettit ... The majority of this court held that the tenant would have to be assessed on the basis that he could be turned out on 12 months notice ... If Pettit's case was rightly decided (that the tenant only gets small compensation on the basis that he has only 12 months to go), it seems to follow that the owner of the farm should get large compensation on the basis that at the end of 12 months he would get vacant possession." (p 375)

10.6.5 The Rugby case was eventually taken to the House of Lords who upheld the Appeal Court's conclusion. It is interesting that the White Paper preceding the 1973 LCA made no mention of improving or reforming the tenant's lot (Cmnd 5124) yet after the Rugby decision the Government accepted amendments in Standing Committee, giving an "undertaking ... to help the tenant farmer without breaching the market value principle." (H.C. Debs, 22/2/73, col 805).

The market value principle had proved its worth in terms of those claiming. The government had been attempting to undercut the principle but found that what was lost on the swings was gained on the roundabouts. The important question regarding tenants is whether their position now, by common consent a much fairer one, has only been achieved by breaching the principle on the other side. The sum of interests in the land could

total up to more than the market value of the land itself.

10.6.6 The concept behind the change - to aid tenants - was universally welcomed but the complexities of calculating the market value of a non-marketable matter (potential security) came in for substantial criticisms (Ibid, cols 804-921). Three inter-related points came up with some regularity. Firstly a number of MP's considered that the whole matter was simply too complex. Secondly that it militated against the older farmer and thirdly that the D.V. was given too great a role. To achieve the end of better (fairer/ more just) compensation for tenants the NFU suggestion that the 4 years rent payment allowed under previous legislation be extended to 10 was felt preferable in its simplicity. It would also provide the same payment to a man regardless of his age and therefore his tenure expectancies. Many members considered this to be a benefit, on a basis of fairness or justness. It may be thought however that the aim of the Act was to do precisely the opposite and distinguish between the younger farmer and the man almost retired anyway. This system has the advantage of fitting one of Hart's principle criteria of justice; that whilst one should treat like cases alike one should also treat different cases differently. The case of the young and old farmers can be seen to be significantly different. Ever since the 1973 Act was passed the problem awaited

guidance from the Lands Tribunal. Despite the worry of MP's who were "not happy that the district valuer is possibly being made the be-all and end-all in this case" (Ibid, col 823) this was where the final response had to be based.

10.6.7 It is without any implication that the eventual decision given in 1977 was other than objective that it may also be said to be an excellent compromise. The Lands Tribunal decision excellently balanced the questions of differentiating in favour of the younger farmer whilst avoiding "that bitterness [which] will be caused when it is discovered that the clause will mean that the nearer a farmer gets to retirement age, the smaller will be the compensation he receives" (Ibid, col 822). What the Tribunal decided in the case of Wakerley v St. Edmundsbury B.C. involving a 38 year old tenant, was that the 1973 Act gave him an unequivocal right to be assessed as if he would have continued to farm profitably for life. They thus anticipated that Mr. Wakerley had another 33½ years of farming before him (calculated from actuarial tables). The question was then what multiplier of his present profits should apply to compensate him for these 33½ years of lost farming. The determinant of the multiplier (or 'year's purchase' as it is termed in valuation) would be the Tribunal's opinion of the 'risk rate' to be applied; that is, what possibility was there of his tenancy being interrupted by some other factor? The Tribunal took 20%

as an appropriate 'risk rate'. This was based upon expert opinion rather than any evidence of tenancy turnover. At a 20% risk level the year's purchase (YP) figure yielded is near enough 5 (in fact 4.989) (Estates Gazette 26/3 and 2/4/77).

What makes this a useful 'compromise' figure is that it lies around the level where there is comparatively little change following different lengths of prospective tenancy, but enough to make a slight difference. Some illustrative examples have been calculated and are given below.

Table 10.1 : Years Purchase Effect of Different 'Risk Rate' Assumptions

FAMERS FORSEEABLE TERM	'Risk Rate' of Losing Tenancy					
	1	5	10	15	Lands 20 Tribunal	25 %
1	1.0	1.0	0.9	0.9	0.8	0.8
10	9.8	7.7	6.1	5.0	4.2	3.6
20	19.5	12.5	8.5	6.3	4.9	3.9
30	28.9	15.4	9.4	6.6	5.0	4.0
40	38.0	17.2	9.8	6.6	5.0	4.0
50 Years	46.9	18.3	9.9	6.7	5.0	4.0

10.6.8 The 20% risk rate it can be seen is a conservative one from the acquiring authorities' viewpoint. They do not find themselves paying virtually the entire potential profit of the farm for the rest of the tenant's

lifetime as would be the case with, say, a 1% risk rate. On the other hand the tenant is better off (except immediately prior to retirement), than he was with the 4 YP which has been a working rule prior to the test case. It will be interesting to see what kinds of special arguments may be provided regarding forseeable terms now the rules are established.

10.6.9 At bottom, the search is still for legal equivalence and beyond that social justice. When our fieldwork cases are assessed the question must be put regardless of the complexities of calculation. How closely does the 5 YP rule realistically match the profit which is <u>in fact</u> lost? And is this a fair and just amount to pay a dispossessed tenant? Chapters 13 and 14 discuss these questions. Lastly in this chapter some discussion is called for regarding what are 'secondary' elements of claim in valuation terms, but are most important to methodology as they should reflect farm losses - severance and injurious affection.

10.7 Severance and Injurious Affection

10.7.1 Writing in 1972 before the new act Keith Davies assessed the workings of this aspect of the compensation code extremely harshly:

> "The third variety of compensation, depreciation ('severance and injurious affection') is in a sorry state because of statutory neglect and judicial mishandling ... The rule that is needed

> is that loss which would be redressed by the award of damages for the tort of private nuisance ... should be subject to monetary redress just the same by payment of compensation. The stumbling-block here seems to be that justice would cost too much."

Whether justice can cost too much must rank as one of the fundamental social questions. Or is the point, in our terms, more that an imperfect project appraisal has been carried out because the real disutilities of a given scheme are masked in the costings. A farm might have its economic losses costed in but the upset and disturbance to the farmer, family, workers and so forth is left completely out of the equation. The 1973 LCA sought to deal specifically with this problem.

10.7.2 The White Paper 'Development and Compensation - Putting People First' spoke of the "balance" which "must constantly be struck between the overriding duty of the State to ensure that essential developments are undertaken for the benefit of the whole community and the no less compelling need to protect the interests of those whose personal rights or private property may be injured ... In recent years this balance in too many cases has been tipped against the interests of the individual." (Cmnd 5124, paras 1 and 5).
In particular it singled out the question of the government's legal indemnity from tortious actions:

"Most development, whether public or private, affects other property in its vicinity, sometimes beneficially and sometimes adversely ... Where the development and its use cause a nuisance the remedy generally open to those affected is an action at common law. But substantial injurious affection can be caused by the use of public developments where the landowner has no redress because the use is immune from such action." (Ibid, para 22)

10.7.3 In practice the fine words and admirable sentiments were compromised by the question of money. The minister, speaking in the third reading debate, put a pragmatic line when discussing disturbance compensation:

"These are figures which go as far as we can go at the moment on this type of compensation. If we spend a lot of money on one form of compensation, obviously we deprive ourselves of putting right anomalies elsewhere. In the Bill we have used a lot of money, if I may put it this way, in tidying up small hardships. Had we concentrated on one major item of compensation, we should have been unable to spread it over the rest." (H.C. Debs, 22/2/73, col 895)

Later the justness of his method of deciding on compensation provision will be queried. First consider the legal practice. Prior to the 1973 Act the law rested firmly on the rule of parliamentary omniscience. If a law

authorised x, and x needs must cause nuisance y, then barring any specific provision to compensate for y it was assumed that parliament understood that y would occur and intentionally chose to omit compensation. The rule rested, like so many others in the field, on an early railway case (Hammersmith & City Rail Co v Brand). In it the vibration within Brand's property was taken to be unavoidable given that trains ran by it and so the courts inferred (and government before 1973 never overturned) that liability to tort did not exist. The position is now that a right to compensation for physical factors (noise, smell, vibration, etc) has been enacted. That is to say, injurious affection can be claimed for loss of value of an interest following road construction for almost all effects except seeing it, where, it may be presumed, the difficulty again is money. The negotiator for the Birmingham Spaghetti Junction and M6 Residents Association estimated that over £1,000 per house had been taken off compensation by the exclusion of visual factors (Birmingham Post 21/2/75).

10.7.4 The injurious affection and severance elements of compensation are, therefore, very important ones to the individual and they too were defined by the nineteenth-century judicial decisions. It is important to be clear regarding their meaning. Injuriously affecting does not mean to physically harm by injuring (say a contractor's vehicle going through crops), although it

may look so at first sight. It is rather an antiquated, and now specialist, term for depreciation caused by some action rather than simply by the passage of time. Severance then is one major type of injurious affection. If a farmer has a 100 acre farm worth £500 per acre as a unit, a road cutting through the middle and taking 20 acres might well reduce the value not only by the £10,000 for direct acreage loss but by a significant amount more if the farm becomes less viable. This is analagous to the concept of reduced viability due to fixed overheads which underlies the gross margin farm assessment method which is part of the methodology employed (see chapter 12). However, calculations for compensation purposes are not based on real farm costs but rather on before and after valuations of the unit's market price. Injurious affection would thus be a further £10,000 in the case described if the farm's new market price was only £30,000. In such a case the form of affection most implicated is probably severance. Legally severance is taken to mean proportions of land lost off an existant unit, even where there is no other land left the other side as might be expected in normal parlance. The law on severance is strongly in the claimant's favour following Holt's rather extreme case in 1872 when a small area of waste ground was acquired rendering a rifle-range too short for use, the court holding that the authority should pay fully for the loss of the range.

10.7.5 Not all injurious affection is based on the severance of land, although the element is usually present. In the same year as the rifle-range case above the House of Lords was also faced with a major case (Duke of Buccleuch) on injurious affection which, although concerned with a small strip of Thames embankment, was primarily caused by the noise and loss of privacy on the claimant's estate. It should be borne in mind, however, that such claims are always part of the valuation exercise and are designed to ensure that a proper land price is paid. They do not fall to be assessed by the nuisance to, say, the farmer as an individual but rest solely on making good the diminution in market value of his holding.

10.7.6 Important to many farmers has been the dictum in the House of Lords that lands do not have to be contiguous (or held on the same title) in order to allow a claim. The important factor is whether the "control of each gives an enhanced value to all of them". (Cowper Essex case) Prior to the 1973 Act it was impossible to claim injurious affection for depreciation caused by factors on land not actually taken from the claimant as had been shown by the early road case of Edwards. This was one of two great anomalies which have now been put right. The second was the problem of relating injurious affection to tenants and rested on the leading case of Worlock v Sodbury RDC. The Lands Tribunal had found that whilst a farmer holding a tenancy and his own land could claim

his overall loss if he lost his owner-occupied land, if he lost the tenanted land he was to be limited by the fact that he could be served notice to treat. This too had been altered along with the general rulings on security of tenure discussed above.

10.7.7 The law regarding injurious affection is thus at present in a tidy state, although not necessarily a perfect one. What has been done in the 1973 LCA is well summed up by McAuslan:

> "These provisions cannot then be seen as just an overdue amendment to the law of injurious affection; they are part of the total package of making public development more acceptable to the public for whose supposed benefit it takes place." (1975, pp 671-2)

Has it made major development acceptable to significantly affected individuals? Are farmers content with their compensation for road disturbance? Do they receive a just amount and do they perceive it as such? It is questions such as these that the Wolfson Team set out to examine. Firstly a firm theoretical basis against which to test the answers was required, and it is this which is discussed in the next chapter before the actual methodology of agricultural economic appraisal.

CHAPTER 11

THREE METHODS FOR TESTING THE JUSTNESS OF COMPENSATION

"Locke would have been highly indignant had he ever been presented with a Compulsory Purchase Order." (Benn & Peters, p179)

SUMMARY

It is argued that criticism of compensation provision has failed to appreciate its social and political role. Broader tests of 'justness' were looked for as a component of interdisciplinary thinking. Three tests were found to be appropriate, they are termed Legalistic, Utility and Fairness. There is a review of the philosophic origins and nature of the tests, which strives to explain them in everyday terms. As it is their practical aspect which is sought, the theoretical debates surrounding the tests are abjured as irrelevant to first steps in empirical testing. The 'essence' of the tests' idea of justice is sought, with weight being placed on referencing to illustrate awareness of the academic background.

11.1 The Aim of the Tests

11.1.1 In a phrase, the aspiration was to develop a test, or set of tests, which would permit an examination of compensation in the light of both the broader principles of law; and ultimately to step outside the circle of testing law against its own premises. As very little empirical work has been done, it might not have been unambitious to limit the assessment of compensation efficacy purely at the level of whether or not government and/or judicial dicta were being fulfilled. Nonetheless it would have been a poor attempt to maximise the possibilities IHD - style research gives for applying cross-disciplinary methods in the hope of throwing light by an unusual approach. This aim is worth dwelling on a moment, for in one sense the idea is a limited one. It is not to provide a fullscale critique of present-day English governmental and judicial practices in the light of political theories. Whilst broad background reading or a political science grounding is required that mammoth task awaits a major theorist. But it is to make some first steps toward placing administrative law and practice in a broader political framework.

11.1.2 Such an examination may also properly bring to a conclusion the argument running at the core of the Wolfson Study's understanding of major road planning.

What commences as policy formulation and central budgetary planning, emerges as project appraisal, is tested within a public administration framework, built to engineering specifications and compensated via the law is one process. It is a process of social decisions and implementary procedures. There is considerable academic merit and interest in focussing the full intellectual glare of a particular discipline on road planning as it passes through that particular stage. But this is not the end of an interdisciplinary approach. As McAuslan had argued so firmly on a solid textual base, land-use law cannot be separate from the political framework in which it operates (1975). Just so, the eventual compensation a farmer receives for his injury cannot be understood outside a contemplation of the place of compensation within its social milieu. Compensation payment varies tremendously between cultures (Garner 1975 and 1975A). Even within a unified political culture such as England the history of compensation has followed the ups and downs of the two competing idealogies.

11.1.3 The point that attitudes to compensation have varied with attitudes to planning and ultimately with political perspectives is well taken by political scientists and development economists (Allison 1975; Parker 1976). Lawyers have understandably not entered this shifting ground to any extent. There is an evident

qualitative distinction between the kind of critique undertaken by 'Justice' (1973) into imperfections in the Code in terms of not fulfilling its own declared aims, and the analysis by Farrier and McAuslan (1975) of the moral dimension of policy itself. That type of distinction underlies our testing.

11.2 The Development of Tests

11.2.1 David Raphael, arguably the country's leading commentator on the concept, uses the term 'prosthetic justice' (1964) for that approach which seeks to "modify the status quo". On the other side of the fence he puts 'conservative justice'. This is a subtle idea and the best conceptual exposition of the distinction drawn above to be found. Political scholars will forgive the point being laboured slightly for others as it provides a useful introduction.

11.2.2 As so often the fine distinctions of Aristotle in the Nichomachean Ethics provide the starting point (Sharpe, p 117). His 'remedial', 'commutative' (meaning reciprocal or balancing) and 'penal' types of justice can all be seen as essentially conservative in that they seek to restore a status quo which has been distorted. On the other hand is 'distributive' justice which demands some external moral value judgement.

Bringing the argument into our times Raphael finds:

> "Two processes, of conservation and reformation, can be seen clearly enough in the field of law.

The first task of a system of law is to preserve an existing order of rights and duties ... Changes in moral notions, or in the conditions to which moral notions are applied, lead to a demand that the law be changed in the name of [new notions of] justice or fairness." (pp 148-50)

11.2.3 To test the law then there are two distinct approaches. The first is that of the practicing lawyer or valuer who daily comes across questions of whether or not the law is fulfilling its own internal obligations. Not merely in the literal and immediate sense of providing equivalence or ensuring that 90% payments on account come through in the time specified by law. There is the equally important meaning of whether the law is protecting those fundamental rights of citizens it claims to protect. When the 'Justice' organisation therefore puts forward proposals for mandatory disturbance compensation (para 54) or the removal of arbitrary limits on blight claims (para 82) it does not pluck its ideas from pure abstraction. Its constitution calls on it

"to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible: in particular, to assist in the administration of justice and in the preservation of the fundamental liberties of the individual."

It has "become the focal point of public concern for the fair administration of justice and the reform of out-of-date and unjust laws."

All the obvious questions spring to mind. What is an unjust law? If the 'Rule of Law' is supported how can laws be opposed? What are 'fundamental liberties'? This 'Legalistic' theory of justice, a commonly employed one, is the basis of the first test. It has no conceptually tight framework, rather a set of working guidelines and useful concepts. Although reforming, it is essentially conservative in that it seeks to maintain certain accepted rights and practices.

11.2.4 Although it will subsequently be divided into two different tests, it is possible to adopt a distinctly separate approach which is less that of the working practitioner than of the philosopher, especially the political philosopher. Almost every major political thinker from Aristotle through the Scholastics to Locke, Kant, the Utilitarian School and most recently Rawls (to cite but a few) has paid great attention to the question of justice. Sometimes the approach has been primarily analytic, often it has been prescriptive and attempted to give methods of testing the 'justness' of social policies and procedures. In this it is not conservative, but note clearly the specialised and precise sense in which the word is used. For the changes enjoined by the political tests will not necessarily be in the direction of any 'radical' extension of compensation

provision, they may rather withdraw them or find little value in certain facets. They are not conservative in Raphael or Aristotle's sense because they enjoin change toward some external end, rather than back to some pre-existant state.

11.2.5 A last word before examining the tests themselves. Why, it may be argued by lawyers with great faith in the positive system as it stands, are any extraneous tests useful at all? Academically the answer is most basic, because they may help the perception of important truths. More directly, the answer is supplied by the two studies which have made the greatest strides from the legal side of the fence. First, theoretically:

> "an attempt is made to generate empirically testable hypotheses by utilising what little information exists from prior research and by drawing analogies with other areas of the law in which compensation is seen to be a relevant objective. It is hoped that the latter technique will provide some sort of a palliative to <u>the disease of compartmentalisation</u> which, as society becomes more complex, is affecting not only legal research, but research in many other fields."
>
> (Farrier and McAuslan p 43 Emphasis added)

Secondly in practical terms too:

> "To argue at length for the unamazing proposition that the true purpose of the just compensation rule

is to forestall evils, associated with unfair treatment, is to imply that the proposition, for all its obviousness, is insufficiently understood or recognised in practice ... the courts fall too far short of adequate performance to be left without major assistance from other quarters." (Michelman p 1226)

11.3 The Legalistic Theory of Justice

11.3.1 The Legalistic theory of justice is, to put it very roughly, that of the everyday thinking practitioner of laws. It is the far-from-simple but nonetheless accepted heritage of Western Civilisation so far as it is necessary to look to the deeper justifications of judicial practice. It is a limited theory in the sense that it concerns not all-embracing theories of social and distributive justice, but the strictly circumscribed area of judiciable actions. Where precisely such judiciable facets of society begin and end is a separate question. As previously stated, the only authority is felt to be the law itself and thus it is those practices, procedures, rules and tests relating to compensation, established by English common and statute law, which will be addressed.

11.3.2 Not everyone believes that the law needs any further justification than its existence as the democratically (and not necessarily that) established will of the State. Opponents range from the intellectual subtlety of the school of so-called

Legal Positivists associated with Austin, to the straightforward simplistic sentiment captured by W.S. Gilbert in the famous words of Iolanthe:

"The Law is the true embodiment,
Of everything that's excellent,
It has no kind of fault or flaw,
And I, my Lords, embody the law."

Brilliantly satirical though it is, if there were not those who subscribed to some extent, the difficulties encountered by Lord Denning, M.R., and similar reforming judges would have been considerably reduced (Drewry pp 39-40, Zander 1970, pp 3-5). Thus, whilst it is limited that is not to say that there are not many who hold even more limited ones. To accept a positivist approach is to deny the possibility of extraneous tests, however. The whole point of this section, as argued above, is to step outside the circle of testing law by its own premises.

11.3.3 Perhaps the most immediately distinctive arguments of Legalistic theorists are twofold. Firstly that there is an automatic connection between law and justice, which can be found by analysing legal systems. It is in this sense that it tends to be circular. Secondly that justice is only one facet of laws, and indeed one feature of human dealings, which should be therefore rather limited in its application. These difficult generalisations, referring at one end of the

scale to practical specialist legal commentators who have vital immediate concerns, on the other to some subtle and brilliant theorists. Examples may serve to illustrate better than generalisations. The Legalistic analytical method is exemplified in the approach of P.H. Clarke, LLB, FRICS, AIArb in a most useful practitioners exposition of a grey area of compensation law:

> "In this article I have attempted to impose a logical framework of principle on the disturbance cases where remoteness of loss was, explicitly or implicitly, an important factor in the decision. The result is imperfect; many cases defy rigid classification; but there does exist an underlying foundation of principle which can be used to decide whether or not a particular item of loss is a proper subject of compensation."
> (pp 153-4)

The method can be seen. It is the method of the courts themselves; detailed analysis of wording in the search for underlying working rules which are then employed forensically once again. There is at work that principle, mentioned above, as the "leading precept" of Legalistic theory. "Treat like cases alike." (Hart 1961 p 155)

11.3.4 Hart's important text on the conceptual basis of law, and its relationship to justice and morality (Ibid, ch 8 and 9), is one of the most sophisticated

examples of the theory. It exhibits the best of the common-sense pragmatism inherent in the approach, and shares with other leading theorists of the school the avoidance of ranking or measuring justice.

> "It [justice] is a distinct segment of morality, and ... laws and the administration of laws may have, or lack, excellence of many kinds." (p 153)

Similarly the eminent barrister and academic Lord Lloyd of Hampstead:

> "If all the moral purposes of human life are classified as 'the good', then the idea of justice is no more than one of the various 'goods' ..." (p 117)

Long before them Aristotle had, in his own logic-chopping manner, made much the same point in the Nichomachean Ethics.

> "Again all other acts of injury we refer to some particular depravity, or, if a man commits adultery, to abandonment to his passions; if he deserts his comrade, to cowardice; if he strikes another, to anger; but if he gains by the act to no other vice than to injustice."

11.3.5 In Aristotle lies the key to this school of thought. It is the 'golden mean', the redressing of ills, the concept of the legal remedy. It is putting a man back as he was; and not simply doing so, but doing so in the correct way. That is, it has a procedural dimension. In order to 'treat like cases alike', it is most

important (as Clarke so well illustrated) to be aware of what are the relevant distinctions. It thus becomes necessary that those extremely limited rules of procedure recognised by English law as 'natural justice' are adopted. In the words of the major commentator:

> "The rules of natural justice are most commonly understood as being two: that no man should be condemned unheard and that every judge must be free from bias, or, as they are often cited in the form of latin tags, audi alteram partem and nemo iudex in re sua" (Jackson, 1973, p1)

As Griffith has noted in a stock-taking essay, the "struggle for [even] part of a system of public law" has been "a long war" (1976, p216). It is only since the turning-point case of Ridge v Baldwin in 1964 that natural justice has been injected with a new lease of life. Since then the question of judicial review of administrative action and the justice of planning procedures has been a subject of extensive comment (Alder 1973 and 1976; Purdue 1975; Clarke 1975; Hepple 1971; Hawke 1977).

From the literature it is evident that natural justice is an unclear concept in practice. Clarke applied the Legalistic approach to it and found internal inconsistency; like cases were not being treated alike.

> "there is discernible in the tenor of recent cases a judicial attitude towards the substance of natural justice that calls more urgently for overt

recognition and critical appraisal ... the doctrine ... is being emasculated from within, honoured in name but dangerously devalued in substance." (p 28)

11.3.6 This then is the vital test of justness provided by Legalistic theory, are all like cases being treated alike? If they are not is it because they are administratively decided in a fashion which does not accord with the rules of natural justice? Albeit that the District Valuer is the agent of an administratively separate promoting authority he represents an arm of government. The question was summed up by William Whitlock M.P. in the second reading debate on the 1973 Act. His excellent challenging speech had little impact on the eventual Act as passed but merits resurrection:

> "I have found repeatedly that people faced with compulsory purchase have not felt that there is anything fair in the procedure followed in assessing what they should receive ... it might be argued that as the land was acquired by the local authority the district valuer was an arbiter ... I have here a leaflet [it] says
>
> > 'The District Valuer, who acts for the Secretary of State in these matters ...'
>
> How can the district valuer, acting on behalf of the Secretary of State, be impartial and be seen to be impartial?"
>
> (1972 H.C. Deb. Vol 847, cols 74-5)

The comment is quoted at length because there will be something of a concentration on the more abstract theoretical background of the tests henceforth. It is a healthy reminder that the matters to be tested in chapters 13-15 are important and realistic.

11.3.7 The Legalistic approach comprises then a series of steps. From analysing extant law, distinctions from the norm of general principles are determined. The question becomes whether they are legitimate distinctions; whether they are like or unlike situations. In the case of compensation the steps may be listed as follows:

Identify the facet under discussion

Assess its compensation implications

Compare these implications with those in other similar cases

Isolate the differences in compensation

Ask if they are relevant differences

Naturally the process set out as 5 formal steps is often subsumed as a single intellectual exercise. When this occurs it may give the appearance at first glance of having been a purely inductive process based on some personally understood concepts of natural or universal law accepted by the writer or practitioner. On closer examination it will be found that lawyers generally apply the Legalistic theory in some more or less formal way. Take for example the firm assertion of David Widdicombe Q.C. chairman of the Justice Committee on land compensation, that the Rugby Water Board

Case was "offensive ... to justice and common sense". (1975, p 7)

Thinking back to that case, discussed in chapter 10, many readers might readily endorse the comment out of immediate moral sympathy for the unfortunate tenant. Widdicombe may agree morally but that is not his starting point. He treats it rather as a case of "reversing the effect of the recent decision" because that decision distinguished the Pointe Gourde principle regarding not paying for any value arising directly from the scheme itself. Failing to apply the principle to the interest in land itself but only to the value of the interests, (a technicality for the specialist which need not concern the general reader) he considered to be an irrelevant or illegitimate distinction. The section of his lecture ends

> "To sum up, I would like to see the law clearly established that interests, values and the planning situation are all taken <u>as at the same</u> date ..." (p 8, emphasis added)

11.3.8 At the heart of the Legalistic theory lies the difficulty of determining relevant differences. The great advantage of the five point approach to assessment of justice set out above is its practicability. It works, like valuation itself, on the basis of comparables. In the case of difficulty reference is made to the comparable authorities, and like legal disputation, to the best and wisest authorities where possible. For this

is what it is; it is the thinking lawyer's (or valuer's) regular questioning of his daily practices in the face of ever changing circumstances and ever different cases. Regarding wider questions however it will always be impossible to make large leaps, but then it does not intend to - that is Parliament's task. Being restricted to its own conservative terms circularity sets in, even with the best minds. Michael Fitzgerald, one of the most prominent names in the field, summing up a conference of the most able practitioners could but say:

> "It may be concluded therefore that the inadequacies in the 'code' relating to the scheme are the contortions necessarily involved in applying the legislation. The inadequacies in the compensation payable for disturbance are apparent in the breach of the principle of equivalence."

11.3.9 Three working concepts are employed then; natural justice in the procedure, comparability and consistency in the specific applications and subsuming all - the principle of equivalence. Three very useful working concepts which have stood the test of time, are generally accepted as virtues, and are reasonably easy to apply in a specific case. All substantial advantages - and ones which cannot be applied to complex political theorists' concepts of justice even if these latter are more theoretically rigorous. Ordinary folk, those affected by CPOs, do speak of having a fair hearing,

(natural justice) receiving the same price as their neighbour (comparability) or being as well off as they were before (equivalence). They rarely speak of whether utility is maximised or Pareto optimality is achieved. That they do not is however no reason why we should not. For the affected individual worries purely about his own recompense and not the balance of interest for society as a whole. Thus arises the cyclical nature of legalistic theory. Being based in the law, with its logic of regard for the individual and his right to redress, it is not able to take the wider social view required by any general theory of justice, which is what we now must examine.

11.4 Political Theories of Justice: Utilitarianism

11.4.1 The search for ideas which could break the circularity of Legalistic theory, and thereby offer some potential insight into the social and political function of compensation led primarily to utilitarianism. There was both a practical and a theoretical aspect to the search, in Almond's challenging phrase "the interplay of imagination and induction". Practically, given the nature of the task the theory would be asked to perform, four criteria could be applied. Ideas were needed which would:

a. have fairly immediate practical applicability

b. be suited to the assessment of a society like present day England

c. have ideas of social justice, jurisprudence or rules as major elements

d. have a body of up-to-date intellectual criticism regarding their social implications

The difficulties of praxis, of applying high theory to everyday realities, are highlighted by a consideration of some of the major ideas which had to be rejected.

Rule A excluded, for example, Kant's categorical imperative and Runciman's idea of relative deprivation. Although stimulating intellectual ideas, it was difficult to see how they would apply to compensation questions. (Readers having difficulty with the ideas alluded to are advised to consult Bullock & Stallybrass' Fontana Dictionary of Modern Thought or Sabine's History of Political Theory.) Rule B took out, say, Hobbes and Aristotle, for slightly different reasons, the first because of lack of conformity with the constitution of society, the second with the social ethic (primarily of equality). Rule C eliminates a number of enormously important social ideas which simply do not treat of the subject in hand, forms of Marxism and Cartesian logic for example.

Finally D was invoked as a pragmatic rule necessary because the testing was but part of wider time-consuming work, it caused the rejection of Machiavelli or Rousseau amongst others. Both have a consuming interest for anyone dealing with the facts of imposition on the individual by government or community (choice of word depending on ideology) but there is little or no relevant literature attempting to put their ideas in a practical context.

11.4.2 If, practically, there was a tendency toward utilitarianism by elimination, theoretically the route was more direct. To take that step away from legal precepts was to move toward ultimate moral duties, toward deontology. There could scarcely have been a more challenging title to the aims of this study than Bentham's:

> "Deontology: or, the science of morality: in which the harmony and coincidence of duty and self-interest, virtue and felicity, prudence and benevolence, are explained and exemplified" (1834)

Not only was it in that work that he acknowledged securing 'the greatest happiness of the greatest number' as a principle which should underlie laws. But, on a slightly lighter note, he had the fullest comprehension of compensation practice having been awarded £23,000 when the design of his renowned Panopticon prison was rejected (Harrison 1948, pp xii, xx and introduction, passim)

11.4.3 Bentham's political philosophy was built on the foundation that legal principles, in particular those of Blackstone, were in themselves an inadequate basis for law:

> "What the law is and what it ought to be are quite different things ... The difficulty is that Blackstone has no social principles for criticising the law. He retained the old fiction of contractual limitations on political power and of indefeasible rights which, Bentham argued, Hume

had already shown to be either meaningless or confused appeals to the clear principle of utility." (Sabine p 651)

In place of what was but the Legalistic theory of a former age, Bentham offered his 'felicific calculus'. The idea was that of counting the happiness produced by an event or action, subtracting the unhappiness and producing an overall measure of utility. The relevance to project appraisal and cost-benefit approaches based on compensation is obvious.

11.4.5 Using the test of utility does not mean going right back to Bentham, for the theory has undergone a considerable number of amendations since then (Quinton 1973). The arguments are well known to the politician and it is to be hoped that the expert will bear with the somewhat simplistic exposition which follows. There are two reasons for the approach, both important to the style of the thesis.

a. To carry the non-specialist reader through the inter-disciplinary barriers to the ultimate tests in chapter 15. That is, this is not meant in any way to be a fundamental exposition of utilitarianism. Any contribution to the theory made here will be in terms of its applicability.

b. Secondly, it is a utility test in a very broad sense. What is more precisely being employed is the idea of compensation being <u>functional</u>.

This contrasts with treating it as a matter of ethics, either purely jurisprudential as in Legalistic theory; or of society as a whole as in the Fairness theory discussed next. Kant was surely correct in asserting that ethics can only begin where self-interest ends. In this sense then 'utilitarian ethics' is inherently contradictory. A system aimed at maximising interests is what is being looked for as a Utility test.

11.4.6 To move into the world of the social welfare function is to take a distinct step, whether in the crude utilitarian model of maximising total happiness, the Pareto optimum of ensuring that no-one is worse off while some gain, or a Rawlsian maximin model where the worst off should gain more than the better off. Legalistic models can only adjudge why compensation procedure 'A' should or should not be introduced by reference to existing procedure 'B'. A social welfare approach can come to grips with that most basic of questions, why pay any compensation at all? If it is so clearly in the national interest to build a certain road then should the individual not be prepared to sacrifice part of his interest to the greater good? After all, the entire concept of modern planning compensation as envisaged by the Uthwatt Committee and never since repealed even in the period of anti-socialist reaction of the 1950's is that the interest

of the public is such that restrictions can be placed on the use of property without any compensation. German planning law, for instance, involves the concept of 'sacrifice' by the individual for the needs of the State (Garner 1975).

Is there some difference between the most stringent of restrictions on the use of land, and the actual taking of it? That is one of the questions to which an answer is sought.

11.4.7 The Utility approach helps the search because it focusses on realities. The administrative reality is that there is a considerable difference between negatively constraining a property right, and positively removing the property altogether. In the words of W. Whitlock M.P. this is the basis of compensation law:

> "The provisions of the Bill will merely soften the opposition to public developments a little - and that is its real purpose; to enable authorities to build more roads, to take more land ..."
>
> (1972 H.C. Debs, vol 847, cols 73-4)

The concept of function does not have to be seen in such a harsh and simple manner. There is a level at which it can be seen to have a task within the social system. The function is that of moving the imposition of compulsory purchase, in Bredemeier and Stephenson's phrase, from the noninstitutional to the institutional end of the spectrum of social processes. Briefly, the idea runs as follows. There are evident and undoubted advantages for each individual to be gained from living and acting

socially. There are many projects which benefit the community, such as motorways, which can only be organised at a community-wide level. They could, like toll-bridges or the railways, be built by private enterprise, but private Acts of Parliament or similar considerations would still be necessary because of the breadth of their effects.

That is, regardless of who carries out the works, certain interests will be affected and community should recognise those effects. The disbenefits of not recognising them come on two levels.

1. Immediately and recognisably akin to much project appraisal, because it is impossible to tell whether a project is 'worthwhile' unless its effects both generally and on distinct individuals and groups are to some degree assessed whether formally or intuitively.
2. Because the fabric of society and thereby the continuation of those advantages flowing from it depend on there being known and promulgated rules (Lloyd ch 1; Hart 1961, ch 5). Such rules must allow for the continuation of matters along steady courses over a long enough time to allow human beings to optimise resources. If a man might be deprived of any part of his interest at any time capriciously or without warning or remedy, investment would fall and longer term planning would cease. Under this rule then, compensation

should clearly be offered up to that point where the demoralisation of people and investment in the long term would cost more to society than compensation - up to the limit where it is cheaper to cancel the project as a whole. On the first rule, the project appraisal rule, there are three options. One is to say that all developments are a matter of winners and losers, and subject always to the second rule, to leave it at that. The second option is to offer compensation to all losers. The third is to say that there must be procedures to establish whether the project is a fit one to go ahead according to the first criterion, one of the resource costs of that decision will be opposition from those whose interests will be affected. They too, then, should be paid compensation where it will be cheaper than the trouble of dealing with their objections.

11.4.8 The basis of Utility testing is that a project is worthwhile if the benefits can be seen to be higher than the costs. Naturally there has been great debate over the question of how those costs are to be assessed. Bentham's followers and revisers in the nineteenth-century - Sidwick most notably in the field of justice - paid great attention to the question (Mill; Himmelfarb 1974; Anschutz). For Bentham, in a famous phrase, pushpin was as good as poetry. This total egalitarianism of pleasures and pains was specifically rejected by Mill who, in an equally famous

phrase, argued that it was preferable to be Socrates dissatisfied than a pig satisfied. In the end such commitment to the value of individuality could not be commensurate with Bentham's approach, with all it implied of trading off the happiness of one with the misery of another. In terms of the Wolfson Study the question is that of whether no compensation need be paid if the road will bring vast benefits to the majority of the nation.

11.4.9 On this question the ultimate challenge came from the reformed liberalism associated with Hobhouse. Rejecting the calculus in the forms in which it had been developed, he mocked at its more ludicrous practical implications. If Benthamite egalitarianism could be accused of justifying slavery, what of Mill's intellectual elites?

> "Justice is that apportionment which will yield the greatest good; the greatest good lies in the fullest development; and if on the whole a fuller development can be reached by the crippling or extinction of some members of the community, they must be crippled or extinguished ... the perfect flower of a strong and rich soul is cheaply bought at the expense of further stunting some already poor and wan personality." (p 112)

Most importantly Hobhouse picked up as the social principle which had been missed by the earlier utilitarians, the question of security (p 16). Evidently there can be little security where a man might have

his property appropriated without compensation. This element of security is an important addition to Utility testing in practice.

11.4.10 The revision of utilitarianism which stemmed from the type of opposition put up by Hobhouse has other lessons too. The concept of not resting the happiness of many on the shoulders of a few had revised the cruder implications of utility measurement, which was far too good a working idea to give up. It offers the social scientist, and especially his numerate first cousin the welfare economist, the chance to implant some of the rigour of the physical sciences or calculable conclusions of econometrics into the notoriously unquantifiable realm of politics. Benn and Peters can be felt to speaking from the heart when they write:

> "Social scientists have hankered after an objective moral truth, analogous to science, ascertainable by rational techniques, and yielding prescriptions that anyone with intelligence and good-will would be bound to accept. Bentham's 'moral arithmetic' is an obvious example." (p 130)

In the complex conditions of a modern society with competing demands on the active state then some way of knowing when enough good would be generated by a road or similar scheme to 'pay off' the rest and ensure general happiness has evident uses. It is this idea of paying off those injured which represents the next element to be considered. The idea is usually termed 'Pareto

Optimality', its origins being traceable to the sociologist, Vilfredo Pareto. In the words of Arrow, arguably with Downs the leading modern theorist of the economic (read quantitative) theory of democratic decision making the idea of Pareto Optimality has "been the main content of what is sometimes called the new welfare economics" (p 36). Indeed, in his own major work Arrow discusses the question under its alternative title 'the compensation principle' - one to be avoided here owing to the possibility of confusion.

11.4.11 The principle has proved far from easy to operate in strict practice as all the difficulties of inter-personal and inter-desire comparability arise as they did with Bentham's original calculus. The problems, described excellently by Arrow and Lange, are usually termed those of transitivity and connexity respectively; they luckily do not concern us greatly as we attempt no rankings. Only in the most fundamental question of all, that of whether money is a fair recompense for non-monetary loss did the question of transitivity arise in our studies. What is of moment for the study from Pareto Optimality and the refinements of utilitarianism which are regularly undertaken is that the debate has kept the concept as a living force. In section 11.6 the practical applications of the concept of justice are discussed. It is against the background of a continuing utilitarian tradition that

the few studies there are have developed. As has been said there can be no room here for a critique of Utility as a whole. The section has attempted only to brief the general reader on the main principles behind the idea as we shall use it as a test. Do the benefits to society outweight the disbenefits to individuals? Could a higher total of pleasure be achieved by higher compensation? These are the type of questionsutility has asked, and continues to pose. They are realistic questions to be faced by a society which seeks to increase the happiness of the mass by public works which impose on the few. In fact, it is argued by prominent political scientists, the questions are in fact the ones asked, less formally, every time government makes a major planning decision. Allison endorses Mackenzie's phrase.

> "Bentham's 'felicific calculus' is as dead as the general social welfare function. But we go on arguing in real life as if they were still alive ..." (p 80)

The problem is to see in quite what form they live on.

11.5 The Second Political Test: Justice as Fairness

11.5.1 If the inherent advantages of the utilitarian system for assessing compensation in broad terms are its implications of rigour and quantification, its equally intrinsic disadvantages are its amorality and atomism. Its lack of a social ethic. The summary of the late John Plamenatz remains unsurpassed:

> "... men want more than to succeed as much as

possible in satisfying one desire after another ... they are not mere competitors and collaborators, however benevolent, in a market for the supply of personal wants; they are members of society ... They see themselves as having rights and duties, as moral beings." (1958, p 175)

11.5.2 Insofar as literature reviewing and fieldwork alike threw up evidence that people do view compensation as a matter of social justice, an extra test - based on some more discernible ethic was called for. The most appropriate test seemed to be that thrown up by the ideas enunciated in recent years by Professor John Rawls (1958, 1963, 1963A, 1967, 1968); and finally presented in his magnum opus A Theory of Justice (1972). Rawls' central concept may be identified in the epigram Justice as Fairness, and it will here be termed the Fairness test.

11.5.3 For those not aware of the work a brief introduction may be merited. As the tome runs to some 280,000 closely argued words it will be understood that any precis is inevitably somewhat unfair. The work can be primarily distinguished from utilitarianism in having a moral dimension. Rawls has attempted to build a model for social procedure based on those rules which would be selected by rational men if they had no idea of what their social position would be. The rules are thus made 'fair' by definition, in that they apply to he who chose them. Although simple in its basics the theory

is worked out in scholarly detail, showing a keen grasp of alternate interpretations. Indeed the final theory is the product of many minds in the sense not only of Rawls' encyclopaedic understanding of his subject; but more because Rawls had learnt from critics of earlier articles and modified his own views or incorporated theirs. The theory provides a useful test (c/f the four maxims in 11.4.1) in that it is up to date, specifically applicable to western liberal democracies and because Rawls intended it to be practical and prescriptive. In his words a "theory however elegant or economical must be rejected or revised if it is untrue" (1972, p 3).

11.5.4 As the work is not well-known generally it may be worth dwelling a moment on its reception. Even those like Professor Brian Barry who criticise the very fundamentals of the work pay due homage:

> "It is, quite simply, a work that anyone in future who proposes to deal with any of the topics it touches must first come to terms with." (1972, p ix)

Reviewed in the Times Literary Supplement the work received perhaps even greater praise, and was put excellently in its historical perspective:

> "It is a convincing refutation, if indeed one is needed, of any lingering suspicions that the tradition of English-speaking political philosophy might be dead. Indeed his book might plausibly be claimed to be the most notable contribution to that tradition to have been published since Sidgwick and Mill." (5/5/72, p 1505).

It has been variously described by eminent critics as "a work of ... magisterial grandeur" (Barber 1975), "powerful and sophisticated" (Daniels, 1975, p253), and even as proof that America can still generate great ideas. (BBC Radio 4, American Bicentennial Celebration 26/6/76).

This last is, if anything, too modest. Rawls is far more than a celebrant of American values like, say, Sumner before him (Bell 1974). As a scholar at the University of Amsterdam has put it, Rawls "may be useful in coming to terms with the issue of equality ... at the societal and global level." (Phillips, p 250)

11.5.5 The debate on Rawls' work has attracted contributions from many fine minds, (among others, Barry 1967 and 1963; Wolff 1966; Boudon 1975; Friedrich and Chapman 1963; Lessnoff 1971; Hare 1973; Wright 1977) and a full scale book of critical essays (ed. Daniels 1975). The brief of this thesis is not to enter the debate on first principles, tempting though it is, but to take Rawls at his word and apply the theory to the realities of compensation. The following exposition then will concentrate on identifying the elements abstracted from the work as a whole.

11.5.6 The best starting point for such a discussion is that vital artifice of liberal philosophy, the social contract. Rawls is concerned with justice as a social process (1972, p 2) and he rests the idea of a social contract not on constructs of doubtful historical

validity as former subscribers to the idea had attempted. It rests rather on the previously outlined idea that if a rational man were to have no idea of exactly what his station/nationality/intelligence and so forth were to be, then the rules he would agree with others in the same position to run their society would be fair and just. As Rawls might prefer it put with greater precision; the substantive regulative provisions selected by rational actors in the original position, that is behind a veil of ignorance, to maximise their own good would be the principals of justice. The principals Rawls finds to be two in number:

> "<u>First Principal</u> - Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a like liberty for all.
>
> <u>Second Principal</u> - Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity." (Ibid, s.46)

Importantly for Rawls' scheme, these principals are in what he calls 'lexical order', that is the first principal has complete precedence over the second "and therefore the claims of liberty are to be satisfied first. Until this is achievedno other principal comes into play". (Ibid s.39) Clearly Rawls wishes to rule out any possibility that a system could be set up which

allows trade-offs between the two. Liberty is not to be sacrificed for economic gain. These are principles he accepts that can only apply given satisfaction of basic needs, a fact which is for our purposes irrelevant in that Rawls' ideas are intended for developed societies with a democratic base (Ibid s.82), and are to be understood as being formulated by people who know how their own society generally functions. (Ibid, s.31)

11.5.7 Applying the principles of justice then to states much like England which he characterises as "nearly just" (Ibid, s.55) Rawls comes up with the "maximin" rule for application in circumstances such as compensation payments. Whilst the principles themselves with their emphasis on liberty seek to regulate the types of impositions which can be made compulsorily, it is the derived rule of maximin which regulates the actual application. 'Maximin' is only a shorthand for maximising the lot of the minimally advantaged. It is derived from the first half of the 'Second Principle' which seeks to establish that society should set up its social procedures so as to maximise the benefit to the worst off. Clearly it is not so simplistic, and it should always be remembered that what is under discussion are working rules and procedures for a society's organisation, not its policy. The criterion does not imply that a

just society is one where everyone gives their money to whomsoever is poorest. That would be to overcome inequality. It is rather concerned with justifiable and unjustifiable inequalities, benefits, burdens and impositions - in our case, what impositions can be made fairly without compensating, and what level of payment is fair for a particular burden.

11.5.8 What Rawls seeks to do is to challenge directly the utilitarian view that the important social judgement is whether people as a whole are better off for the compulsory purchase of the land. He rejects any such approach, even in a refined Pareto-optimum form. The rule which logically derives from the idea of not knowing whether the motorway may be built across your land, but knowing the odds and the general benefit to be gained, is to select rules which will ensure that the 'worst affected person' is put back <u>better</u> than before. This point is so important a little more precision is merited. The rule counters utilitarian arguments by saying that the procedure for adjudging the practices of compensation should be based on ensuring thar Farmer A, a <u>representative</u> of the worst affected group, has <u>every possibility</u> of ending up marginally better offthan prior to the C.P.O. That is, the rules should look to the position of, say, the young tenant farmer whose specialist holding is irretrievably injured just as he has finished an intensive capitalisation programme.

If not the worst affected, he is a fair representative of the group. The emphasis is important. Rawls argues lucidly that fairness resides in general social procedures, not each specific case.
The maximin rule is Rawls' answer to the eternal question of establishing procedures for future uncertainties. It is a conservatively-orientated answer. In his earliest formulations of the idea Rawls supported social rules which "might be thought of as those a person would keep in mind if he were designing a practice in which his enemy were to assign him his place." (1967, pp138-9) The same idea and phrase occurs again in the eventual theory (1972, p153) but is qualified as being an analogy. It would be a 'false premise' to believe that in life one's enemy were to decide the routing of a particular road. Although there is to be generalised ignorance regarding the individual's position, the workings of human society are understood (Ibid, pp153-4)

11.5.9 An uncompromisingly conservative approach to compensation provision will arise, Rawls argues, for three reasons: discounting, fail-safe and moralism we might call them. In Rawls' words:

> "First, since the rule [maximin] takes no account of the likelihood of the possible circumstances, there might be some reason for sharply discounting estimates of these probabilities. [Secondly] the person choosing has a conception of the good such that he cares very little, if anything,

> for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule. [Thirdly] the rejected alternatives have outcomes that one can hardly accept." (Ibid, p 153)

It has been excellently argued by Barry that the logical reasoning has flaws and that men in the original position will not necessarily be driven by the three reasons to choose a maximin approach (1973 ch 9). Taking this argument yet more deeply Nagel has questioned whether it is not a feature - and an inherent weakness - of all contractarian theory that the need to achieve the agreement of all strictly limits its practical applicability. Even in our liberal democracy the road, it will be shown, is generally open before compensation is paid. It is not difficult to envisage reasons for forging ahead with a road, without compensation, which would still be 'just' within the society concerned:

a. in a developing totalitarian state to ensure the five year plan and carry the nation along
b. in a religiously based state to ensure the correct worship of the god, as in an Aztec highway to the sun
c. in almost any state when liberalism is suspended during a war emergency.

Social contracts demand unity, Nagel argues, and therefore the highly conservative maximin tendency arises inevitably:

> "The egalitarian liberalism which he develops and the conception of the good on which it depends are extemely persuasive, but the original position serves to model rather than to justify them ... I believe that Rawls' conclusions can be more persuasively defended by direct moral arguments for liberty and equality ..." (p 15 emphasis added)

11.5.10 The argument has merit and when employing Rawls' ideas as a test we can thus look two ways. Not only to ask whether maximin conditions are satisfied by compensation provision and practice. But also to put the interesting question of whether the results show it to be as useful a test in practice as it promises to be in theory. In a challenging critique from the angle of a social psychologist Benjamin Barber has suggested that maximin may be unjustifiable:

> "A consideration of actual historical developments and concrete institutions as they manifest special psychologies may in fact suggest that the no-risk prediliction for security may be atypical of human choice in the face of uncertainty." (1975)

Rawls himself places great weight on the principle of "coherence". Ideas developed should be testable against real world occurances and particularly an individual's own intuition - they should accord with what is felt to be just.

Rawls specifically calls for empirical tests of his theoretical assumptions and deductions so as to be able to seek the best fit of the real and rigorously theoretical;"Reflective equilibrium" as he calls it (1972, pp 46-53, 578-82).

11.5.11 The lack of such empirical work to date is striking, for as Lyons points out such tests of theory (and particularly the limits of theory) have a long history, back most obviously to Plato (p 146). The whole concept of universalisation as an important element of justice rests on such a foundation (Harrison 1953). Lyons makes another point of relevance to the very question of the compensation study - in particular its subjective aspects:

> "... pure coherance arguments seem to move us in a circle, between our present attitudes and the principles they supposedly manifest. We seem to be testing principles by comparing them with given 'data'. Because the latter (our shared, considered moral judgements) are impartial, confidently made, and so on, we can indeed, regard them as reliably reflecting our basic moral convictions. But we can still wonder whether they express any more than arbitrary commitments or sentiments we happen now to share. To regard such an argument as <u>justifying</u> moral principles thus seems to assume either a complacent moral

conventionalism or else a mysterious 'intuitionism' about basic moral 'data'." (pp 146-7)

Here, perhaps in more pithy and elegant a form is the attitude struck above regarding the Legalistic theory. It does not apply to Rawls because whilst coherance is seen as a useful test of where a theory might have overstepped its limits in prescribing from deduction, he is nowhere so naive as to accept it as being justificatory in and of itself (1972, p 580). Rawls may be a liberal contractarian, but he has learnt his lessons and cannot be accused of the philosophical 'crime' of Locke and his fellows, that they read back the dominant ideology of their own time and class to the original contracting citizens (Macpherson, p 238).

11.5.12 If the argument regarding 'coherance' is difficult in being a brief exposition of a major seminal idea, it is nonetheless important for the methodology pursued. Not simply because it is encouraging to know that the thinker himself desired to have his ideas tested, but because Rawls based his desire for empirical testing on an understanding of how his prescriptive work differed from Legalistic theory, which he terms 'thin'. Again the language is difficult but has precise meaning. Rawls saw his work as opposed to "intuitionism in a broad sense", that belief that there may exist "a plurality of first principles which may conflict to give contrary directives in a particular

case" (1972, p 34). Hare (1973) has entered into a debate on this intuition question. It only concerns us to the extent that whilst Hare might find procedure x unjust because farmer y felt it to be (or even farmers a ... z), Rawls helps take matters an important step further. As well as saying that a particular compensation problem is unjust in the Legalistic sense that existent social principles are being breached, Rawls may help a judgement on whether it is correct that they be breached in wider terms.

11.6 Broader Testing of Justice by Legal Commentators

11.6.1 Work of Farrier and McAuslan

It was some time after the decision to attempt testing by the methods described that the first directly relevant items of literature came to hand. It was akin to meeting a fellow traveller who can confirm the chosen direction. In an encyclopaedic work covering the law on compulsory purchase in a number of countries (Garner 1975) was one article, out of keeping with the otherwise formal descriptive nature of the text. In a profound and aware analysis of the inter-relationship between compensation and the planning process as a whole, based around the new 'home loss' payments incorporated in the 1973 L.C.A., two academic lawyers had probed the place of compensation generally. They too had examined the

little basic data available either regarding governmental attention or individual attitudes; the Roskill Commission, the debates on the 1973 Act, the White Paper Putting People First and so forth. They added one very interesting source to help allay the paucity of information - the 'Community Attitudes Survey' undertaken for the Royal Commission on Local Government (p 58). This is picked out as helping show two things. Firstly how little pertinent information there is, that only one new source could be added, secondly how it is possible to employ such data to make points of broader ethical relevance. The evidence of that survey illustrated the value people place on the idea of a 'home' and not being disturbed in it. Farrier & McAuslan then went on to isolate the extra strength of the concept "in lower socio-economic grades". Admirably they point out that if such facts were to be "relevant variables" to decision-makers "it might do something to redress any tendency ... to choose area [sic] inhabited by the lower socio-economic classes because (so long as compensation is based on market value) it proves cheaper to acquire the property in these areas."

11.6.2 What Farrier and McAuslan show themselves to be aware of is the place of compensation within the greater political system. Indeed they divide their paper into two parts. Although the terminology is ours, not theirs, the first part consists of a Legalistic

examination of land-use compensation within a wider legal framework (accidents, redundancy, tort). The second part opens with a challenging admission that in the earlier discussion "we might perhaps have defined the problem at issue incorrectly, in so far as we have limited it to one of 'compensation'." They recognise the essentially political or ethical basis of the fundamental question. By focussing on the concept of 'homes' and their loss however they leave most of the aspects of compensation facing farms. They do however provide evidence from the legal side of the fence that a political approach may have merit, and they point to the work of one commentator who, although in an American context, has grappled in detail with the problems.

11.6.3 Michelman on the Ethics of Compensation

Michelman, a Professor of Law at Harvard, was known of for his work on Rawls (1975), before a major and more relevant opus of his was pointed out by Professor McAuslan. The article 'Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law' appeared in 1967, but appears to have escaped the attention of British commentators within disciplinary bounds. Michelman too chose utilitarianism and Rawls as models for testing compensation. The article is not based on empirical work but rather on a detailed review of American practice. The immediate question therefore is that of cross-cultural comparisons. In fact this is

less of a problem in practice than it may seem in theory. American law is comparable with English, allowing for a reversal of emphasis onto a forensic as against a statutory basis. That is, in America the question to be put is whether a governmental action of regulation amounts to a 'taking' of land in the constitutional sense - a question for the courts. If it does then ' just compensation' must be paid according to the 5th and 14th amendments (Garner 1975). In the absence of strict planning laws the settlement is generally on the basis of the 'highest and best use'. That is, normally the most expensive potential use. Thus the actual <u>amounts</u> of compensation, the quantum in legal parlance, is rarely an issue as it is in England. The question of when there will be payment is the great problem.

11.6.4 Reflecting the differences in social ideology within the nations compensation in America, Michelman argues, needs to be accepted as a political question because the courts are incapable of handling wider issues (pp 1199-1200). In a sense he is concerned with points irrelevant to England, yet the application of the tests employed is much the same as that herein envisaged. It would be surprising if they were not, for justice should be a universal concept. The article is a long one, (92 close-type pages), as Michelman clearly feels the onus of justifying the type of study undertaken, and reviews the gamut of welfare economics and related

publications before settling on the tests of relevance.

11.6.5 Utility is selected as a test primarily because of Hume's starting point in the 'Treatise of Human Nature'. Building on social contract ideas Hume based society on the value of men coming together to achieve ends they could not individually attain. The greatest decision in so doing is the problem of their own property. Whilst sociability necessitates the acceptance of restrictions on what should be done with the property of others, it rests equally on the guarantee of the enjoyment of property which is one's own. If such an underpinning of the stability of society is removed then there will arise 'demoralisation costs' as people refuse to look to long term investment (pp 1209-11). On the basis of Hume's theory, and Bentham's addition of the idea of property as a set of secure rules, Michelman presents the application of utility tests to compensation in terms of 3 quantities. These he calls 'efficiency gains', 'demoralisation costs' and 'settlement costs'. The 'efficiency' part of the first term is but the jargon of initiates, for most purposes they are simply benefits over and above Pareto optimality in its subtler Welfare Economic sense. Not benefits after compensation is paid, that would be circular when looking for compensatory guidelines. Rather the benefit theoretically available from what all gainers would be willing to pay, if what losers would demand were subtracted. Such a vision is a market one, and therefore incompatible with

the idea of the private turnpike road.

11.6.6 The two costs, demoralisation and settlement, are fairly self-explanatory as a) costs caused (social and economic) by the realisation that no compensation will be paid for loss x, including any lack of investments attributable thereto and b) the value of resources put into reaching agreements adequate to avoid demoralisation costs.

> "A measure attended by positive efficiency gains is, under utilitarian ethics, prima facie desirable ... It follows that if, for any measure, both demoralisation costs and settlement costs (whichever were chosen) would exceed efficiency gains, the measure is to be rejected; but that otherwise, since either demoralisation costs or settlement costs must be paid, it is the lower of these two costs which should be paid."

The attention of the reader is called to the use of 'paid' here. It implies not only the active sense of cheque - writing by the D.V., but equally the passive sense of allowing blight to occur.

> "The correct utilitarian statement, then, insofar as <u>the issue of compensability</u> is concerned, is that compensation is due whenever estimated demoralisation costs exceed estimated settlement costs, and not otherwise." (pp 1214-5)

11.6.7 Michelman is prepared to address himself, from these premises, to the fundamental question of whether to

compensate at all. As the fact of living, let alone owning property, involves many risks what is special about losses due to the bad luck of facing a motorway? Although he rather loses track of his initial starting point regarding sociability and security, his analysis of practice illuminates one important point. Distinguishing public works from more random and general risks he concludes:

> "The clearer it is that the claimant has sustained an injury distinct from those sustained by the generality of persons in society, and the more obviously there appears to be some objectively satisfactory measure of his disproportionate or distinctive injury, the more compelling will his claim become." (p 1217)

A most important and practical point dealing with the problem of treating unlike cases differently. It has direct analogies with the English law of tort in the emphasis on special injury over and above that imposed on the public at large. It is a problem at the heart of justice, yet not necessarily at the heart of utilitarian product maximising ethics. For utility is about just that, optimum outputs taking all on all, and not with golden means or putting back as was. This is in no wise to decry the test as an important element of justness, it is rather to say that it could arguably be more applicable in his section on justice as fairness than in that on functionalist justice.

11.6.8 Michelman himself draws a firm distinction between the idea of compensation as part of the process of maximising net social product and compensation as justice. It is possible to quibble that the distinction is not as clear as that, but the basic point of treating the problem ethically rather than functionally is acceptable. It is of interest to quote the support given by Michelman for the choice of fairness as a test:

> "Rawls' theory attracts our attention because it is concerned with inequalities in the treatment - the quota of power, honors, [sic] and incomes - received by individuals under collectively maintained arrangements. A cogent attempt is made to clarify the idea of justice as the special virtue of social arrangements within which such inequalities become acceptable." (p 1219)

Michelman accepts that Rawls' principles are directed at "fundamental social arrangements" rather than giving guides to particular practices. The way they are drafted as general principles should imply that they have applicability - the problem (if it can be so called) is Rawls' depth of analysis and profound working out of his theory. It is simply the question of looking at the main principles. What is firstly striking is the difference between the imputed psychology of individuals. In the utility approach the individual is assumed to be self-maximising. Rawls too is a supporter of the liberal market mechanism but puts into it an ethical dimension. Being ignorant of his

personal social position the claimant must be assumed to look to the longer term and the broader social good (pp 1220-2). The project must fulfill the basic Rawlsian criterion of not just advancing net social product but ensuring that the worst off representative person is dealt with better than the mean. Insofar as the affected farmer will, on most schemes, be a fair representative of the worst off from the scheme, Michelman sums up as follows:

> "A decision not to compensate is not unfair as long as the disappointed claimant ought to be able to appreciate how such decisions might fit into a consistent practice which holds forth a lesser long-run risk to people like him than would any consistent practice which is naturally suggested by the opposite direction." (p 1223)

The 'ought', a dangerous word at the best of times, is confusing here. It implies no moral onus, but should be read as 'given that he is a rational man prepared to abide by the general rules drawn up in ignorance of his social position'.

11.6.9 Finally it may be of use to end this review with an example of how Michelman employed the ideas in practice. Generally he found Utility and Fairness to point to the same answers, and his examples are too closely tied to U.S. legal circumstances to have much illustrative merit. One however which is general enough to do so, is the question of whether physical invasion

of property might be a good mark of compensatability. Although this is directed at the question facing American law 'what is a taking?', it also reflects the position of English law as set out (for different reasons) in Edwards v MoT and now over-turned by the 1973 L.C.A., that those not losing an interest (road next to the garden fence) had no claim. This is an interesting case for it is one where Utility, rather than Fairness, favours compensating - whilst generally it may be assumed that the opposite will hold. For in this case an affected farmer will not always be a worst off person. Losing only an inch (to be extreme) at the edge of the farm would arguably not, under rules of fairness merit compensating, but a motorway, on the other hand, close to the main buildings, severing off-lying land would. Clearly for fairness taking alone is inadequate. But in Michelman's terms:

> "The psychological shock, the emotional protest, the symbolic threat to all property and security, may be expected to reach their highest pitch when property is taken." (p 1228)

In the utility world the question of 'where will it end' - with demoralising effects - is implied whether 1" or 1 mile is taken. The fairness model would have men more far seeing than this and content to accept a minimal claim rule as just. Whether this is a realistic approach to human nature - the question of coherence - will be a matter of concern in chapter 15 as well as whether the theories offer insights into reality.

CHAPTER 12

THE METHODOLOGY AND SOURCES FOR ASSESSING EQUIVALENCE

'What are States without Justice, but robber bands enlarged?'

(St. Augustine)

SUMMARY

An attempt is made to apprise the reader of the data sources within agricultural economics on which an assessment of a given farm's actual losses may be based. The use of the 'Gross Margin' method of appraisal is outlined, with a description of the lesson taught by pilot studies that whilst generalised figures could be used, individual case studies of each farm were necessary. The development of the method is set in the context of the project as a whole, following on from the desire to cost up the overall national agricultural loss (described by Hearne). The joint use of the data is seen as an advantage of interdisciplinary teamwork.

12.1 Context of this Chapter

12.1.1 The philosophical and academic context of the compensation study was developed simultaneously with the agricultural economic tools for such a survey. Insofar as this is the first attempt to assess compensation by a rigorous post-hoc examination of settlements, considerable detail is required with concentration on the aspects which have thrown up lessons of value for further research. The characteristics of the schemes themselves, M5 and M40, are best discussed at the opening of their respective chapters. M42, M11 and the Chester by-pass which provided useful supportive evidence are discussed in the Information Pack section (chapter 3) above. The concern here is the method itself. The facets determining the Group's choice of schemes are discussed by Hearne as is appropriate because the terms were primarily those of the farm system impact studies. Compensation assessment, by definition, could only follow assessment of farm loss. The important constraint to emerge gradually from M11 and particularly M40 work was that some five years from the beginning of construction seemed to be required for an adequate number of cases to be settled. This traded off slightly with the fact that MAFF had destroyed the important June Return data source for the years prior to 1969.

12.1.2 During the initial period of fieldwork the emphasis lay on ranking the different areas within the single social process road construction essentially is.

Compensation emerged early as a point of friction. The form in which it first arose acutely was the question of the relation between third-party claims against contractors and the disturbance ('rule 6') element of a claim under the Compensation Code (see chapter 10 above). Because M42 work focussed on a scheme at the construction, or imminent construction, stage the questions of direct damage and disruption were uppermost in the minds of farmers who, being located on the urban fringe endured considerable imposition of this type (Blair; Boddington 1973A). In the course of iteratively pursuing issues uncovered, Mr. Manzoni of Douglas Engineering gave access to the firm's Land Agent, Mr. Birtles of Chessire Gibson. At this early stage the discussion focussed on three elements:

a. the boundary between contractor/promoting authority responsibility,

b. the relationship between compensation and national economic losses (i.e. the 'land value' debate),

c. the eventual satisfaction of affected farmers.

Inevitably on the first of these there was concern to enhance the reputation of Douglas, and assurances were given that it was common practice for them to pay considerably 'over the odds' in order to ensure that farmers were well satisfied. This whole question is discussed later, the evidence from elsewhere being such as to confirm that if this is indeed Douglas' policy they are a remarkable exception. At the time of the

interview, construction of the Solihull Section of M42 was only partly completed. A survey found that of 9 farmers interviewed in detail six had outstanding claims or grievances against Douglas and only one other had received monies and favours - with which he was indeed well satisfied. Unfortunately it was made a condition of continued liaison with the DTp that research cease on the controversial M42 scheme, and Mr. Birtles' assurances on points (a) and (c) could not be tested. The second point merits separate consideration as an important step in the isolation of relevant issues.

12.1.3 The Project's brief from the Wolfson Foundation was to examine the national resource impact of constructing major new roads on farmland. Inevitably then an important starting question was that of land loss. As is argued in more detail in Bell 1978A, the loss of land to roads constitutes a small proportion of overall land conversion figures. The causes for worry reside in the questions of whether there is wastage, and in the secondary planning effects. Thus the land covered by motorways is a comparatively minor strategic planning concern. The important question was seen to be placing the value of lost marginal agricultural production within the overall road planning/project appraisal framework. There is a considerable literature, primarily from agricultural economists, concerning the difficulty of putting a price on farmland required for alternative uses. (Boddington 1970, 1973 and 1975; Wibberley 1959; Ward 1957; Peters). It became clear that the difficulties elicited

by such studies, and the common property of planners concerned with the social cost-benefit of development schemes were being ignored by DTp. Mr. Birtles confirmed our initial impression gained at the Epping and Chelmsford Inquiries that the 'Land Price' included in approximations of the schemes' costs were D.V.'s assessments of potential compensation settlements.

12.1.4 The problem of strategic land loss as an important element of resource concern was rejected in favour of methods of costing total farm impacts. It became clear from a review of the compensation literature that the methods of assessment legally enjoined meant that, at best, the Land Price figures used could only act as a surrogate for comparing schemes. At the same time the issue of severance provision, particularly its relation to the overall cost-benefit, was emerging as of related interest. Attendance at the M16 Inquiry brought contact with Mr. P. Farrer, Land Agent for the large Copthall Estate. As a member of the national firm of John D. Wood he had gained considerable expertise regarding motorway schemes throughout the country. Lengthy discussions and examination of the many cases undertaken by the firm threw up a number of points of great moment to the direction of the research:

a. there was distinct discrepancy between the theoretical perfection of most literature on compensation and the virtual 'horsetrading' of most settlements;

b. compensation was not an assessment of loss standing extraneous to the planning process. It was an active part of the costing, routing and accommodation provision;

c. because of this integral position the cases looked at showed the D.V. as a principle position of linkage in the administration of construction;

c. if Wood's records were a fair picture there was reason to hypothesise that a number of elements of compensation were imperfect in the sense that the principle of equivalence was not being achieved.

12.1.5 Up to this time, especially during the half-completed M11 fieldwork, compensation had been approached primarily as a procedural matter. With the development of accurate appraisal methods for assessing losses to the farm the possibility arose of taking on the question raised by point (d) above, and attempting some objective assessment of compensation efficacy, at this time only in Legalistic terms. The hypothesis was that whilst allowing for the different bases of valuation if equivalence was achieved there should be some accord between loss and compensation received according to the formulae:

Tenant's losses = total tenant's compensation - items specifically recompensed (e.g. destroyed crops, injured animals)

Owner-occupier's losses = injurious affection/severance compensation + disturbance compensation - elements of the latter paid as specific recompense - apportionment for injury to farmhouse and other non-agricultural elements.

As with the overall attempt to distinguish farm losses due to the motorways it would be necessary to obtain access to detailed financial records. From those few farmers who had settled or part settled their cases on M11 it was consummately clear that to obtain evidence which was both detailed and unbiased it would be necessary to have access to the farmers' agents.

12.1.6 On the M11 scheme the bulk of cases were shared between two local specialist agricultural valuers. Both expressed the feeling that there were major failings in the compensation code and its implementation, particularly they felt in the procedures. They helpfully gave practical guidance to the developing methodology.

a. Although they were more than willing, as professional men, to aid a useful study they pointed out that the information required could not be discussed informally, say over lunch. Costly working time would be required to delve into complex, probably closed, files.

b. Insofar as Scale 5 (a) to which agents were tied for their fees on government valuations is out of accord with the time spent on road compensation it might be necessary to have research funds available to recompense busy men for broken time.

c. Most valuers would be willing to give time and information but would naturally require written authorisation before handing out financial details of their client's cases.

The M11 also provided the first evidence that schemes examined would need to have been completed quite some time before, three years at least, in order to have the majority of cases settled. This accorded well with our methodological requirements on the agricultural economics side, and, as described by Hearne in his chapter 9, these requirements had a certain precedence in choosing schemes, there being no reason to believe that different schemes would have significantly different predictable results.

12.1.7 The completion of fieldwork on M11 Contract 3 and discussions with the land agents left an impression that the office of the District Valuer and Valuation Officer held relevance for the research. Despite the considerable bulk of law and case practice laid down, there appeared to be discretion in application. There was no exercise of power in any of its stricter senses (Lukes; De Crespigny 1968; Russell 1938). What was

being exercised appeared rather as 'institutional discretion' - not authority because its legitimacy was challenged by those concerned. The D.V.'s office was a front for a complex of differing administrative arms and functions of government. The RCU, regional DTp and DoE offices, Treasury as well as the Inland Revenue itself were interlinked in the process which functioned through the D.V.'s office. It thus seemed important before pursuing specific case-studies of compensation to explore the role of the D.V. in general terms. In pursuit of this end it was decided to accept the severe restrictions imposed by the D.V. responsible for M11 Contract 3, and not press a number of disturbing aspects in exchange for a meeting on general factors.

12.1.8 The D.V. interviewed was the third to hold the office during the construction of M11 and this may have had some influence on the replies given and refusal to debate controversial areas. The details of the evidence are more appropriately discussed below. A number of important points for methods and approach stood out however, and influenced the studies on M40 and M5.

a. It would be necessary to probe for evidence from farmers, agents, accounts and so forth because D.V.'s might well refuse to discuss any detailed individual case, <u>even where the farmer had given signed permission</u>.

b. An hypothesis to test was added to those already developed. It was that the D.V. had a considerable degree of personal discretion. The M11 D.V. emphasised the opposite, that it was of no importance that there had been 3 D.V.'s on the scheme. Valuations, he argued were "objectively correct". This did not, however, accord with the M11 findings where individual cases appeared to show contradictions and personal initiatives by different D.V.'s. Such cases could not be pursued as a condition of the meeting.

c. It would be important to provide the D.V. with detailed points and arguments to comment on, that is approach him last with the other information firmly marshalled, otherwise the tendency to concentrate on placatory generalisations might dominate. The D.V. is a little studied area of public administration, and the interview showed a keenness to have the general context correct at the cost of specifics. This being an anticipatable reaction when interviewing normally 'closed', and usually justifiably secretive departments dealing with personal financial affairs. The interdisciplinary approach was seen as something of a challenge and it was clear that it would be necessary on M40 and M5 to

explain carefully the aims and objectives otherwise it would not be possible to make the questioning sufficiently detailed and useful.

12.2 Methodological Aspect of the M40 & M5 Studies

12.2.1 Compensation questioning on M40 was based around the developed questionnaire (Appendix 3). As with the Information Pack interviews this was used more as a checklist than as a strict set of questions. It was designed to probe the farmer's objective response to compensation provision, his subjective opinion of its fairness and to lead to the signing of forms granting access to MAFF records, farm accounts and the agent. The method was successful in practice, again employing the two-man interview technique. Even with detailed questioning in the first three or four interviews which were with farmers who agreed in advance to give time to act as a pilot survey, the need for agent interviews was evident. Whilst continued questioning could elicit greater detail of farm systems or investment policy, compensation was left to the professional adviser and few farmers had knowledge any further than the final figure and approximate date of completion.

12.2.2 The M40 had notice to treat served in March 1971, but entry was not taken until February 1972. The scheme was opened in 1974, work being completed by the early summer of that year. Agents were not

contacted until after all the interviews were completed. It was occasionally difficult during the interviews to be quite clear who were the farmer's professional advisers. In a number of cases it was found that the names of agents, agent's firm (agent's firm's abbreviated name or nickname), former agents, accountant, accountant's firm and various extraneous characters were confused. This proved to be an aggravating problem and in one case (number 3) was not sorted out until after the preliminary case-study had been drafted. Before the M5 work began the names of the principal firms and their agricultural experts were requested from the local NFU, this proved a great improvement. If such a source is not available it is still recommended that potential interviewers apprise themselves of the names from the Institute of Chartered Surveyors Directory.

12.2.3 The 16 farms accepted as being significantly 'affected' yielded 13 responses which merited taking forward as cases. These were distributed around six firms of surveyors, always placed with the same agricultural specialist within the firm. One firm has six cases and had handled the post-M40 transactions of one more, one firm had two and the other four one each. The one good respondent who refused access to his agent also used the first of these but naturally could not be discussed. All the agents had local

premises (within 15 miles of the farm). There were more problems in gaining response from agents than might have been envisaged. Table 12.1 sums this up. The points most notable for methodological consideration arising from the interviewing of agents were:

a. The need to be very well read and briefed. Whilst this is a desideratum of all academic study it merits emphasising that agents were unwilling to answer questions until they were confident of the intellectual bona-fides of the researcher. It was a universal syndrome that a personal visit was preferred to answers by post and that the first part of any such interview comprised a questioning of the researchers to expose their knowledge of the valuer's specialist field.

b. The advantages of the two-man interview. Few agents had prepared anything on paper and details of settlement tend to be extremely complex. The 'story behind' items would be explored by one member whilst the other concentrated on taking full notes.

c. Even 5 years from notice to treat is inadequate to ensure that cases will be settled and agents are unwilling to deal in prediction or approximation, a pointer that compensation is not the clear procedure it was pictured to be by the D.V.

Table 12.1 : M40 Agent Response

Agent Number	Number of Clients	Initial Letter Sent	Contact Established	Interview(s) Carried Out	Explanation and Comment
1	6	18/3/76	29/3/76	27/6/77	Claims unsettled primarily, agent busy, fee requested
2	2	18/3/76	22/3/76	4/6/76 & 11/1/77	Agent busy, fee requested, agreed but never claimed. Claims uncompleted
3	1	18/3/76	23/3/76	1/4/76	Partner dealing with M40 claim had left, a colleague took us through the file
4	1	18/3/76	25/3/76	16/5/76	Agent busy
5	1	18/3/76	23/3/76	30/3/77 & 20/1/77	Claim and severance provision uncompleted
6	1	18/3/76	4/2/77 (telephone)	-	No reply to 3 letters, rang, refusal to aid study as of no help to them

d. The fact that an offer of helping with expenses, in advance, would greatly speed up response and aid goodwill. This was employed on M5 where once again only an agent with six clients asked for any reimbursement.

12.2.4 Again the reasons for selection of the M5 scheme lay mainly in the field of agricultural economics requirements. From the compensation angle it was useful that the scheme was a slightly older one. The writing of early compensation case-studies on M40 had been undertaken to give a guide to the questions needed, but it was found that there was little need to significantly alter or amend the compensation section. It was evident from compulsory purchase documents that many more farmers were affected by the M5 due to the small dairy units common in the region. There was thus a possibility of a greater number of marginally affected farms. It is possible that such farms minimally affected in land loss terms, could be badly injured by, say, drainage side-effects. Such farms were looked for and those replying to initial telephone queries that they were barely damaged were specifically asked also if they had compensation difficulties. Similarly agents responding had this problem explained and were asked whether they had notable compensation difficulties with any cases we had not cited to them. This careful checking threw up but one such problem and this was

indeed a case where a river re-alignment had taken place on land only clipped at its boundary by the road.

12.2.5 This investigation was carefully costed and the following are attributable to the compensation survey. Overheads are not included. A good estimate is £100 for typing, postage, telephone and particularly photocopying.

Table 12.2 : Cost of M5 Compensation Research (£)

MATERIALS	- Maps, O.S. (6")	14.70
	- Land Classification	4.72
	- Copying	3.28
	- Regional FMS Data	5.05
	- MAFF Computer (June Returns)	94.21
	SUB TOTAL	126.96
FIELDWORK	- Travel, farm interviews 1500 car miles @ 10p per mile	150.00
	- Subsistence, farm interviews, 14 man days @ £8 per day	112.00
	SUB TOTAL	262.00
VALUER VISITS	- Travel, 1200 car miles @ 10p per mile	120.00
	- Subsistence, valuer visits, lunches/teas	12.00
	- Travel, train	11.40
	- Fees	25.00
	SUB TOTAL	168.40
ACCOUNTS	-	103.83
	GRAND TOTAL	661.19

(Note: Does not include general overheads)

12.2.6 A total of 22 farms on this section produced pursuable data. All but one of the land agents employed were based locally within 15 miles of the farm. The other farmer employed a major regional firm almost 50 miles away. The distribution of cases is shown in Table 12.3. Once again, even with very willing agents it took considerable time and effort to set up appointments with them all. Being completely at the behest of the agent concerned it was impossible to influence timing and, for instance, separate trips to Somerset were required on the Tuesday and Thursday of the same week. Offering fees in the initial letter and having by this time examples of our work such as the I.P. to include appeared to help response. Once again only one agent eventually took up the offer of financial help although anything between 1-3 hours could be taken over the interviews.

12.3 The Analytical Method

12.3.1 The essence of the analytic approach is to employ the most appropriate methods of agricultural economics to estimate the actual losses of the farm caused by the motorways, and compare them with the compensation received. As a secondary aim it was hoped to collect detailed evidence of the procedural aspects of compensation claims and negotiations, for these there was supplementary evidence from M11. Inevitably in any real-world study the control of variables was extremely difficult. Farms, their incomes, sizes and

systems, all change over time (Agriculture E.D.C; Langley; Zuckerman). Indeed in this case it had to be faced at the outset that change and adaptation were all important. Equivalence is best served when a farm can purchase land with its compensation monies, sufficient to restore it to the position it held pre-motorway. Of course the same holds if it adapts its system, intensifies production or combines any number or range of different methods of restoring itself.

12.3.2 It became clear from pilot appraisals that so different were the circumstances of each holding that no one method was suited to all. In certain cases any one method required checking by another. This was a lesson learnt from a study of valuation texts and Lands Tribunal/Judicial cases, the lesson of <u>tests</u>. Agricultural economics as applied to planning and post-hoc approximations of impact is a developing discipline in itself, and even given the most perfect information can only presume to give a reasonably accurate measure of losses (Beynon & Horston; Bennett-Jones). Like valuation itself it is an inexact science. The tests themselves were selected as appropriate from the best of the developing appraisal techniques of the Wolfson Team as described by Hearne and similarly employed by him in a national (or, social) cost-benefit context. Where appropriate more than one test was used.

Table 12.3 : M5 Agent Distribution and Response

Agent Number	Number of Clients	Initial Letter Sent	Contact Established	Interview Carried Out	Explanation and Comment
1	6	5/12/76	13/4/77	14/7/77	Firm very busy, fees requested, considerable preparation time required
2	6	5/12/76	17/12/76	13/1/77	Christmas intruded
3	5	5/12/76	8/1/77	18/3/77	Agent semi-retired, attends office as required
4	2	5/12/76	9/12/76	10/3/77	Agent ill, then busy with backload
5	1	5/12/76	5/1/77	1/2/77	Agent retired, attends office weekly as a consultant
6	1	5/12/76	9/12/76	22/12/76	Very businesslike

Appropriateness was based solely on an assessment of the cases themselves. This case method is an essential lesson of the study.

12.3.3 No two farms were alike, although common features such as small size and dairy system, arable farming developing in the 1970's and so forth were obviously present. After initial trial assessments it became clear that farms would each require studying as individual cases. Specific lessons were learnt from the studies which merit passing on to future researchers:

a. The sheer uniqueness of the cases ensured that they had to be examined in depth. Although very time consuming, the method is recommended to all working from similar data.

b. Farm economics materials allied to the details of compensation settlements drawn direct from agents' files require a great deal of marshalling before yielding useful results. Account analysis, the tabulation of June Returns data and their comparison with national and regional trends both demands a close involvement with the farm's performance and yields a most useful detailed comprehension of it, a 'feel' for how well or badly it was doing which must be read together with the interview.

c. The work requires an interdisciplinary approach but rewards it well too. The data to be handled is enormous. A full-scale investigation of farm performance is required before it can be compared with compensation received. This same analysis, amended to take account only of losses to the nation rather than those to the individual, was used for appraisals of motorway impact on the national farm and for the Group's development of predictable models described in the parallel thesis. Thus the interdisciplinary team approach maximised the usefulness of the data.

The case-studies, it remains to be said, form such a unique data bases that an illustrative selection is contained in the appendix in a disguised and anonymous form.

12.3.4 The cases rest on a number of agricultural economics tools and data sources. The principle amongst these are as follows:

June Returns - These are annual forms to be filled in on behalf of every agricultural holding. They request details of crops and stock on the date of June 1st. Smaller sample surveys are also taken in December to deal with enterprises like sheep which tend to be imperfectly represented by a summer-based census. The returns are used to construct the annual Agricultural

Statistics of the United Kingdom (HMSO) and give the government the information on which to draw up its Annual Review of Agriculture (also HMSO) and base the vital price review figures. The statistics gathered are held on computer at Guildford and available to the public anonymously grouped by parish. After discussion with the MAFF's Academic Liaison Officer permission was received to draw individual holding information on print-out provided the farmer's signature and 'holding code number' was obtained. The computer runs cost approximately £100 each. The information held on the computer files is the most detailed and complete record of the state of British agriculture, and of most farms' systems over time. Unfortunately MAFF have scant regard for the importance of such historical records and are in the process of destroying their back files. To date they have reached 1969.

Farm Accounts - The range of accounting detail and method is vast, varying primarily with purpose. Whilst some farms are linked into continuous enterprise-budgeted computer-based systems, (Grimshaw), it is only in recent years that MAFF have felt able to withdraw their subsidy for the keeping of farm accounts at all. No farm without accounts was discovered. The usual accounts are purely for taxation purposes and supplemented for the day to day decisions by personal record books. A number were however usefully presented

insofar as the profit and loss ('trading') account was broken down into at least major enterprise divisions - milk, animal trading and cereals for example.

Farm Management Surveys (FMS) - The appropriate Universities for our two study areas were Reading (M40) and the combined faculties of Bristol and Exeter (M5). Both carry out surveys of a sample of farms in their regions from which detailed costings, outputs and income measurements are produced. The data collected is primarily managerial and financial rather than physical as in the June Returns.

The surveys are eventually presented in three forms:

a. participating farmers receive details of their own performance,

b. average figures for the region are published annually and form a useful control for comparing with the study farm,

c. figures are sent up to MAFF for use in monitoring farm incomes and inclusion in the annual farm 'Blue Books', or 'Farm Incomes in England and Wales'.

John Nix' Farm Management Pocketbook - Although not strictly an empirical data source like the above, Nix is an authoritative reference point. Published at first annually, now in roughly two-year cycles since 1967 by Wye College's School of Rural Economics and Related Studies it draws together a mass of useful

performance data. Most importantly the information is presented in the form of Gross Margins on particular enterprises, the form in which it is most useful for farm appraisals.

12.3.5 As mentioned above a number of different tests were employed, in many ways these followed the development of our appraisal methods generally. For example in one of the earliest studies figures were obtained directly from the Meat and Livestock Commission partly because the fixed-system, small, economically marginal farm merited it; and partly because it was desirable to see if their use produced significantly different results from using figures as at the date of compensation assessment. It was found from parallel calculations that in only one or two cases (primarily those where little or no readjustment was possible) was there need to go to actual margins and costings. For the vast majority of cases generalised methods worked well within acceptable bounds.

12.3.6 The key to assessing individual farm loss is the gross margin method. The method is a well developed tool of agricultural economics generally and applicable to the measurements of short term system disruption required by the Wolfson Study. Its place in appraisal terms generally is well covered by Hearne (chapters 7-10) and nothing would be gained by repeating it here. Only such comparatively brief expositions of methodological bases as are required by the reader

of this thesis will therefore be given prior to moving on to discuss it in practice.

12.3.7 The gross margin on any particular enterprise on a farm is defined as:

> "its enterprise output less its variable costs. [These] must (a) be specific to the enterprise and (b) vary in proportion to the size of the enterprise ... The main items of variable cost are : Crops: fertilizer, seed, sprays, casual labour and contract work specific to the crop. Non-grazing Livestock: concentrate feed, vet and med. marketing expenses. Grazing Livestock: as for non-grazing livestock, plus forage crop variable costs." (Nix p 1)

On the whole farm basis (total output minus total variable costs) the method will tend to give an upper estimate of impact on farms which have to reduce their output but do not have severely disrupted systems. An example is given in Table 12.4

Table 12.4 : Example of a Gross Margin calculation for a whole Farm

1. Current Situation of a Farm of 100 Acres

	£/annum	
Gross Receipts	10,000	£100/acre/annum
Variable Costs	2,000	£20/acre/annum
Gross Margin	8,000	£80/acre/annum
Rent	1,000	£10/acre/annum
Gross margin less rent	7,000	
Other fixed costs	4,000	
NET farm income	3,000	

11. New Situation after 20 Acres Loss

	£/annum	
Gross Receipts	8,000	£100/acre/annum
Variable Costs	1,600	£20/acre/annum
Gross Margin	6,400	£80/acre/annum
Rent	800	£10/acre/annum
Gross margin less rent	5,600	
Other fixed costs	4,000	
NET farm income	1,600	

In the above example Net Farm Income has been reduced by £1,400. This 47% reduction was caused by a 20% land loss.

An upper estimate is gained because it is assumed that there is no re-adjustment of fixed costs to suit the 20% reduction in farm size. In the individual cases, which are of course empirically rather than theoretically based, the tendency to over-estimate is tempered by a number of factors:

a. Working in enterprise margins rather than whole farm ones allows reductions in the least-valuable farm outputs rather than across the board.

b. If, in fact, substantial re-adjustments were made - or intensification undergone - this can be reflected.

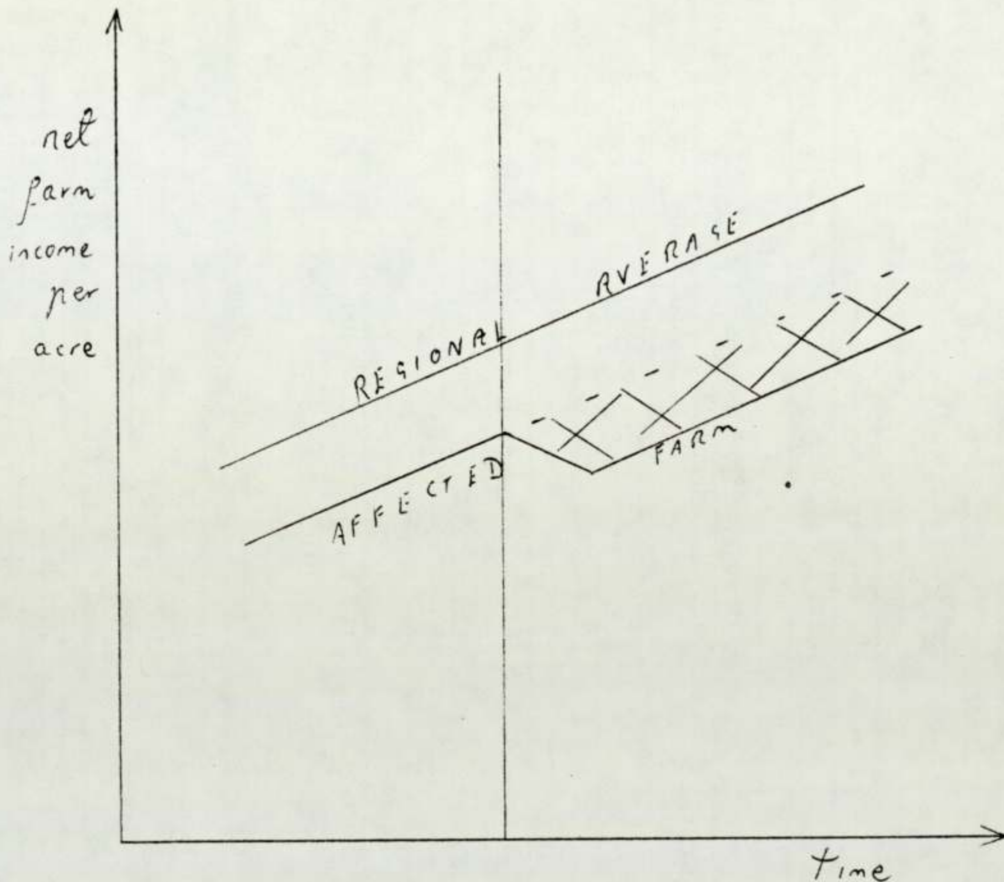
c. The loss is reduced on top of the above by discounting to cease completely when real-world factors would intrude (retirement, more land acquired).

d. Above all by performance comparisons, these are discussed below.

12.3.8 So many factors influence the performance of an individual farm that it is essential to have a control group. Thus it is important to compare the farm's performance before and after the motorway with the appropriate regional figures. The FMS figures for an area are presented in a number of different ways as performance measures. Given the limitations of the data collectable by a general survey of <u>past</u>

performances, the most useful presentation is the tabulation of average NFI as this measure. (Gross Output less inputs less paid management but including the value of the labour of farmer and wife). NFI is calculable from taxation accounts, The FMS figures are usually given by farm type and size. They are thus pretty close comparisons. The FMS is necessarily selective - only farmers willing to cooperate in detailed costings are used; and educational - a participant receives a detailed managerial critique. It was no surprise then that most of our sample farms ran consistently below the appropriate average. The importance lies in its deviation from the mean. Expressed graphically one might expect a result as in Fig 1 (ignoring the possibility of blight).

Figure 12.1 : NFI performance of an affected farm



In Fig 1 the farm is one which was put on a consistently lower plane. The shaded area thus represents the loss to be compensated. The majority of cases, however either have the farm gradually tending back to the extrapolatable trend, or have a farm trend tending toward the average but which is checked in its course. In such cases a careful study of the interview details, accounts and national/regional price trends over the period is necessary to make an informed judgement concerning the loss attributable to the motorway.

12.4 Reorganisation, Adaptation and Peripheral Gains

12.4.1 The function of section 9 of the Agriculture (Miscellaneous Provisions) Act of 1968 and the concept of equivalence overall is to provide the capital necessary to enable an individual to reorganise his affairs such that he is no worse off (and no better off) due to the motorway. There are thus two separate but in practice inextricably linked aspects to the question of re-adjustment.

Firstly there is reorganisation proper, the compensation monies are used either to intensify, purchase land or amend the farm system in such a way as to put right the impact within the time allowed for by payment received. Secondly there are extraneous gains and improvements - an option in a particular market, a relation's death makes land available, a piece of land is sold off at development value and so on.

In reality clear-cut cases are rare. Farm M40/7 gained massively from soil-dumping by the contractors, Farm M5/3 gained land because his landlord ceased farming in his own right. Again careful distinguishing of effects was required and quite possible as certain of the appended cases illustrate.

The problem of what precisely is motorway impact merits further methodological consideration.

12.4.2 The later case-studies were written to a pattern consisting of up to 13 sections. These are by way of being a checklist developed empirically in the course of

writing the first seven cases and reflecting constant elements which emerged. At first in breaking new ground it was a policy decision to work through the cases in the very closest detail, allowing the exigencies of the case's individual details to determine structure and layout. After consultation with supervisors and other readers and a review of experience gained it seemed possible to follow a regular structure of sections to help comparability. Naturally, not all occurred in every case. They were:

Section	Short Title	Subject and Comment
1	Farm	Background and introduction
2	Information	Quality and quantity of response
3	Farmer	Subjective views and satisfaction
4	Agent	Subjective opinion and comment
5	Claim	Position as at interview, including time taken to settle
6	Third Party	Claims against contractors etc
7	Land	Owner-Occupiers claim for loss of land to road
8	Severance	Including injurious affection generally
9	Tenant	Range of claims peculiar to tenants
10	Disturbance	Claims for such 'secondary elements' of all kinds
11	Assessment	Calculations of anticipated theoretical loss
12	Adaptation	System changes made to fit new circumstances, whether successful, extraneous gains
13	Conclusions	

12.4.3 The approach proved remarkably robust and efficacious in ensuring that all useful information was drawn out, and properly marshalled. The advantages for retrieval and generalisation give equal support for the utility of the system. The system moves through a gradual pattern of background - compensation information - system deecription - analysis - conclusions. It was found early that there was need for the adaptation section to be accorded close and detailed attention. Reviewing the position with all cases completed there is a notable distinction between the strict legal rule in Cooke's case and a realistic appreciation of the position. In Cooke it was established that gains from deals connected with motorway building (selling of gravel), were not to be considered as betterment because they did not arise directly from the making of the scheme. At first sight this would appear to be a firm guide, and all similar gains should be excluded. It would however be a ludicrous conclusion of a realistic project to find that compensation was to be arraigned as being unjust if all the farmers on the line were, as individuals, delighted with their gains! On a scheme affecting ten farms let us say three sell gravel at a healthy profit, three gain significantly from allowing soil dumping on low-lying fields which are thereby raised and improved, three gain more and better land all severed from one other farm and that

latter collects hefty compensation for land loss, injurious affection and disturbance on a low profit farm from which he was retiring. It is feasible. Both realism, and optimum use of information gained and analysed at considerable cost are therefore in accord. The method of result presentation must distinguish between the efficacy of compensation in putting people back as they were (e.g. free market land purchase at equivalent price), and the effects of extraneous factors in so doing (e.g. soil dumps, land deals). With these caveats and problems in mind the assessments themselves may be approached.

CHAPTER 13

COMPENSATION PROVISION ON THE M40, STOKENCHURCH-WATERSTOCK SECTION

"Forgive me that my words come thin and slow
This could not be a time for eloquence,"

(John Wain, Apology for Understatement)

SUMMARY

The first of two chapters describing the results of fieldwork directed at compensation, this deals with a road scheme running through good Oxfordshire farmland characterised by large, efficient units. The evidence in the chapter is a summary of results with examples of the background case-studies included in Appendix 2 to allow the narrative to flow. Major findings were a considerably greater degree of discretion in the negotiation of compensation than presumed, the identification of a number of factors influencing the achievement of equivalence and a disturbing level of dissatisfaction amongst those affected.

13.1 Introduction

13.1.1 It is worth reiterating the major hypotheses to be tested. These had arisen in the course of literature searching, I.P. fieldwork and especially through dialogue with practitioners.

- Compensation for compulsory purchase has a long history as an administrative and legal remedy. There are more likely then to be imperfections and unusual cases where the code fails, rather than major inherent systematic imperfections.
- In particular there would appear to be dissatisfaction with the procedures for assessment and settlement even where the amount itself might be acceptable.
- Agriculture's position as one of the lowest value land uses may be an influence on its treatment.
- The dividing line between disturbance compensation and third party claims may be indistinguishable in practice.
- The strict legal concept of compensation as a remedy may accord with the road engineer's perception of it (as taking care of issues), but not the farmer's to whom minimising compensation by adequate accommodation work provision may be more important.
- Tenants and smaller farmers are badly served by compensation.
- The scale payments provided by public authorities to agents are low in relation to work done, but professional pride ensures that this does not influence service to the client.

13.1.2 Although the hypotheses were well defined and aims of the study firmly established its uniqueness ensured that regarding the actual detailed methodology, interviewing, agent visits and eventual assessment there was a continuous refining of concepts and methods. M40 especially, as the first of our studies, was a trial of the ideas in practice. The case studies, it will be noted from examples given in Appendix 2, are somewhat more detailed than on M5. On the other hand they are less consistently written. The development of the 13-point approach arose empirically in the course of writing the early cases. This is not to say that they are in any way less rigorous than the M5 cases, nor vice-versa. In fact some of the M40 cases (including the example case M40/3) were amongst the last to be written because of late settlement and the difficulty of obtaining an interview with the agent. All cases, whether written to the 13-point system or not were remitted to the agents for checking and comment. The one exception was case M40/8 where the farmer refused permission for a visit to his agent and the case study was sent directly to him.

13.1.3 It was interesting - and pleasing being something of a stamp of approval from experienced practitioners - that there was no disagreement of any consequence with the findings, and in many cases positive approbation for the approach adopted. In only one case, (M40/6) did the agent refuse permission for the

anonymous study to be published even in a disguised form. This was a perfectly understandable professional decision as his client had a very specialist holding, recognisable to any reader at all familiar with the scheme, and an intimate understanding of the client's financial affairs was required to comprehend all the ramifications. It will nonetheless be a regrettable loss should the cases ever be published as it had some very disturbing aspects.

The question of confidentiality was discussed in depth with those concerned and after consultation it was decided that it was acceptable to identify the scheme studied. Although this traded-off with the detail which could be included in the cases it was primarily taken because of an evident and strongly expressed desire by farmers and agents alike that apparent imperfections in our national system of justice should be brought to the attention of those concerned. By clearly identifying the scheme it becomes much easier for those in authority to pursue the points raised in detail. The Central Valuation Office of the Inland Revenue have taken an interest in the study and at their request will be supplied with copies of the findings. It is the fondest hope of any action-based project that as well as contributing to knowledge, suggestions for improvement will be considered and possibly acted on by authorities.

13.1.4 The M40 scheme chosen was that from Stokenchurch to Waterstock (roughly Oxford to High Wycombe). It is 9½ miles in length and entry onto the land was in February 1972. Notice to Treat had been served on the 3rd March 1971. It took some 2½ years to complete being opened in mid-1974. The three lane dual carriageway road was for that period the responsibility of ERCU but was designed and built under agency agreement with central government by Oxfordshire C.C. It is best known generally for the enormous public debate generated at the time concerning the effect on the escarpment of the Chiltern Hills.

13.1.5 A most useful and enlightening discussion with the Oxfordshire engineers responsible for design confirmed our fieldwork impression (and point of rancour to some farmers) that other considerations had been subordinated to the conflict over which route to take through the scarp. The engineers resolutely maintained that they had done their duty in consulting MAFF, gleaning land classification advice in advance of the formal publication of the sheets, and eliciting knowledge of farm boundaries. Of the impact on the farms as functioning units they confessed ignorance but looked to compensation to remedy injury. It was an intriguing fact that utter faith in the efficacy of compensation was only matched by an equivalent ignorance of its actual provisions. Clearly at whatever higher

administrative level (probably in the RCU or regional DoE) the District Valuer liaised, it was not with the engineers on the ground. Not only were these men, so intimately involved in the process which must eventually lead to the compulsory purchase of someone's land, ignorant of the provisions for paying for it, but they were absolutely confident that excellent recompense was in fact made over. Such a response reflects the normal road engineer's perception of compensation, which numerous informal discussions have found to contain a modern myth, that of the farmer gleefully welcoming a CPO with thoughts of copious financial rewards accompanying it. It is to be hoped that the facts presented here will either lay this myth, or lead to statutory and procedural amendments more likely to make it accord with the truth.

13.1.6 The presence of discrete responsibilities was evident in the conviction of the engineers that severance had been adequately dealt with. Most notable to the analyst of public affairs was the insistence that there "was no severed land" on the route. Objectively this was in fact an error, for the difficulties of case no 1 are not yet rectified as this is written. More subtle and important is the light this sheds on the engineers' limited perception of severance, and their role in minimising it. Where there is no <u>physically</u> unreachable land there is no severance, for the other loss is compensated. Unable, it seemed, to cross the Rubicon between

individual and national costs, questioning focussed on the particular provision of three accesses in under one mile close to farmers 9 and 15. These were provided for the "needs" of footpaths and the farmers, the latter being upon the advice of the D.V. Again there is a circularity of argument. The D.V. advises the RCU (or here C.C.), who take their decision: on the advice of the D.V. Nowhere in the Wolfson work as a whole was any one person or office found wherein the power of decision lay. Partly this must be for want of the tools, but as much for want of the will where will is an attribute of the apportionment of responsibility and discretion within a system.

13.1.7 The M40 was planned and constructed some two years after the M5 and aroused enormous public concern. An objector's alternative line was proposed at what was then lengthy seven-day public inquiry. Agriculture was given quite minimal attention, a fact commented on bitterly by a number of farmers quite unprompted for we were briefed by the local NFU Branch Secretary not to raise the matter for fear of rankling respondents. Having read the inquiry reports, for all its curtness there are outstanding likenesses of characteristic with M16.

The inquiry was dominated by major amenity objectors and was instrumental in the CPRE's decision to set up a specific roads working party chaired by the wife

of a local M.P. Summing up, the CPRE record:

> "We reported last year the then Minister of Transport's deplorable decision to approve the route ... When the motorway is built, we believe that it will be recognised as providing its own permanent condemnation ..." (Annual Report 1970)

A greater proportion of affected farmers (8 from 15) attended the inquiry than at Epping but the lack of attention accorded their purely descriptive cases illustrates that agricultural problems must not only be perceived as meriting attention by the authorities but presented so as to be comprehended by them. Neither of these conditions were present on M40 and this fact provides a backdrop to our study of compensatory provision.

13.2 Execution of the Study

13.2.1 The choice of M40 was governed primarily by the requirements of income and farm system data. The scheme was long enough completed to yield usable accounted data of re-adjustment within the limits of June Returns and reasonable memory alike. It was also an area with an active and interested NFU Branch Secretary (Mr. John Davies). As enunciated above compensation had been a major concern of NFU H.Q., but had never achieved any depth of analysis due to lack of time and method. The approach developed by the Wolfson Group proved exciting to the Lands Use Branch and they were instrumental in setting up contacts.

A meeting of Mr. Hellard with affected members on this stretch.was attended by the two research students who were introduced to the gathering and their purposes outlined. This was followed by a background briefing from Mr. Davies before he sent out reminder letters to all members on the section. The utility of involvement by NFU can hardly be overstated and the success of the M40 study rests on this action research foundation. Mr. Davies knew his members well and, it appeared, NFU membership was almost universal in the area. By ringing the day or day after the letters arrived, when possible at around 9.30-10.00 am - the optimum time for catching farmers - the setting up of interviews ran admirably smoothly.

13.2.2 Not all interviews were carried out in one single survey. Mr. Davies having been briefed regarding research requirements, he outlined the farms in such a way that Farms 3 and 7 were chosen as pilots for the survey. Two related amendments, one to the questionnaire and one to the survey method, were found to be needed following the pilot. Questions directed to the details of farm expenditure and investment caused confusion - especially over dates, and were abandoned. Secondly farmers' knowledge of the details of their compensation negotiations and settlement were discovered to have been over-rated. Both illustrated the importance placed on professional advisors, accountants and land agents respectively. The importance of the release forms in helping to contact these advisers

became even more important than was anticipated.

13.2.3 Working from the CPO documents it was found that NFU's list included all but two who lost sizeable amounts of land. The first a 1500 acre stud farm had lost 6 acres. In the second case the road affected only peripherally a 2,500 acre estate. Neither of these were included in the 13 finally taken through as case studies. Altogether 19 affected agricultural units were found on M40 and checked against CPO's, inquiry records, maps and by visual inspection, there is no reason to believe any have been missed. Data available and responses are set out in Table 13.1. Of the 19 holdings approached 13 turned out to be usable for compensation study purposes. Four of the others were extremely marginal cases from whom no useful response could be expected. All were visited and checked in case there were some special injury despite marginality, there was not and the difficulties of obtaining any response from those barely injured was a lesson to take forward to M5. The other two poor respondents (cases 9 and 10) were respectively an extreme low cost, low productivity farm lacking modern amenities where the response mainly comprised invective; and a retired farmer who claimed no compensation as the affected land was held on a lease back arrangement from a gravel company. The land is now grazed by a new tenant to whom the M40 is irrelevant.

Table 13.1 : Data Availability on M40

CASE STUDY	INTERVIEW (Compensation response)	JUNE RETURNS	ACCOUNTS (Year ending)	AGENT NO.	+ RESPONSE
1	Excellent	1965-75	1965-75	C	Excellent
2	Imprecise	1969-75 (but imperfect)	1966-75	F	Refused cooperation
3	Excellent	1969-75 (crops only)	1966-75 (1972 imperfect)	A	Discovered late due to confusion, good
4	Good	1969-75	1966-73	A	Excellent
5	Occupant Excellent Former Occupant Vague	1969-75	1971-73	B	Excellent
6	Good	-	1965-71	D	Excellent
7	Good	1969-75	1967, 1969-73	A	Excellent
8	Excellent	1969-75	1967-75	Permission not granted	
9	Interview Refused	-	-		-
10	Occupant - No interview Previous Occupant Vague	-	-		-
11	Imprecise	1969-75	-	A	Excellent
12	Imprecise	-	-	B	Excellent
13	Good	1970-75	Refused Cooperation	E	Good
14	Vague	-	1965-75	A	Excellent
15	Excellent	1969-75	1966-75	A	Excellent
16-19	Marginal Impact; Interview terminated in all cases				

All but one of the 13 cases readily granted permission to see their agents. Such is the nature of the request to release information that obviously it is impossible to delve deeply into the reason for the refusal. Six different firms were involved and as explained all but one (one case) readily cooperated although in a number of cases there was as yet no settlement which limited the response. Perhaps because cases are still outstanding for some, and fresh in mind even for those who have settled, agents on M40 placed a higher premium on confidentiality than on M5. In respect of this the cases in Appendix 2 are heavily disguised and identifying factors amended or omitted. This was always anticipated and gratitude is expressed to those farmers and agents who will allow the data base to be illustrated, whilst the reasons of those who could not are perfectly understood and respected.

13.3 Evidence on Procedural Aspects

13.3.1 Land was taken from the farmers by notice of entry procedure in February 1972 yet few cases had been fully settled by mid-1976 when the majority of interviews were carried out. Two who felt themselves to be capital deficient farmers, (3 and 13) pressed their claims forcefully and gained early settlement but, as the case of 3 shows, may not have been wise to do so because of the exclusion of later disturbance items. Farmers and their valuers both emphasised the

difficulty of having points firmly settled.

Table 13.2 sets out the dating of settlements. No such table can tell a complete story and, as applies to all such generalised tables in this section, ultimately reference should be made to the case studies themselves. This is not to say that there are not general points to be made, were there not then academic inquiry would be bootless.

Table 13.2 : Length of time between entry and receipt of M40 Compensation

Years since date of entry	$1\frac{1}{2}$-2	2-$2\frac{1}{2}$	$2\frac{1}{2}$-3	3-$3\frac{1}{2}$	$3\frac{1}{2}$-4	4-$4\frac{1}{2}$	Not settled by February 1976	Not settled by March 1977
No of Settlements	2	1	0	0	1	4	2	4

Note: 14 cases cited, in case 5 owners' and tenant's claim is distinguished

13.3.2 The first point then is that only 3 cases were settled and paid within $3\frac{1}{2}$ years of entry. Of these, two were those mentioned above as being heavily capital deficient. It merits emphasis that one of these two had taken his case away from two agents castigating them for making insufficient progress, and the second was settled, in the agent's colourful words "at the doors of the High Court". It was far from easy to obtain settlement on M40.

That being said M40 was especially interesting insofar as provision for payment of 90% of Compensation in advance of final settlement was made in the 1973 L.C.A. which came into force during the time of negotiation. Thus, it could be urged, date of settlement is not a fair measure if the greater proportion of the compensation was received earlier. This was not, in fact, the case although advance payment was employed more on M40 than M5. Table 13.3 shows interim payments and relates date of receipt to claimant satisfaction.

13.3.3 A drawn out settlement occurs for a reason. Only in case 8, where permission was not given to interview the valuer (but we know it is Agent A) was no reason found. However, it can be surmised from his other cases that there was some hope of gaining extra compensation. Indeed the story of keeping the claim open, not taking '90%' payments pressing for (and achieving) substantial increases is very much the story M40 presented. It would be naive to say merely that claims on M40 took x years, therefore there is cause for concern at the length of time. Businesslike men with skilled advisers do not put off the receipt of literally thousands of pounds without good reason. Neither does an experienced Government Official refuse to pay agreed sums when requested to fulfill his legal responsibility. If claims dragged on M40 then it must reflect some fundamental discontent or point of conflict within the system and it would be academically unworthy not to pursue it.

Table 13.3 : Date of compensation settlement and claimant satisfaction

CASE NUMBER	TIME TO SETTLE (years from date of entry)	INTERIM PAYMENTS	PRINCIPAL REASON FOR TIME TO SETTLE	FARMER SATISFACTION
1	NOT YET	Jan 1976-£9,000	Partly severance problems	STRONGLY DISSATISFIED, claiming £30,000+
2	NOT YET	NONE	N/A	DISSATISFIED
3	2	1971/2-£4,000 1972/3-£2,400 1973/4-£8,100	Capital Deficient	STRONGLY DISSATISFIED OVERALL, content with timing
4	NOT YET	NONE	Valuation disputes	DISSATISFIED - supported by extraneous gains
5	Owner 4 Tenant NOT YET	Owner - NONE Tenant - £3,852 1975	Drainage, valuation disputes	Owner - SATISFIED Tenant - STRONGLY DISSATISFIED
6	4	Greater part early	Claimant taking legal advice	STRONGLY DISSATISFIED
7	4	90% taken in mid 1976	Valuation problems	STRONGLY DISSATISFIED with timing. Content with amount
8	NOT YET	1974/5-£1,337 "after pressure"	Not known farmer desires settlement	DISSATISFIED
11	2	NONE	-	SATISFIED with timing. STRONGLY DISSATISFIED with amount
12	4	Feb 1975-£1,536	General dissatis-faction with amount	STRONGLY DISSATISFIED with timing and amount
13	2	NONE	Capital Deficient	STRONGLY DISSATISFIED with procedure and amount
14	NOT YET	NONE	Valuation disputes	STRONGLY DISSATISFIED
15	4	1975 - amount not known	Valuation problems	STRONGLY DISSATISFIED with timing. DISSATISFIED with amount

Notes: As at June 1977. For a discussion of the measurement of 'satisfaction', see 13.4.11 below

13.3.4 The most important evidence regarding procedural problems comes from the three early settled cases. All three could arguably be said to be the most dissatisfied, and certainly the most injured, farms on the scheme. As will be shown, on M5 there was at least some relationship between early settlement and satisfaction, here there is none. The difference lies in the facts of the farming. Early settlers on M5 tended to be retiring or have made significant gains either by purchasing cut off land, or going into a non-agricultural business. On M40 all the cases are farmers only and farmers who desired to keep their farms operating after the road was completed, opened and a fact of life. Two of the farmers who settled quickly urgently required their compensation monies, the third, Farm 11, was a small low-budget enterprise too. At interview the farmer did not raise capital deficiency but these were not the terms in which he would talk. He did however point out forcefully that the money had been "no use", because although looking for land he had been unable to obtain any at a "good price". It is reasonable surmise, given the destructive severance of his holding and his lack of assets (described by the valuer) that he had a need to settle early too. In a phrase then those who settled early on M40 did so under financial duress, being badly injured, but have not been well satisfied in the longer term. The question is summed up in case 3.

The distinction drawn by Farmer 3 was between his immediate re-adjustment costs, those mainly of fixed equipment, and his longer-term system losses until the readjustment was successfully effected. This, in sum, is the complaint of all three. They received their compensation in a comparatively short time, (but 2 years, remember, from the loss of their land). They needed to receive the compensation to cover short-term losses. In the longer term however it proved insufficient to permit them the requisite system re-arrangement to put them back as before. They have not received, in a word, equivalence. In this they are alone. Albeit that only Farmer 6 was quite as bitter in condemnation of compensation's inadequacies there is not one practicing farmer who could express satisfaction with both the procedure and amount of his settlement. Only one (case 7) was content with the amount. Notably for the question of timing his case too was unsettled at the date of initial interview and at that time he had an expectancy of settlement at a level which would leave him strongly dissatisfied. It was his agent's advice to bide his time in a complex negotiation which proved sound, and between 3-4 times the anticipated sum was achieved.

13.3.5 Cases 7 and 15 are especially important as both were first interviewed around February 1976 and expressed grave dissatisfaction with procedure, anticipated amount and indeed their agent (the same one) for his sloth.

In case 15 not such a striking difference in amounts was achieved as above, but the Farmer feared his agent could not achieve £350 per acre when only £300 was offered. In fact settlement was at £375 p/a and the agent ascribed much of this to simply needing the time to put the losses across to the D.V. The implication of the evidence is that settling early was unfortunate for those who did so because time was needed to press claims fully. It is interesting that interim payments made little difference to this. Most were not taken until quite close to settlement anyway, or some three years after entry when clients were becoming restless, and they made no impact on satisfaction. In simple terms this means that whilst farmers said they were not desperate for settlement because of personal reserves, extraneous profits from the road or such like reasons, not one mentioned an interim payment as making the slightest difference to his satisfaction. If there was no settlement then there was an underlying and outstanding problem which their agents were still fighting, a genuine objective item which they felt should be claimable. A lack of settlement (just like settlement on an undesired basis) was productive of dissatisfaction.

13.3.6 In the face of such difficult questions as when to settle, the relationship between claimant and his professional adviser is critical. Table 13.4 outlines the feelings of clients and appropriately links this section with the next where we move onto the perceptions of the agents themselves.

Table 13.4 : Client Satisfaction with Agent Performance at time of Interview

Agent Code	A	B	C	D	E	F	Total
Clients Satisfied	4	1	1	0	0	0	6
Clients Dissatisfied	3	1	0	1	1	1	7

13.4 Participant Perceptions of Compensation

13.4.1 Table 13.4 is presented, broken down by agent, as it best illustrates facets of the M40 evidence. At the time of interview more farmers were dissatisfied with their agents than were content, but this should be interpreted with care for what it reflects above all is more generalised dissatisfaction. In the case of agent A for example two of the clients expressing dissatisfaction did so primarily because their cases were not settled, given that they now have been it is reasonable to expect that this is a fair picture only at the time it was recorded. Similarly the dissatisfaction with agents D,E and F was a reflection of a more general feeling of unfair treatment. The most telling fact being that in only one case did the client lay

a specific criticism at the door of his agent, generally it was a contention that he had not achieved enough. The one case, that of agent B's dissatisfied client, was because the agent had requested some top-up on his Scale 5(A) fee. He was the only agent to do so, but whilst one client was prepared to accept it, to the other it proved distressing. That he should be the only one to request help with fees is not in any way to criticise, it is more to praise the others and their sense of professional responsibility.

13.4.2 The agreement of agents when replying to many of our questions was a striking fact, and on no point was there such universal agreement as on the inadequacy of Scale Fees. Files some 4" thick on each case were normal. Agent A, with the majority of cases, felt a good deal of his working time had been dominated by M40. His losses on Scale Fee only were incalculable but it was a matter of integrity not to go back to clients. Any financial satisfaction he gained from M40 was from extraneous effects, mainly leasing land. His colleagues rarely had this small satisfaction, but did not have the same number of cases. Even the agent who did go back to a client only charged £128 expenses for what he calculated would be £905 worth of work on a fee basis. His Scale Fee is normally in this low region. It was pointed out by the highly professional agent D who is active in valuation affairs generally that Scale 5(A) is simply irrelevant to land agent's

detailed work on accommodation provision and so forth. On M40 his fee was £97.65. He now feels it necessary to request, in advance, either 1% of the compensation or quantum meruit - whichever is the lower.

13.4.3 M40, agent D argued from his considerable experience on M3, M4 and County Council Schemes, was very poorly planned and executed. Accommodation work in particular and liaison between the various authorities in general were poorly organised. He gained an impression that very little had been clarified in advance and that it would be extremely difficult to settle matters early. The feeling of a lack of decisiveness was widely held by the agents. All felt that it was extremely difficult to attempt early settlement as the D.V. was very wary of setting precedents. Their general views on client satisfaction and negotiation of the cases are given in Table 13.5.

13.4.4 The criticism of the D.V.'s office, which was widespread, was not of the man but of the institution and the lack of agricultural valuation expertise. This left a feeling of a certain arbitrariness in the items agreed and those disputed. The comparison was frequently made with the Gas Board's use of its own specialist valuer who "talks the same language" and has authority without having to constantly refer back. This is a comparison raised frequently during I.P. work. The fact that despite direct questioning it is so often only possible to record 'probably' in

the table is not only a measure of the difficulty of having a professional man commit himself so directly. On a subtler plane it is a mark of the genuine difficulty many have found in defining the working concepts behind their daily dealings. Answers did not come readily and thus to find that from 12 usable cases the considered replies of experienced professional men were that 4 clients had not, and 5 more probably not achieved equivalence is a major discovery. That they felt their clients had been inadequately compensated - even though this might be some reflection on their own performance - is disturbing.

13.4.5 In such circumstances a useful method for analysis would seem to be to start with the exception and the factors making for their satisfactory settlements. The constant element is property ownership. It is good compensation for the loss of proprietorial value which helps the three cases come out so well. All are complex negotiations and merit close reading of the cases. In all there is evidence of continued negotiations leading to a settlement based on a liberal interpretation of property elements (injurious affection or land price) by the D.V. None was settled early, none concerned a badly damaged farm and in each continued close liaison with the D.V. eventually led to a change in attitude by the authority and acceptance of some important element of claim.

Table 13.5 : Agent View of Client Equivalence

CASE NUMBER	AGENT CODE	EQUIVALENCE ACHIEVED
1	C	Probably Not [1]
3	A	No
4	A	Probably Not [1]
5 (Tenant)	B	Probably Not
5 (Owner)	B	Yes
6	D	No
7	A	Yes
11	A	Probably Not
12	B	No
13	E	No
14	A	Probably Not
15	A	Probably Yes

Notes: Cases 2 and 8 excepted, agent not seen

1 Significant extraneous gains

The four where agents committed themselves to a negative answer comprise two tenants and two small owners with specialised inadaptable holdings. All four were significantly injured by the road, and three found it necessary to pursue an early settlement. Similarly with the five 'probables', if they may be so termed. Three were tenants and one more lost partly tenanted land, and all wished to continue with their farms. As Table 13.6 shows however they tended not to be as badly affected in their overall performance as those in the definitely negative group on the agents' assessment. In cases 1, 4 and 5 indeed there is probably little system impact, it has been procedural failure - accommodation work and time to settle - which has led the agent to fear inequivalence.

13.4.6 It was found necessary to remove the whole question of <u>rise</u> in land prices (as much a matter of settlement timing) from that of price itself and indeed from the objective overall assessment. The question of date of assessment in an inflationary era contributed so heavily to overall dissatisfaction, in the words of Agent A it was "all-important", that it both merits and necessitates separate study. Table 13.3 above painted a bleak picture so far as satisfaction with either procedure or amount was concerned. Table 13.7 below isolates elements in the cases cited as conducive to either strong positive or negative feelings. As can be seen the related problems of speed of settlement and inflation were equally conducive of discontent. It was surprisingly

easy to distinguish responses related to the two elements, and evident that questions of accommodation works, or whether a particular item of claim was to be accepted were of great moment to the practicing farmer. This may well be a psychological matter, the profession of farming being one putting a premium on personal responsibility and decision taking. In this sense the complaints regarding timing and authority response tended to be particular, whilst those pertaining to inflation and/or overall price were general. When, for example, farmer 15 bitterly castigated authorities for not taking note of his premonition of drainage inadequacy he was making a different type of complaint from wider feelings concerning the land price by the time of settlement.

Table 13.6 : Impact of M40 on Farm Performance as Assessed by Hearne

CASE NUMBER	IMPACT
1	Minimal
2	Minimal
3	Severe
4	Minimal
5 (Tenant)	Uncertain
6	Business Discontinued
7	Minimal
8	Minimal
11	Business Discontinued
12	Uncertain
13	Severe
14	Moderate
15	Minimal

Table 13.7 : Factors Causing Content or Discontent

	Number of Farmers
Content	
Gains from leasing land to contractors	2
Construction of internal trackways/severance provision	3
High injurious affection amounts	2
Individual stoicism	2
Discontent	
Speed of settlement/authority responses	8
Land price/tenant monies in face of inflation	8
Inadequacy of sum in restoring farm system	5
Inadequate accommodation work	5
Business losses	2
Threat of 'betterment'	2
Bill from agent	2

13.4.7 The division was also recognised between allusions to compensation sums in terms of inflation, (i.e. value as landlord's capital) and to them as not being enough to mitigate farm system impact (working or tenant capital). Although at first sight they may appear to be facets of the same problem, they in fact represent the results of carefully structured questioning to go to the root of the practicalities of discontent. Farm 3, for example, was displeased with his compensation and the use to which he could put it in rebuilding his farm. Only careful questioning to delve below the general elicited the distinction between his praise for the D.V.'s early payment of sums of £4,000 and £2,400 (tenant compensation) on account, and his actual reason for dissatisfaction. That is, the inability to find a new system yielding the same income as his former outdoor pigs had.

13.4.8 The adequacy or not of accommodation work might be thought to be a dangerous area of judgement for objective observers to go into. In fact it was found that those respondents who did offer up complaint had virtually unarguable causes. This case of Farm 5, for example, is included in Appendix 2. This tenant claim was dominated by drainage accommodation. Note however that generally there was considerably more discontent at the procedure for agreeing, specifying and constructing accommodation works than at the quality of those eventually installed. Those that did fail were generally put right, and again

it is more the question of initially wrongful assessment of the requirement than overall poor provision.

13.4.9 The last cause for discontent meriting comment is a very difficult one indeed. The question of 'betterment' is one where a clash of two rights causes problems. The fundamental political question of when to pay development value, and then how much of it, has dominated post-war compensation and planning law. It is part of our concern that in the complexities of ideological and harshly practical debates of compensation for urban land values, the question of agricultural value only land has been given little regard, It is of the essence that the community should not pay out to individuals profits stemming from public investment. Nonetheless the manner in which betterment arose in the two cases (6 and 13) is disturbing. Such is the difference in value between farmland and land with planning permission that it takes very little 'hope value' to be established to wipe out compensation. In a situation where equivalence rests on paying no more than value then such reductions cut deeply into the offer and inevitably mean that if the value is not realised (i.e. farming continues) then the sum received will be below equivalence.

13.4.10 To turn to happier matters. The factors aiding contentment are also interesting but rather more self-explanatory. One aspect merits pointing out to the

reader because of its contrast with M5. That is severance provision. Whilst the circumstances of case 1's lack of provision are a reflection of the worst aspects of administrative imperfections, they are an exception on this scheme where provision was generous compared to M5, illustrative of considerable discretion. This will be dealt with in detail below, let it be noted here that the provision was not simply adequate but productive of positive satisfaction to the recipients. To the three cited could surely be added the poor respondent Farm 9 which not only has its own bridge, but has in fact the most impressive farm bridge come across in the course of the Project.

13.4.11 Before moving on from this section a note is merited on the idea of attempting to assess so apparently nebulous a concept as 'satisfaction' at all. The question was heightened by comment on drafts of this chapter which showed a discernible division between practitioners (in favour) and academics (dubious). On reflection and a review of the evidence it has been retained. There are two grounds for this: Firstly its sheer usefulness, for all its potential imprecision. It is simply some measure of the fact that respondents are unhappy. Thus no grading of satisfaction has been undertaken other than the addition of 'strongly' in the summary Table 13.3. It is possible, re-reading the cases, to essay a definition

of 'dissatisfaction' as:

> "volunteered, supported statements involving a (not superficial) expression that, all relevant factors considered, compensation received and/or the manner and timing of its receipt was significantly out of balance with the respondent's world view (involving primarily concepts of property, public good and fairness)".

The cases prefixed by 'strongly' would rest on there being such an imbalance that the respondent would not equate the two at all. The definition is *a posteriori*, viable but in the end unnecessary. For it is, little more than a fancifully worded expression of what 'dissatisfied' would mean in commonsense terms in the context. It usefully expresses the fact that compensation has left a number of citizens, in a profound sense, malcontent. Secondly, and less strongly, there is a theoretical value in recording dissatisfaction. It rests on the continuing debate over consent in democracies which is too much to consider here but once again Plamenatz is succinct. In his *Consent Freedom & Political Obligation* which encapsulates the problem brilliantly, he wrote:

> "... to consent is not always to give permission, though it is always to do or to take part in doing something which the doer knows, or is presumed to know, creates in another a right he would not otherwise have had ... The obligation to obey does

> not always, nor even often, derive from consent to authority, but to consent to authority is always to undertake a duty of obedience ... Yet our obedience ... is not the sort of consent that we have in mind when we call representative government, government by consent of the governed." (pp 167 and 172)

This is no place to undertake any further analysis only to emphasise that theoretically too the key term seems to be imbalance. There is an imbalance between the imposition of a democratic government's policy - which was obeyed - and what the farmers concerned would have directly consented to, or given authority for, knowing what their compensation would be.

13.5 Third Party Claims and Disturbance Compensation

13.5.1 That being said, Table 13.8 below illustrates the satisfaction of farmers regarding their third party claims. The difficulties of dealing with contractors were outlined in the I.P. chapter. Although two agents tried to make their clients keep detailed diaries they were not always totally successful and potential claims had to be abandoned because of insufficient evidence. The table tries to range, in order, across a spectrum.

Table 13.8 : Farmer Perception of Third Party Claims on M40

RESPONSE	NUMBER OF RESPONSES
Satisfied	1
No complaint or response	2
Profited by minor works	2
Claim accepted by District Valuer	3
Not considered worthwhile claiming	4
Dissatisfied by entire procedure	8
Total	20

Note

Totals more than respondents due to overlaps.

13.5.2 The most interesting fact, illustrated by the table is the acceptance of claims by the D.V. The line between third party claims to the contractors and disturbance claims to the D.V. is a thin one and has been a major item of discussion between the NFU and the DTp. It is worth setting out the background here. At the NFU's Seminar on road problems (31 October 1975) the question of third-party claims was 'highlighted' by NFU in their paper as one of the most urgent problems for members. The words of a pressure-group rather than an academic, they make their point.

> "It is an unusual contract if some incidental damage is not caused to farm land, stock or equipment outside the working area during construction. The problems may range from a few broken fences

to widespread dust or flooding damage. That such damage is caused is an understandable problem, but the maze of delays and buck passing which follows submission of the farmer's claim is neither understandable nor equitable. There is a procedure for settling claims but in the Union's view it is inadequate, especially if it is necessary to resort to High Court action as a precursor to negotiations for the settlement of claims. This in the Union's view is indeed cavalier treatment."

The issue continued to be discussed after the seminar with the Minister himself, (then Dr. John Gilbert) eventually setting out the strict legal position as understood by the Department in April 1976. Quotation at length is merited:

"In the first place, you suggest that all claims for compensation (other than statutory compensation) should be negotiated directly with the Department or agents acting on behalf of the Department. What we are concerned with here is the sort of damage which ought not to occur by reason of the carrying out of the works without negligence by the contractor. This is a point which the Royal Institution of Chartered Surveyors has raised with previous Ministers. I understand your concern in the matter, but do not feel I can depart from the position previously taken, as described over.

Looking first at the normal case where the Department is entitled to rely on the independent contractor rule, if the Department settled a claim and then asked to be indemnified, the contractor could say that, as the Department was not legally liable under the claim, the payment was necessarily ex-gratia so that there was no obligation to indemnify in respect of that payment. In the rare cases where the Department could be sued directly, it would be open to the contractor to say that the settlement which the Department had made was too generous or that the claim could have been resisted on some particular ground, and would have been so resisted if left to him. The Department is advised that there would be great difficulty in recovering from the contractor or his insurers if settlement of a claim was made without the consent, and in many cases recovery would prove to be impossible.

Apart from this legal obstacle to the Department dealing directly with claimants, there are practical difficulties. A claimant would allege that he had suffered certain damages due to certain things having happened. Obviously the Department would not be able to accept those allegations without inquiry. The inquiries would be made of the Department's agent authority who would in turn have to inquire of the contractor. The contractor might well dispute the claimant's

statement and this information would come back along the chain to the Department who would then reply to the claimant. He would then give some further explanation which would have to follow the same course and so on. Surely it is more sensible that the parties who are in dispute, namely the claimant and the contractor should get together to attempt to agree on the details. They are then both able to see the position as between themselves and to settle the matter or take any necessary proceedings. In our view, the intervention of the Department merely introduces an unnecessary link in the chain with consequent delay."

13.5.3 The practice proved to be somewhat different. The distinction between errors within and without the contract is very thin, and indeed in some cases (e.g. no 5) the agent was convinced that the D.V. was accepting claims which were legally the responsibility of the contractor as a gesture to aid satisfaction and settlement. This proved to be all right for small numbers of items or conversely one large claim. In case 15, for example, the D.V. accepted under the heading of "tenant's crop loss" costs caused by a flooded drain, which the agent felt sure could have been refused as being the responsibility of the contractor (as indeed occurred in other cases). It is not to begrudge due praise to the D.V., to indicate the imperfection inherent in such imprecision.

13.5.4 The type of claims arising were, in themselves, nothing unusual. Dust, escaped cattle, trespass, and rubbish in fields are the typical gamut of problems found during other surveys. Although the contracting firm, Merriman's, were generally felt to be fair in their own responses to requests, claims which actually went to their insurers were quite a different matter. This is an important point. The loss is not that of the firm. Not surprisingly then that there should be 4 cases where the agent realised that evidence was inadequate to convince loss adjustors. Even where sums were obtained (vide case 3) they were so small as to make little or no difference to satisfaction and a generalised annoyance at this aspect was expressed in 8 from 13 cases (62%), and supported by agents. Not a satisfactory position.

13.6 Tenant Provision

13.6.1 The area through which M40 ran was one dominated by owner-occupation. Luckily, in terms of assessing the position of tenants, it was routed through the estate of All Soul's College. Table 13.9 sets out the position. It is tenant cases which tend to be unsettled, perhaps as a reflection of the delicacy of their position regarding the achievement of equivalence. In the three unsettled cases extremely detailed evidence has been collected and it is thus possible to take a mid-point between the agent's claims and the D.V.'s offers on even the specific elements.

13.6.2 Although there are 9 tenant cases, 3 are best approached as part of an overall settlement, one other family trust handed over the tenancy to a new farmer co-incidentally with the road's coming leading to a division of elements having little accord with the strict legal position regarding landlord's responsibilities. Of the tenants proper four (3,4,8 and 12) were on the All Soul's Estate and, as can be seen, rents varied quite considerably between them at the time of the road. Indeed if there is one point which stands out from the cases it is the need to be careful when generalising about tenants. This applies to Table 13.9 most dramatically. It is best used as a check-chart and illustrative starting point. Note, for example that arguably the two hardest hit farms on the scheme (nos 3 and 11) occupy opposite ends of the spectrum of compensation provision per acre. A reading of the cases indicates that the most fruitful way to approach analysis on M40 is via the different elements involved. The starting point must be the rental itself. Payment of a 're-organisation' sum is based on 4 times the rental being paid. Looking then at columns G and H it is seen that of the five cases for which we have detailed information two received less than the average rental p/a being paid over the farm. Explanation is merited for the opposite might be expected. The apportionment of rent might be expected to include an expectation of injury to the value of the tenancy as

Table 13.9 : Analysis of Tenant Compensation on M40 (£)

Farm Number	Total Size pre-M40	Tenanted Land (acres)	Tenanted Land Taken (acres)	% age of farm taken	Total Tenant compen-sation	Rental p/a paid in compen-sation	Rents p/a on whole Farm	Loss of Profit p/a	Total Dist-urbance paid in compen-sation	Distur-bance p/a	Overall Tenant Compen-sation p/a
A	B	C	D	E	F	G	H	I	J	K	L
3	260	260	28	10.8	12,500	N/A	4.97	N/A	N/A	N/A	518
4[1]	256	256	32	16.4	2,707	3.63	3.89	64.98	82.34	2.57	84
5[1]	452	452	26	5.7	6,074	NEW FARMER[3]	7.61	161.34	3,673	141.27	234
7	200	79	3.93	2.0	449	4.0	4.47	63.61	162.88	34.64	114
8	443	397	15	3.4	1468	N/A	6.98	N/A	N/A	N/A	99
11	93	37	7	13.9	425	4.11[2]	3.11	36.58	54	7.7	61
12	537	136	11	2.1	1695	7.43	N/A	86.91	287	26.09	154
14[1]	272	250	33	13.2	3156	4.55	'very low'	66.53	361	10.94	96
15	256	256	7.7	3.0	(1540,	Settled inside family)	3.0	-	132	17.14	217

Notes:

1 Unsettled, calculated by taking mid-point of D.V./Agent assessments

2 Includes a 'profit rental' element because of low actual rent

3 No 'reorganisation' payment available to a new farmer

a whole (when rents bear little relation to profit) and thus be higher. In both these cases however there are good reasons. In case 4 an extra area of grazing, over and above the All Soul's land was rented from the Nature Conservancy. This land pushed up the rental figure in the accounts, it was in fact so high compared to the value of the rough grazing involved that the farmer subsequently gave up his tenancy of it. With Farm 7 it is partly that the land involved was acknowledged to be comparatively poor and damp, but more importantly the settlement was dominated by injurious affection on owned land involved and the agent did not press the comparatively insignificant tenant claim in the face of a generous offer by the D.V. regarding other elements.

13.6.3 There were cases where the question of rental as a basis of compensation was brought sharply into focus. Case 11 was the most dramatic. A small dairy farm, badly severed, it held part of its land on a tenancy rental which was outstandingly low, around 50% of the regional average. (ADAS figures). In the case of Farm 11 the agent found the D.V. most understanding and an addition was made to bring the figure up from a factual to a profit rental figure. Not only is such an addition limited legally to the duration of the potential tenancy (in this case 18 months) but the low cost/low output nature of the holding failed to provide a figure

of any real moment. Having agreed the theoretical possibility only £28 could in fact be added, but then the theoretical possibility is itself the most interesting fact. In terms of overall equivalence assessment, it is worth pointing out, the D.V. allowed a most important sum (£4,500) as injury to farm buildings allowing part of it to reflect loss due to the loss of tenanted land too. This emphasises the importance of having owned land. The rule in Worlock v Sodbury RDC excludes tenants claiming injury to other land held as an owner, but not vice-versa. Equally, but in simpler terms, a D.V. and agent searching for elements under which to aid equivalence have a great deal more discretion with valuation of injury than in the strict definitions of tenant compensation.

13.6.4 Farms 12 and 14 were cases of the kind where only tenanted land was taken from a mixed holding. The thing to note is the difference (61%) in the rental allowed on these two neighbouring farms, both in the selfsame belt of grade 2 land on the MAFF classification. Here is a specific example of where the man with the low rental, (and the one losing more and a higher proportion of land) is doubly penalised by only being paid a multiplier of that rental where it is to be expected that he was in fact making a higher profit off the land.

13.6.5 The second element of tenant compensation, and one which had important and interesting ramifications on

M40 is the question of profit loss. In practical terms a claim may be submitted for the loss of crop in the year of entry and the following year insofar as there should be a year's notice to quit. That is, it depends on the respective dates of notices and tenancies. On M40 most tenants had Lady Day (25 March) holdings and qualified for two years compensation. The assessment and valuation of these crops was a prime cause of 2 of the 3 cases still outstanding (Table 13.10). The most important fact is less the difference between different claims but the conflict

a. between agent claim and D.V.'s offer

b. between the different years

It is interesting to note Agent B's two cases. In the first he was able to obtain an increased price in 1973, whilst in the second he accepted the 'normal' method of a 10% discounted reduction. Agent A too had accepted this procedure in cases 7 and 11, but both were ones where the tenancy was a small matter compared with the sums being negotiated regarding owned land. In cases 4 and 14, both having only tenanted land taken much tougher debate ensued. The story is told in detail in case 14. Briefly the dispute is between the agent's claim for actual market price, apparently supported by professional authority, and Inland Revenue practice of taking guaranteed prices then discounting for the second year. A difference of £1,007 is involved. Although both agents preferred to use generalised figures rather than the farm's own profit

details there is considerable variation between agreed prices, even for the same crop. The lesson is re-inforcement for the overall assessments for equivalence undertaken, because it is difficult when looking at the actual cases not to realise that there is much greater trade-off <u>between</u> elements of the claim than is to be expected from reading the leading cases and texts.

13.6.6 The last major item of claim is the difficult area of third party or 'rule 6' disturbance claims. Whilst the problem arises equally on owner-occupied farms it appears that tenant compensation is so much closer to the borderline of equivalence as to be more serious. Again in case 14 there is a detailed listing of the specific items held to fall on respective sides of the law of contract fence. The interesting point appears to be that where (case 14 and not yet submitted claims on case 4) detailed submissions of individual occurences have been made there has been some attempt, albeit a dubious one, to distinguish the claims. Yet on case 7 and case 12 claims for £100 as "output difference between grazing and only mowing a field adjacent to M40 where fencing was not erected" and simply "general nuisance" were accepted by the D.V. It would be a dangerous folly to generalise from this. For on case 2 there has been difficulty obtaining response from the D.V. on nuisance elements whilst case 5 had specific damage claims accepted. The rule appears to be that of discretion, but presumably within certain bounds defined

Table 13.10 : Tenant Claims for Profit Loss

Settled Claims (£ p/a)

CASE NO	AGENT CODE	CROP 1972	PRICE	CROP 1973	PRICE
4	B	Wheat	45	Wheat	53.7
		Grass	38	Grass	41.5
		Leys	43.8	Leys	43.8
7	A	Grass	33.1	Grass	30.5
8	A	Arable	'Much'	Arable	'Much'
11	A	Grass	24.9	Grass	22.3
12	B	Grass (sheep)	48.4	Grass (sheep)	38.5

Unsettled Claims (£ p/a)

CASE NO	AGENT CODE		AGENT CLAIM	D.V. OFFER	AGENT CLAIM	D.V. OFFER
4	A	Spring Barley	60[1]	40	60	28.9
		Arable	70	-	70	-
		Pasture	15	-	15	-
14	A	Arable	40	18	36.1	16
		Barley	40[1]	40	64	29.3
		Pasture	40	25	36	22

Note:

[1] Reduced from 70 in negotiation to allow for harvest crop

by one of

a. the D.V.'s will and professional opinion,

b. the non-acceptance by DTp of his recommendation,

c. non-acceptance by the Treasury (or Treasury Solicitors) of recommendations of DTp,

d. the law, not a simple system.

13.7 Land Price

13.7.1 Questions of land price on M40 did not arise as acutely as on M5. This section will aim to set out the facts of settlement, but a good deal of discussion is left for the equivalent section of chapter 14. Table 13.11 details the price achieved and Table 13.12 the land prices officially recorded for the area at date of entry. Two points stand out. Firstly, there appears to be no consistency of price with grade and agricultural productivity, questions of hope value and planning permission were more relevant. Secondly the price roughly accords with the going prices for the better quality land. Both these aspects, as will be seen, are different from M5. Indeed, on M5 a higher price was paid in 1969 than three years later on much of M40!

13.7.2 The question of 'accommodation land' or land with hope value arose because of the nature of the scheme. Designed to relieve one of the oldest major roads in the country the M40 runs parallel to its sister A40, along which are regularly spaced, rather desirable, ancient villages. Thus there were bound to be areas

Table 13.11 : Land Price on M40 from West to East (£)

Farm No.	MAFF Land Classification	Land Description	Price Per Acre
5	3 and 4	Former pasture newly converted to arable	320
11	3	Pasture, at edge of village	400
7	3 - 4	Damp pasture, accommodation land	500
15	3	Damp pasture	375
13	2	Arable	433
6	2	Arable	350
1	3	Chiltern Upland	360-400 (unsettled)

Table 13.12 : Land Prices Southern Mixed Farming

Year Ending March 1972 (Vacant possession basis)

Size Group (acres)	Price per acre (£)
LAND WITH BUILDINGS	
10 - 49	528
50 - 99	333
100 - 149	405
150 - 299	271
300 and over	271
All over 10 acres	305
LAND ONLY	
10 - 49	273
50 - 99	224
100 - 149	293*
150 - 229	229*
300 and over	170*
All over 10 acres	243

* Less than 5 instances

Source: MAFF, Agricultural Lands Service Technical Report 20/4

of land entrapped between the two roads. At Postcombe, Tetsworth and Lewknor the problem arose. The question of planning effects does not fall within the scope of this thesis, except insofar as there are extraneous gains following the road which effect an individual's position regarding compensation. Or, although there was no reason to expect it before fieldwork commenced, losses arising out of the problem. In fact, three farms were affected in different ways by questions of betterment or value supplemental to agricultural use, nos 7, 13 and 6. All are difficult cases to unravel as will inevitably be the fact where difficult concepts are debated and set off against one another. To take the easiest and happiest first. Case 7 concerned land which undoubtedly had a certain hope value and which was claimed as such by the farmer. The details of the claim are complex but one principal feature stands out. It can be fairly said that with understanding by the D.V. there was a positive gain to the farm by the settlement for this off-lying land and equivalence was beyond doubt established. The contrast is with a case where there was no thought of development by a small intensive enterprise which merely desired to continue. It is part of the D.V.'s job to protect the public purse, and he was doing no more than that when he suggested that a degree of hope value existed on Farm 13 which could be taken to cancel

out injurious affection. Information is unclear on exactly how negotiations proceeded. This, in itself, is important. Not only could the firm of agents (the actual partner dealing with it having left) not pick up the details from their files, but the farmer himself had no real idea of what occurred. What is evident is that in the course of doing his job quite correctly the D.V. applied betterment to a small badly injured farm which needed hefty capital investment to keep it as it was; producing a position far from equivalence.

13.7.3 Respondents 6 and 13, both 'sufferers', from betterment were the most virulently angry of those interviewed. As case 6 is excluded from the appendix for reasons of confidentiality it behoves a precis here. A specialist agricultural business was terminated following the road and a claim duly submitted for high business loss and injurious affection. The D.V. raised the possibility of betterment and argued that it should be set off against the claim. Although the case is qualitatively different from no 13 in that the farmer had no definite idea of continuing to trade, the same rancour showed up. A sense of "blackmail" was expressed by both respondents. Although the land price offered was comparable with others on the scheme it was balanced off by a depreciation of the injury elements. It may well be that the whole question of betterment on land with such comparatively minimal value could merit revision. The added value only being claimed if it realised.

13.7.4 Wider questions of that type are a little out of place in this section and will be discussed in chapter 15. Here we record the simple facts of the price paid compared to sale prices in the area. None of the agents felt that assessment of market value was at all easy on the scheme as no land was sold in the area to give a guideline price. Agent C pointed to records of sales between £3-400 at the time, but felt they were not directly comparable. At the time of our meetings with him (end of 1976) prices had not recommenced rising sharply but he felt that arable land like Farm 1 would make between £8-900 p/a. Farm 1 itself had no settlement at all by June 1977, due to severance problems. Table 13.13 shows the feelings of respondents on the question of land price. It is worth drawing attention to two important psychological points. Land price is how most farmers see value. Complex matters of injury or severance may in fact far exceed it, but there can be little doubt that respondents perceive land price as most important. In many ways this shows a keen perception of equivalence, as the best way of being put back as before is to obtain replacement land. The second point is that farmers tend to be competitive, will know what neighbours have received and be disgruntled if others have more.

Table 13.13 : Satisfaction with Land Price Settlement

Farm No.	Price Received (£)	Years to Settle	Farmer Perception of Settlement
1	(360-400)	Unsettled	Satisfied, obtained replacement land. 'Better off than neighbours'
5	320	4	Dissatisfied by comparison with neighbours
6	350	4	Dissatisfied: betterment
7	500	4	Satisfied with amount. Dissatisfied with timing
11	400	2	Dissatisfied, no land available
13	433	2	Satisfied
15	375	4	Dissatisified due to price rises

13.7.5 It was generally agreed by the agents that the rise in land prices which commenced immediately after the M40 began was instrumental in the dissatisfaction amongst their clients. A meeting was held prior to entry to agree policy between the agents and discuss prices with clients. The only land purchased by a client was by Farmer 1 who had invested in land some distance from his farm in 1969 or 1970 at a price of £254 p/a (after selling off the farmhouse). Since the road, and price rises, little land has been sold but Farmer 4 purchased 33 acres at £832 p/a in 1973. He admitted that he had paid a high price as he put a premium on minimising taxation by 'rolling-over' his compensation. A more reasonable guide is Farmer 7's purchase of 53 acres at £585 p/a also in 1973. Again he argued that he was using money gained from partly road instigated dealings. This would seem to be a matter

to be taken into account. In an area where a motorway has gone through there may well be 'land hunger', one of a number of hypotheses we took from M40 to the M5 study.

13.8 Severance and Injurious Affection

13.8.1 The study method of writing detailed cases induces an understanding of the process of compensation as one in which there is a good deal of what may be 'horsetrading', or may be professional balancing of different heads of compensation. Whether common parlance is employed or not there is strong support for the idea of overall tests to look for equivalence. As outlined in the previous chapter, theoretically land price should stand clear of questions of farm system loss dealt with by injurious affection or severance payments. If there is regard to overall justice then they should balance out with system loss. In some ways this is value to the owner (in output potential terms) rather than market value. It is therefore an enthralling and central question to see how the facts of injury were compensated. Equally it will illustrate the important public administration balance between access provision and paying for severance costs. Table 13.14 provides a guide to severance provision on the road.

13.8.2 Provision for severance on M40 was, as a generalisation, generous. In 9.5 miles there are six public road crossings, four agricultural crossings (including one which is publically maintainable for historic reasons) and 4 footpath or bridleway crossings.

Table 13.14 : Severance on M40

Case No	Acres Severed	Acres without Public Access	Accommodation Provision	Financial Provision
1	25	25	None - CPO's served for a trackway in 1976	£9,750 claimed - No settlement
2	80	80	Trackway built to 70 acres, 10 purchased	£6,000 estimated track cost
3	c130	-	In 5 portions. Underbridge, public roads	£14,500 in total mainly disturbance (tenant)
4	9.5	9.5	Underpass shared with footpath	Irrelevant
5	48	-	Underpass, road to farm is publically maintainable	£3,900 to owners. (£2 p/a rent reduction)
6	12	12	Underpass	£25 p/a
7	-	-	Sold off	-
8	166	-	Agricultural underpass Bridleway (non-agricultural). Public road underpass	N/A (tenant)
11	20 (owned 20 (tenanted)	40	2 Agricultural overpasses 1 Footpath underpass (inadequate for machines)	£2,562 severance £4,500 redundant buildings
12	14	-	Public roads (3 mile round trip) Bridleway (non-agricultural)	£125 (tenant)
13	½	-	Sold Privately	£1,015 p/a
14	167	-	Trackway built. Also public road (1½ mile extra round trip)	None (tenant)
15	8	8	Agricultural overbridge Footpath underpass for workers	Irrelevant

Only one of the last is intended for agricultural use, some of the others go so far as to have bollards up but nonetheless prove useful on occasions. One of the bridges, that to Farm 9, a non-respondent, is a splendid structure with special fittings to permit ingress of machinery without animal escapes. It is some ¼ mile from the bridge to serve Farm 15's 8 acres. The provision of the latter has two other facets. It will permit Farmer 15 to accept bulk milk tankers if he decides to transfer his milking to alternative buildings. It also offers Farm 11 an extra access. Farm 11 already has one access and a footpath underpass. By comparison with M5 in particular the provision can only be said to be generous. Whether it is justifiably so is another matter, for there is no useful available evidence regarding the reasoning of the authorities.

13.8.3 Yet for all that most of the scheme is well provided there is one case where the failings of public administration discussed in Section II are exemplified. Farm 1 has 25 acres severed. A public road runs close by but actual entry can only be gained via the good graces of those whose land must be crossed. Good graces had cost £50 per annum, but there has been a distinct possibility of a sale for development. Individuals have a legal onus to mitigate loss, a fact well enough known to the agent, nonetheless there came a point where he had to advise his client to cease cropping the area and enter a sizeable (£2,000) claim

for the loss. An inquiry was eventually held into a scheme to provide a private access in late 1975. Although recommended by the Inspector, no action had been taken by January 1977. Thus a claim for almost £10,000 is entered which had little need to be. Both those who had excellent trackways constructed (Farms 2 and 14) accept that they are probably better off with them than on the unrelieved A40. The terms then in which Agent C has been forced to claim for 'loss of value' can be seen as evidently a surrogate for crop loss and system inbalance. With a trackway provided there would probably be little or no diminution in value.

13.8.4 As well as generous the other adjective which applies to severance provision is haphazard. As well as the comparison between the excellent provision for Farms 2 and 11 and the lack of it for 1, there is also the question of veritable over-provision in some cases. Certainly in case 8 the farmer was at pains to point out how little use the formal agricultural underpass was to him as most of his trips are easy enough on quiet public roads. For those visits when more immediate access is needed he feels he would be better off being allowed to use the bridleway underpass (which has bollards) and thus saving the nation money. Detail is given of these matters because of the contrast with M5 where, as we shall see, a much less generous attitude was taken. These matters are as much pure

public administration as compensation, but then this has been a principal finding of the study. Compensation has a number of roles, not only its strict one of putting people back, but also as part of the process of decision-making regarding agricultural accommodation. When injurious affection is paid on a particular farm it is doing a number of jobs. What the payments amount to in the end is a settlement for the overall impact on the farm both as an investment (land-price) and in terms of its system. This last is the task of injurious affection which should compensate for injury within the system. The way to test this is by comparing it with overall equivalence and this most important of conclusions is discussed below.

13.9 Achievement of Equivalence

13.9.1 The objective assessment method developed is at the leading edge of agricultural economics thinking. It proved to be vulnerable on two counts:

a. lack of important information (particularly June Returns or similar enterprise details)

b. it is impossible to be definite where cases are unsettled, or similarly where a longer time-span is required than we had on M40.

Otherwise the modelling and testing method proved exceptionally robust. The acid test is that in no case did an agent (or in case 8 the farmer) object to any significant point, nor did the occasional welcome

correction or difference in emphasis alter the overall result. That b) was found to be the case is accounted for by 2 inter-related factors. Those cases which are not settled are thus because of some dispute. It is evident from agent's comments and cases like no 7 that if the overall amount is good, minor items can be permitted to remain individually unsatisfactory. Secondly, and in some ways the point from another angle, compensation is meant to be a delicate balance. The reason little definite can be concluded is that where there is dispute the parties are usually a fair distance on either side of the golden mean. Should the client's claim be settled on his own terms a fair profit would be made, on the D.V.'s initial offers a discernible loss. A system of skilled valuation it may be in the end, but 'horsetrading' elements have their part to play. The tenant's claim in case 5 for example has a D.V. offer of £4,280 against a tenant claim of some £22,000. Objectively some £14,000 will be required to settle the loss. Such extreme positions are abandoned once claims move nearer settlement. In 4 and 14 then there is much less of a gap and it is possible to be rather more definite.

13.9.2 Starting at the optimistic end of the spectrum, from 14 cases there are the following conclusions:

Table 13.15 : Equivalence on M40

Case No	Interest in The Land	Equivalence	Prime Reason
1	Owner	Possibly	Unsettled, trackway provision
2	Owner	Yes	Loss at edge/system upturn
3	Tenant	No	Quick settlement. Severe impact/ unsuccessful system change
4	Tenant	Possibly not	Unsettled, price of crop loss
5	Owner	Yes	Capitalisation rate
5	Tenant	Possibly	Unsettled, poor accommodation
6	Owner	No	Quick settlement/business loss
7	Owner/Tenant	Yes	High injurious affection
8	Tenant	Probably	Accommodation/system upturn
11	Owner/Tenant	Probably not	Severe impact/no replacement land
12	Tenant	No	Tenant/unsuccessful system change
13	Owner	No	Severe impact/no system change available
14	Tenant	Possibly not	Unsettled, price of crop loss
15	Family Trust	Yes	Minimal loss/vacant possession basis

Achieved equivalence	4
Probably achieved equivalence	1
Possibly achieved equivalence	2
Possibly will not	2
Probably did not	1
Did not	4
	14

Striking is the regularity of the table. For 14 farms, all of them desirous of keeping in business the chances of achieving equivalenceare, it seems, no better than evens. What can be done to improve the odds, what factors point one way or the other? The first, and most important advantage is gained by being an owner. Of the four unequivocal achievers of fair settlement (or considerably better than) all did so on owned land. Notably Farmer 7 who had tenanted land taken too did poorly on that but made up his overall amount by high injurious affection on an owned cottage. Different aspects of the settlements were employed in different cases, the point is that if there is a loss to meet, I.A. offers a greater possibility of doing so than more tightly defined elements. The second grouping who had significantly better chances of equivalence were the larger, less affected farms. The four owners discussed above were also in this category. Amongst those as far across the scale as 'Possibly did achieve equivalence', half the sample, not one had under 200 acres and the

lowest was in the process of acquiring 53 acres more. Equally, of the 7, five were placed by Hearne in the 'minimally' affected category and the other 2 were the respective interests in the 452 acre case 5, which common-sense shows to have suffered little serious damage. A most important finding this, that those suffering little damage were generally fairly served by compensation. One with important implications for both the M5 study and the tests of justness discussed below.

13.9.3 Looking at Table 13.6 above it will be seen that for those at the other end of the equivalence spectrum the picture is not quite so clear but is fairly pointed. Of the 7, 2 are rated as severe, 2 business discontinued, 1 moderate, 1 uncertain and only 1 minimal. A little clarification will help. Primarily the grading of impact roughly corresponds with the gradation of imperfect equivalence. Both severe impacts are in the definite 'no'category, the moderately injured is a 'possibly not'. The 2 who are counted as business discontinued are in neither case retiring or voluntarily desisting. Both can be considered as driven out by M40's impact.

13.9.4 If severity of impact is one factor leaving a lesser chance of equivalence, other influences are small size and having only a tenant holding. Of the four definite non-achievers, two had farms under 40 acres and the other two were tenants. The two 'possibly nots' are both unsettled tenants haggling over the crop price. The last respondent, Farm 11 rated 'probably not' spans

both camps. It was only 93 acres before the road, and lost both owned and tenanted land. Were it possible to collect confirmatory evidence that his extra tenanted land was lost due to the road then Farmer 11 would be a non-achiever too. The question of secondary effects as a whole is discussed below in 13.10.

The categorisation of 'winners' and 'losers' is more important than the specifics of what caused dispute in the claims. The answer to the latter is that a number of different aspects did, but as a whole the claimant was not put back as before. Some might argue that it is cause for concern that Farmer 7 may have been overpaid on I.A. and underpaid on his tenant heads. In a near-perfect and rational world it might be so. When there are clear cases of overall inadequacy it seems, at best, quibbling. At worst it is not giving due praise to the D.V. for keeping an eye to the greater good.

13.9.5 It is difficult to know then how to classify the actual elements which did lead to failure. Are they cases where the D.V. did not have an eye to the greater good? Or do they show the limitations of his discretion and of the system as a whole? Probably any such distinction is an artificial one. The interaction between the constraints of a system's rules and its official representatives and practitioners is a complex effect outside the scope of the analysis. The aspects

however on which the system appeared to founder, those leading to inadequate compensation, were a) the costing of crop loss (4 and 14), b) years purchase on business loss (6) and c) above all the need of badly injured applicants to settle early (3, 6 and in part 12) with the problem of not setting precedents, but there being no provision for claiming subsequent loss. These points will be picked up in chapter 15 where possible ways around imperfections are discussed. But above all here the lesson to take forward to M5 is the need for some overall provision for the farm which wants to continue but must either cease (6) re-establish itself completely (3) or has no way of intensifying the system (13). Indeed, Farm 11 spans all these aspects.

13.10 Extraneous Factors and the Overall Position of Farms

13.10.1 As has been explained the equivalence tests are important because they omit factors which may leave an individual equally as well off as before, but are not a necessary and integrally related part of the 'scheme' itself. Theoretically it had been considered that there would need to be attention given to these other factors however, if only because there has been detected a type of myth - common amongst the planners and constructors of roads - that farmers 'do all right' out of land leasing and similar arrangements. Evidence and experience from the I.P. work showed such deals to be less often advantageous in the longer term than expected. On M40 therefore information on the subject was carefully collected and distinguished from farming gains.

13.10.2 The first thing then to be recorded is that for two farms M40 proved to be an unexpected but welcome windfall of the highest order. The gains arose not from the scheme but from errors in the scheme. Following from a miscalculation of the quantity of soil it would be necessary to remove cutting sites were required at short notice. The cost of transporting the bulky material would be enormous. Farms immediately adjacent were approached and satisfactory deals negotiated. One had fields which fell away sharply into a coombe built up some 50 feet (sic) and levelled to produce a much more workable (and valuable) topography. The other a tenant handed over land for reshaping with waste soil. Again a better shape has been produced and the substantial financial adjustment involved enabled the purchase of extra land. Neither case is settled, and for both the memory of the gains is important in keeping up overall satisfaction despite problems in their compensation settlements (c/f the satisfaction definition in 13.4.11).

13.10.3 It will be remembered that 2 other farms were faced with the idea of betterment. Although they are properly recorded above in compensation terms, desiring as they did the continuation of their agricultural enterprises, they may well have felt forced to seek development on their land as a means of recouping losses. Farmer 6, having ceased trading, did indeed sell off the site of his farmyard (in a village) for housing.

A trial plot of farmland put up for planning permission was however refused permission, amongst other reasons for being too close to the motorway. Farmer 13's agent, not having received the extra fee he requested, told us the firm hoped to regain its scale fee losses by organising his planning application. A small application was submitted and refused by the County Council, the agents advised him that he might well win on appeal but he decided against it due to the Development Tax levy. It was an impression gained at interview that the application was simply by way of gaining back what was lost to the motorway and that Farmer 13 did not see himself as a property developer. He had rejected his agent's advice to attempt to develop his whole field.

13.10.4 The dividing line between gains arising out of the road and those extraneous to it is a thin but perceptible and justifiable one. It is examined in the M5 evidence where the question of land re-arrangement was much more acute. Here it presents the final aspect for consideration as there is informal debate as to the respective merits of owner-occupation and landlord-tenant systems as regards land re-arrangement. The question has importance because land re-adjustment is a vital component of the overall farm adjustment so central to the economics of road impact. No readjustments of any moment took place on owned land. A lengthy stretch of the road however ran through four farms on the estate of All Souls College (Farms 3, 4, 8 and 12). Farm 3 was badly hit by the road, and upon the death of Farmer 12 soon after M40 the College decided to re-allocate the

land (rather than let it pass to his son). The majority of the land, over 100 acres, will be going to Farm 3 with a severed piece falling in better with Farm 8. Such re-allocation, were it based on the effects of the road, would considerably shift the balance of burden and benefit. The agents for the College were kind enough to reply to our questions on this score and clarified the matter. Naturally the road had influenced their thinking, but not substantiably in the end, "much of it would have been reallocated in any event". Outlining the factors behind their decision they described the position:

> "Basically we aim to achieve a holding size which is more than sufficient for a tenant to make a good living now and an adequate living for the forseeable future."

The death of a tenant is not only (under new legislation) no longer a necessary opportunity to reallocate, but more generally not to be relied upon as a means of putting injured farms to rights. In this case All Souls had helped Farmer 3 with a substantial building programme and it seems that there was always intended to be extra land for this holding. The import being that in case 3 assessment should ignore the timely gain and in case 12 ignore the equally unfortunate loss.

CHAPTER 14

COMPENSATION PROVISION ON THE M5, ST. GEORGE'S - EDITHMEAD SECTION

"There has been minor injustice,
Yet we have gone on living,
Living and partly living."

(T.S. Eliot, Murder in the Cathedral)

SUMMARY

To compare with work on the M40, a section of the M5 running through small dairy farms was studied. More farms were affected but many only marginally. Data availability and respondent information was poorer than on M40. In all, 22 cases were followed through, all but one now settled (seven years from date of entry). An overall low level of satisfaction with compensation was found, despite evidence in some cases of generosity by the District Valuer. The main factors producing dissatisfaction were the rise in land values, length of time taken to settle cases, inadequate recompense for disturbance/ third party claims, and low tenant compensation. Objective tests showed farmers who had retired to have done well, but those who wished to continue farming had not. Over 30% of farms did not achieve equivalence, again tenants, small farmers and those whose farm systems were severely affected were found to be the worst served by compensation.

14.1 Introduction

14.1.1 As the second survey undertaken, M5 had the benefit of lessons learned by writing up the detailed M40 case studies. Questioning at interview was much more pointed and directed to the specifics of the claim. Again, however, the two-man interview technique was necessary. One to maintain conversation on background details whilst the other ensured all vital specifics were accumulated.

14.1.2 The most important lesson from M40 was not to expect usable responses from those minimally affected. Being prepared for this, questioning was designed to ensure both that there were no outstanding farm system problem, nor outstanding compensation matters. Questioning on this latter point was based on fieldwork lessons regarding how short an attention span could be expected unless it was captured and held. Thus, unlike full-scale interviews, there was a distinct effort with the less affected to put potential problems to the respondent rather than let the perceptions be automatically ranked as a result of allowing the farmer to bring out the points himself. As on M40, agents were carefully questioned as to whether they had any major cases we had missed. The reasons for not following cases through vary tremendously but the type is a marginally affected farm where the response was nugatory in the extreme and the interview could not be carried through. A qualitatively different response from the specific reply that there are and were no memorable compensation

difficulties, or that things were positively satisfactory.

14.1.3 The M5 was not chosen primarily in order that compensation could be assessed. There was reason to hypothesise from M40 that an area of small farms would throw up more severe impacts, especially concerning severance of stock-based holdings. Consequently there was equal reason to anticipate that more severe cases in disturbance terms would be more difficult cases in compensation terms.

M40 had given some indication that different schemes might product different results. Given the careful definition and mass of case law relating to the compensation code, we had, initially, the directly contrary hypothesis that there would be little or no difference between schemes. It was formulated as a research aim, to test whether the compensation code allowed discretion to the D.V. by examining a scheme in a totally distinct farming area.

14.1.4 Unconnected with farming type but of equal moment to the study is the question of timescale. There was surprise during M11 and M40 work at the number of cases remaining unsettled. When the final choice of schemes was under way it was made clear that for compensation purposes it would be preferred if the scheme could be 6-8 years after entry rather than 4-5 years. Happily this accorded perfectly with the requirements of agricultural economics data. The scheme studied is

part of the M5 Motorway running through the mainly dairying grassland of the Somerset Levels. Of three adjoining sections built at the chronologically appropriate time the first, it was discovered from preliminary consultation with the local NFU, was the scene of exceptionally bitter clashes between the local farming populace and the contractors. It was therefore rejected as likely to be difficult to deal with matters within the compass of road authorities. This left the sections St. George's - Edithmead and Edithmead - Dunball. Preparatory working through of the CPO documents showed that considerable numbers of farms could be affected in an area of small units and it was decided that only one section would be required for study. Map work, pilot survey and NFU information pointed out the former as offering greater potential and it was chosen.

14.1.5 Construction on the St. George's - Edithmead section was begun in late 1969, with entry taken in November. Notice to treat had been served earlier in that year. It was not completed until January 1973, a much longer construction period than normal. The cause was the need to create a firm road base in the wet lowland. This was done by weighting with heavy materials which were then left for over a year whilst settlement of soil was monitored. Earlier in the project the MAFF Divisional Surveyors for the South-West, including the St. George's - Edithmead section, had been interviewed.

They had indicated that their own, and especially the RCU's knowledge of impacts had been minimal and that they were learning as they went along. Compensation was not one of MAFF's responsibilities but they had gained a general impression that third-party claims had been a problem and that there was general dissatisfaction with the amounts.

14.1.6 MAFF had no systematic approach to severance problems, it had mainly been left to the D.V. to offer advice on the compensation implications. The treatment of severed land by the D.V. will be shown to be an outstanding feature of this scheme. It is worth, then, pointing out that the farmers themselves had as little influence on their severance provision as MAFF. The Line and Side Road orders were published between 1966 and 1968. This was during this high tide of motorway building and the line selected had been a probability for many years. No objections were lodged. Although there were limited objections to the CPO orders and a brief inquiry was held, no farmers attended it. Interviews indicated the reason for this as a near total lack of knowledge of either the implications, or often, the very fact that the road was finally about to be realised.

14.1.7 The route of the scheme is mainly through low lying grassland typically farmed in small dairy-based units. At one point it rises through a cleft in the Mendips. The farming alters in this area, farms are larger and more mixed and an estate dominates ownership.

Elsewhere land tenure is primarily owner occupation, or internal family tenancies. On top of this is a distinct feature of the area - 'grass keep' (summer grazing) licences. Technically sold by auction for the summer period only, in reality many of these tend to be used in the long term as virtual tenancies without Agriculture Act security. Nonetheless many acres are on the open market every year with implications for holding readjustment.

14.2 Execution of the Study

14.2.1 Working from the CPO documents to obtain guidance as to tenures and areas of land lost a list of over 130 occupiers and tenants was obtained. From addresses, yellow pages and the general telephone directory it was possible to isolate the main farms. A preliminary survey of those farms where initial contact could be made by an NFU letter was combined with detailed reconnoitring of the dubious addresses. In most cases it was a simple matter to distinguish non-farming householders and land-users. The final sieving-out was done by telephone contact or a brief personal call where required. At the end of the day 54 farm holdings were distinguished. These have been rechecked with the CPO by mapping out, and by driving the route. There are no discernible gaps of any size unaccounted for.

14.2.2 54 is some three times the number of affected holdings on M40. Even in an area of small farms this

inevitably implied that there were a substantial number of farms marginally affected. In particular the region's scattered tenures meant a number of farms were affected only in off-lying fields. Full analyses of a number of holdings were thus abandoned. The most usual reason was the problem of requesting data release from marginally affected farmers. The 'rate of response' therefore in Table 14.1 should not be read as a 'success rate'. Only significantly affected functioning agricultural units are the subject of the research and it is therefore advantageous to sift out those not in that category. Detailing minimally affected or part-time holdings would be a waste of resources.

Table 14.1 : Data Availability

	Interviews	June Returns[2]		Accounts	
		No. of Farms	Total No. of Years	No. of Farms	Total No. of Years
Requested from farmer	54	34	238	31	341
Granted by farmer	47[1]	25	175	15	165
Obtained from source	47	24	130[3]	13	96
Overall success rate (%)	88	71	55	42	28

Notes: (1) including those conducted on the telephone, where this was clearly all that was required

(2) over the period 1969-1975

(3) not including years where there is a duplication in the computer print-out, because the farmer did not submit a return for that year

14.2.3. There are certain aspects of M5 data which merit specifying in advance of discussion:

a. The greater number of farmers and marginal impacts led to telephone contacts only being merited in some cases. Checking with CPO's, visual inspection, NFU and finally agents confirmed that - as was to be expected - no farmers had understated the effects on themselves and thereby been missed.

b. The one seriously affected farm not visited was no. 46. The farmer was very ill after a heart attack.

c. Perhaps due to the region's normally unchanging farm systems both personal responses and data availability/usefulness were reduced from M40. In particular, consideration of M5 impact and recording of the farm system were noticeably poorer. Undoubtedly the reduced proportion of farms to which there was preliminary introduction by NFU letter was relevent, but this does not fully explain the regional difference in application of management recording techniques.

d. Accounts especially tended to be more strictly kept for tax purposes only, with little enterprise breakdown or similar presentation for useful managerial purposes. Of those requested two farms' accounts could not be

supplied in full sets and one more did not apply to the farm business as a whole.

e. June Returns, too, were more frequently returned incomplete, or the farmers informed us in three cases (only one of which has been used for compensation study purposes) were intentionally misleading because they did not trust the Government's assurances of confidentiality.

f. A more serious systematic problem, however, with ramifications for the use of the agricultural land statistics constructed from submitted figures, is that of grass keep. As stated, this is an integral part of local land use. However, there was no consistent policy on entering this land onto the returns. Sometimes the owner would return land he was not farming, sometimes the licencee but often no-one at all.

14.2.4 Table 14.2 outlines data availability for the scheme's studied farms, and the categories of impact as calculated by Hearne. There is no case, unlike M40, where a farm suffering an important impact refused access to the agent. Therefore information on the difficult case was adequate enough to leave little doubt of the facts.

It can also been said that where less information was available than on M40 it made little difference to the

compensation assessment as detailed account or system analysis was less often required.

14.2.5 The response from agents can hardly be overpraised. With only one exception their time was given willingly and without charge. The one who felt he must charge did so reluctantly and reasonably. A strong sense of moral outrage at their clients' treatment was frequently exhibited and the work evidently put in for negligible scale fees impressive of professional responsibility.

Table 14.2 : Farms Studied on M5 : Data Availability/Impact Rating

Farm No.	Agent Code	Agent Response	Accounts	June Returns	Impact rating as calculated by Hearne
1	B	Fair	N/A	Imperfect	Minimal
2	A	Good	N/A	Yes	Minimal
3	D	Excellent	Yes	Yes	Minimal
4	B	Good	Not required	Not required	Minimal
13	C	Fair	N/A	Yes	Moderate
14	C	Fair	Yes	Yes	Moderate
15	E	Good	N/A	Yes	Moderate
16	B	Excellent	N/A	Yes	Moderate
17	A	Good	Yes	Yes	Severe
19	A	Excellent	Imperfect	Yes	Severe
20	A	Excellent	Yes	Yes	Severe
21	C	Excellent	Yes	Yes	Severe
22	A	Good	Yes	Yes	Business discontinued
23	B	Excellent	Refused by acct.	Yes	Business discontinued
26	D	Excellent	N/A	Not required	Business discontinued
27	B	Good	N/A	Not required	Business discontinued
28	F	Excellent	Yes	Yes	Business discontinued
29	B	Good	Not required	Not required	Business discontinued
33	A	Good	Yes	Yes	Improved
34	C	Excellent	Yes	Yes	Improved
37	C	Excellent	Yes	Misleading	Indeterminate
53	B	Good	N/A	N/A	Indeterminate

14.3 Evidence on Procedural Aspects

14.3.1 The hypothesis that the legal detail of the compensation code would leave little room for administrative discretion underwent re-appraisal on M40, and was rejected after M5. Agents and farmers alike pointed to the active and independent D.V. as a force of moment, particularly with regard to severance and land rearrangement. The evidence bears this out.

In cases such as 19, 22 and 33 (the first is appended as an illustration) the D.V. took on the role of an active land broker, purchasing areas at what - it could well be argued - was a high market price, and selling it to neighbours.

14.3.2 Table 14.3 sets out the length of time from date of entry to receipt of compensation. The satisfaction recorded is strictly with time taken to settle. As stated with regard to M40 it was necessary to distinguish between satisfaction with time taken to settle as such, and the equally important but separate fact of the date of assessment in an era of fluctuating prices, otherwise satisfaction would have become meaningless in this context. Farmers were well able to make the distinction.

Table 14.3 : Timing of Settlement from Entry onto Land

Time to receive final compensation (years)	1½-2	2-2½	2½-3	3-3½	3½-4	4-4½	4½-5	5-5½	5½+	Not by June 1977
No of respondents	5	1	2	1	1	0	3	0	4	2
No satisfied	5	1	1	0	1	0	0	0	1	1

Note: Total 19. Omitted are one direct and quick settlement with landlords, one uncompensatable interest and one where the date was unknown. One unsettled respondent was satisfied with his interim payments.

Of those who settled later than the arguable 'break-point' of 2½ years were three who directly ascribed their overall dissatisfaction to their inability to purchase available land because compensation had not been paid. (Case 19, appended, exhibits this problem.)

14.3.3 Above three years from entry only 3 from 11 expressed any satisfaction. Of these two had received the greater part of their money as interim payments. In case 37 for example the interim monies were put to good use in land purchase and the claim was left for detailed settlement and paid off in terms of a high figure.

An outstanding case of slow settlement was the time-lag between the D.V. agreeing final settlement, and payment coming through from the Treasury Solicitors. The evidence from agents and farmers is limited, as only in cases just at the appropriate stage can the two dates be put together. The norm seems to be around six

months, case 2 showed settlement on 2.12.76 where payment had not been received by July 1977.

14.3.4 On the physical side the prime cause of delayed settlement was drainage. The other claim still oustanding is a dramatic example of this problem. Farm 14 is an extremely well-run holding. A claim for £28,130 was answered by an interim payment based on the D.V.'s assessment representing only 24% (£6,750) of the claim. The present farmer and his father are both extremely proud of their farm's physical condition and drainage is a vital contributory factor. The channel in question has been inspected thrice by the Wolfson team and is undoubtedly a poorly executed piece of dredging causing silting and back-up of water. The responsibility for making good, it appears, is still being argued between authorities and contractors but meanwhile the claim cannot be closed. The road has been 'handed over' by the South Eastern RCU to the two county authorities, Avon and Somerset. The contractors have been paid off and fulfilled their obligations (excepting third party claims, obviously). Financial responsibility lies with the D.V., above him are the Treasury and the regional office of the DoE.

14.3.5 A similar problem of responsibility arose in regard to side road bridge fencing. There is no legal onus upon anyone to take responsibility for this oversight of planning and accommodation provision, yet it vitally

affects the position of certain farms (e.g. no 4) regarding the equivalence of their position post-M5. The problem affects all stock based farms in Somerset which have to cross the motorway, and serves more widely as an example both of the procedural difficulties facing farmers within an administrative system of discrete authorities and of how compensation provision inadequately accommodates problematic cases. The non-erection of fencing on motorway overbridges leads to disturbing problems for those who have to walk stock to severed land. The bridge approaches tend to comprise wide fast roads with equally wide verges gradually becoming embanked. It is extremely difficult for a small farmer with often only himself as labour to prevent beasts being trapped at the base of these banks. An understandable omission in the early days of roadbuilding, the problem is that it has swollen into an issue far beyond its merits because it falls into an administrative vacuum once the road is completed. Of their own accord Avon C.C. have taken on the responsibility and fenced their bridges. Somerset, however, refuse, arguing that it is the DTp's responsibility, there being no difficulty prior to M5. Meanwhile farmers like no 4 face a problem which is difficult to financially quantify but which dominates logistically, and leads to dissatisfaction with the justice of affected farmers' treatment.

14.4 Participant Perceptions of Compensation

14.4.1 Examples of the quality and commitment of agents' responses are given in cases 15 and 28 appended. The analysis here seeks to bring out generalisable points. The first of which, as on M40, is the conformity of view between all six skilled practitioners regarding interpretation of aspects of compensation procedure. On the question of the adequacy of their fee there was an evident unanimity of view. As mentioned earlier, only one agent asked clients for a supplementary fee, and then only to two especially lengthy and complex claims. Agent D calculated the difference between scale fee and quantum meruit as £66 and £280. The problem is a simple one. Scale 5(A) on which valuers' fees are assessed for Government work is, and no-one denies this, a generator of healthy sums when the work involved is - for example - valuing a school site at development land prices. It is set as a small, sliding proportion of the valuation. When a farmer's land is acquired for a motorway, however, the professional is called on to perform two tasks in tandem. The comparatively simple one of valuing the interests to be acquired, and the extremely time-consuming and complex one of negotiating and supervising the carrying out of accommodation works. Encapsulated, these are the jobs of valuer and land agent. Only the former is paid.

14.4.2 Farmers, not surprisingly, are distressed when their agent mentions to them the question of fees. On M5 the two farmers who were asked to contribute did so (around £100 each) but expressed extreme annoyance at the fact. The advice of the road's promoters on this question is unequivocal. In their public information leaflet Land Compensation - your rights explained no. 4 in the series, being designed specifically for farmers, tenants are advised:

> "2. Should I get someone to act for me?
>
> Yes. The assessment of compensation can be difficult - to apply the basis explained in 1. above is in practice rather complicated - and you would be well advised to ask a professionally qualified person such as a solicitor or surveyor to advise you and act on your behalf. His fee will normally be paid by the acquiring authority."

And similarly owner occupiers:

> "12. Should I get someone to act for me?
>
> Yes. The valuation of property can be very complicated and you would be well advised to ask a professionally qualified person such as a solicitor or surveyor to advise you and act on your behalf. His fees will normally be paid by the acquiring authority." (DoE, 1974(B))

14.4.3 Farmers are generally aware that their agents were not in fact receiving appropriate recompense from the authorities and were asked about their agents' performances. The results are set out below, and compared with responses on other schemes.

Table 14.4 : Client Satisfaction with Agent

Road Scheme	Farmers Interviewed	Assessment of Agents' Performance			
		Commendable	Competent	Acceptable	Unsatisfactory
M5	22	9	7	4	2
M11	16	10	5	1	0
M40	13	5	1	2	5

The results are not broken down as in the M40 table because there was little difference between agents. Even those who were thoroughly dissatisfied with all aspects had no condemnation for their agent's performance. As with M40 it was clear that few farmers had any depth of understanding of the compensation process but placed faith in their agent's abilities, a faith which seems well founded.

14.4.4 The agents themselves were in turn questioned regarding their client's achievement of equivalence. By way of experiment they were asked firstly at interview, and then again after having the cases remitted to them. This proved successful insofar as after studying the cases some were more prepared to commit themselves one way or the other, whereas at the interview

they had been chary of expressing too firm an opinion.

Table 14.5 : Agents views on their Clients achievement of Equivalence

Agents opinion	No of cases
Better than equivalence	3
Achieved equivalence	4
Probably achieved equivalence	5
Probably did not achieve equivalence	4
Definitely did not achieve equivalence	3
Could not say	3
Total	22

14.4.5 An outstanding difference between this scheme and M40 was that in three cases agents volunteered the opinion that only the active goodwill of the D.V. had managed to achieve a fair settlement for their client. These three cases each had a different agent working on them, nos. 3, 28 and 37. The question of the D.V.'s involvement and active role, along with procedures in general, was of considerable moment to the agents. Four of the agents offered specific praise for the D.V. who had dealt with the road, although three tempered this by adding that willingness to help was no true substitute for efficiency and lack of adequately speedy procedures. The final agreeing and paying of settlement took much too long (in case 22 for example there was over 1½ years between virtual agreement and payment). It was generally accepted that this was not the personal fault of the man, but a system of

inadequacy which showed up yet more in negotiations over accommodation works. The M5 being an early motorway with little formal opposition, accommodation works were not settled in advance and five of the six agents cited what we have characterised as the "responsibility void" as the most difficult factor facing them. The promoters of the road themselves appeared to have no distinct definition of their responsibilities as against the D.V., contractors and superintending engineers. Again agricultural details are seen to be omitted within a discrete system of roles.

14.4.6 One last generalisable point which may be picked out from the agents' responses was that all five agents who had tenant cases to deal with were convinced that their compensation was inadequate. Interestingly, whilst all five offered forthright condemnation in general terms they tended to rate their specific clients cases as often as not more circumspectly, and they are thus subsumed under the "probably did not achieve equivalence" group in Table 14.5.

14.5 Third Party Claims

14.5.1 The difficulty for farmers obtaining rectification from contractors was yet worse on M5 than on M40. The dedicated pursuit of claims by agent C however gives interesting insight into the problem.

The actual items for claim were much the same as on other schemes; escaped cattle, drainage disturbance and dust dominated. Even given the difficulties of generalising about individual claims certain elements of

importance stand out. Table 14.6 summarises the responses of the 22 farmers, more replies than respondents are recorded due to overlapping.

Table 14.6 : Farmer Perceptions of Third Party Claims

Response	Number
Satisfied	2
No complaints or response	5
Profited by minor works	4
Claim accepted by D.V.	2
Not considered worthwhile claiming	6
Dissatisfied by the entire procedure	10
Total	29

14.5.2 The overwhelming impression to come from the study was of tremendous difficulties encountered once a claim had reached a firm's insurance adjustors. There was differentiation between the different contractors employed; those who had dealt with Farrs (8 from 12 satisfied) and Laings (none from 6). Farrs, it seemed, and agents confirm this, were happy to refer claims to their insurers whilst Laings would attempt to refute them. The insurers themselves acted logically given their legal position and own corporate ends. They rejected claims for lack of proof and offered compromises on others.

This seemed one area where the agents' lack of adequate remuneration may have deterred some from pressing difficult claims. Although it is only fair to say that they may simply have been giving clients good advice not

to waste their time unless they had watertight evidence. Only one agent actually came close to saying he avoided taking third party claims too far because he could not afford the time. At the other extreme was Agent C who welcomed the Information Pack advice to keep an accurate diary, a procedure he had enforced on his clients. The evidence collected allowed him to launch what he himself felt became something of a personal crusade. Once having beaten the insurers on the major question of dust damage, after having samples analysed at local universities, he found he commanded more respect and some very substantial settlements of over £1,000 were obtained.

14.5.3 High settlements took a considerable time to achieve and thus two of those who felt they were fairly paid distinguished carefully between that and being fairly treated. Similarly, of the four who had ditches dug, ponds filled and land raised two still felt dissatisfied that their claims for damage were not met. The amount of damage liable to be done and which could be claimed is remarkably illustrated by one of those with an eventual high settlement, Farmer 22. He kept an accurate diary and actively pursued claims, to his agent's chagrin in some cases, finally receiving payments totalling over £1,000. This may reasonably be considered some measure of the amount involved when claims are foregone. Farmer 22 was due to retire and could dedicate his time to the required minutiae, whereas most active farmers cannot and claims are lost for want of attention.

14.6 Tenant Provision

14.6.1 M5 was constructed prior to the 1973 Land Compensation Act becoming law, or being filled out in its tenancy provision by the Wakerley case discussed in chapter 10. The opportunity was taken to ask three of the agents whether they felt the new provisions would make a significant difference, all three can be paraphrased as feeling that there will be an improvement, but tenants will still not generally achieve equivalence. Table 14.7 analyses the facts on the scheme where exactly half the sample holdings included land held on a long-term tenancy of some type.

14.6.2 The immediately striking fact to stand out from the table is that in spite of the formal rules governing compensation it is impossible to point to a 'normal' pattern in the cases. The number of settlements (4 from 10 not including case 17) which were privately arranged with the landlord must be seen as a reflection of the poor opinion farmer's advisers held regarding the levels of payment to be obtained from reliance on statutory provision. The judgement of the agents appears to be borne out when the level of settlement in cases 21 and 34 (including the latter's rent deduction) is compared with 15 and even 3 (excluding almost £3000 worth of disturbance elements). Case 20 is not really an appropriate comparison being intra-family.

An examination of the rentals obtaining in the area at the time of entry (MAFF Agricultural Land Service) shows the range of rents being paid by the sample to be higher

Table 14.7 : Analysis of Tenant Compensation on M5

Farm No	Total size pre-M5	Tenanted land (acres)	Tenants' land take (acres)	% of total farm taken	Total tenant compensation (£)	Rental p/a paid in compensation (£)	Rental p/a on whole farm(£)	Loss of profit p/a (£)	Total 'Disturbance paid in compensation (£)	Disturbance p/a (£)
3	107	107	21	19.6	4285	17.34	17.06	33.3	2977	141.8
4	90	22	2	6.7	PRIVATELY WITH LANDLORD					
13	239	239	9	3.8	950	18.2	Slightly lower	72.8	0	0
15	232	232	17	7.3	1750	19	6.63	25.9	438	25.7
17	75	36	27	36.0	0	0	0	0	0	0
19	47	18	7	26.6	420	5	n/a but very low	40.0	0	0
20	92	92	35	38	864	SETTLED WITH FAMILY AT £57.6 P/A	6.52			
21	124	124	13.5	10.5	2015	SETTLED WITH LANDLORD AT £150 P/A	6.04			
28	130	88	5	8.9	150	TAKEN AS 5 YEARS PURCHASE ON PROFIT	8.04			
34	289	289	16.7	5.5	2004	SETTLED WITH LANDLORD AT £120 P/A	6.70			
53	Approx 25	13	2.8	21.4	261	10.0	N/A	0	150	14.6

than those in the official figures which cover a wider area. The consistency of the range suggests that there is some objective reason - institutional, land quality, land shortage, or so forth - for the area of this road to be a high rental area. What is, however, yet more striking, is the apportionment of rent made by the D.V. The relevant provision of the Agriculture (Miscellaneous Provisions) Act, 1968, s.9 (2), reads:

> "The sum payable ... shall be equal to four times the annual rent of the holding, or, in the case of part of a holding, four times the appropriate portion of that rent, at the rate at which the rent was payable immediately before the termination of the tenancy of the holding or part to which the said compensation relates."

This is by way of being "a sum to assist in the reorganisation of the tenant's affairs". (s.9(1))

14.6.3 The all-important words are "the appropriate portion of that rent". Two immediate interpretations present themselves;

- the 'crude' interpretation, total rental divided by total acreage multiplied by acreage lost,
- the 'apportionment' interpretation, to look at the market rental for the farm after the road and subtract it from the rental immediately prior.

At its best, the apportionment method would be a smooth transaction wherein tenant and landlord agree the reduction, the tenant is paid accordingly and the landlord

has a basis for his injurious affection claim. Such a method would be especially important where land of a different quality is taken out of the holding from the majority of the remainder, or equally the loss was such as to cause higher tenant working costs. Both circumstances being typical effects of linear road land-take. The M5 notice to treat was served in August 1969 and provided local agents with an opportunity to test the provisions of the 1968 Act. The story is best told in case no 15. A 232 acre farm paid £1538 rent annually (from accounts), that is £6.63 per acre. Upon the loss of 17 acres (7.3%) of the farm, all bottom land on a mixed land holding, a reduced rental of £400 (26%) was agreed with the landlords. This figure took account of injurious affection to the tenancy due to the new balance of land types and severance of 44 acres. A claim for £1600 was duly submitted under this head. The facts of the subsequent negotiation are somewhat confused but point to an interesting clash of theory and practice. Looking at the case and noting what other agents said too, it seems that the Inland Revenue officially interpreted the Act to imply the crude basis but nonetheless the D.V. in practice allowed something over and above a strict interpretation of the crude rule, which would only have produced a figure (17 x 6.63) of £451.52.

14.6.4 The underlying question is that of basing a reorganisation payment on rent at all. The theoretical dilemma is over whether the basis of assessment should properly be actual or artificially valued rentals; that is, which best represents the market value of the interest? The value of empirical evidence in this debate is enormous, for it mocks at the niceties of abstract discussion. In practice, the D.V. has allowed, in every case for which information has been collected a rental above the crude method. If cases 21 and 34 are taken as guides (where the landlord was prepared to pay high sums to achieve a vacant possession basis) it can be concluded that settlements were above the crude but below full apportionment.

Table 14.8 : Difference between Rental Paid in Compensation and Farm Rental (£ p/a)

Farm No	Rental paid	Rental on whole farm	Actual difference (p/a)	% difference (p/a)
3	7.34	7.06	0.28	4
15	9	6.63	2.37	36

14.6.5 Table 14.8 gives the evidence which can be presented with certainty. Unfortunately, details of the actual rental in cases 13, 19, and 53 could not be obtained but there are good reasons to believe that these were also paid at a rate above the actual. The figures in case 13 (£8.2) and 53 (£10) are both well above what could be expected even in a high-rental area, whilst

even the £5 in case 19 is above the abnormally low rental which was known to be paid.

There is a fundamental paradox in basing reorganisation on rent paid due to the inherent tendency to underpay those who have a very low rental and are thus losing most anyway. It is notable what a remarkable difference there is between the apportionment rentals allowed by the D.V. The two farms with comparatively low rents (3 and 19) both had their loss made up considerably by high profit loss amounts. There seems to be considerable support for the view put in neat words by Agent F that "the D.V. and I had a figure in mind, it was a case of fitting it into the elements available".

14.6.6 At the end of the day the sum of interests in the land should add up to the value of the land, so it should be irrelevant what apportionment is settled on between landlord and tenant. That this was not expected to happen on M5 is shown by the number of people settling directly with their landlords. The very fact of agents advising this method of settlement implies that they had little confidence in the method of assessment producing a satisfactory figure. It should be possible to compare the two methods, and it was indeed one of the aims of the study to do so. The rent reorganisation payment and profit loss figures (i.e. not disturbance) should balance with the value of a tenancy as paid freely by the landlord. That is what they

are surrogates for. The hope for rigorous figures from such an analysis had to be abandoned because of the evident incomparability of settlements where there was an element of arbitrariness between elements. Nonetheless, the figures collected remain of considerable interest in the absence of similar evidence elsewhere. Ignoring Column D, Table 14.9 would appear to justify the decision of agents to recommend their clients to settle directly. A rational calculation would point this way, even given the high rentals allowed by the D.V. The problem which they could not have predicted was that this left their clients to fight for accommodation works, but without any statutory right to claim compensation in lieu. Thus the importance of including Column D at all. Our developing thesis that the D.V. had an eye to overall equivalence seems strongly supported by this evidence. Cases 3, 15 and 28 were helped along by generalised sums for disturbance during construction. Case 19 received hefty injurious affection. Case 13 on the other hand with extensive severance was compensated by a loss of profit figure almost twice anyone else. Such a picture is strongly supportive of our approach in testing actual, overall equivalence. If, and it is a most welcome use of discretion, the D.V. did take the heads of compensation as guides or tests, then this was quite proper. As Winn, L.J. put it, cutting

Table 14.9 : Settlement by D.V. Compared with Direct Settlement with Landlord (£)

A D.V.'s cases	B 4 x rental	C Profit loss	D Non-land value elements	E Total Tenant value p/a (B + C / acres)
3	608	700	2977	62.29
13	295	655	-	105.56
15	720	496(1)	383	71.53
19	140	280	-	60
28	5 years purchase on profit		3650 (3)	30

Direct Settled Cases	Mode of Settlement		
20	16% of family settlement	57.6	
21	Straightforward agreement (see 14.6.3)	150	
34	Plus ¼ reduction on 60 severed acres discounted at 10% over 20 years	120 + 49	= 169

NOTES: (1) Includes a £55 seed/sward element

(2) But £4,200 for owned land + IA

(3) On owned land too

through irrelevant verbiage:

> "It is immaterial whether the sum ... is regarded as the purchase price of the claimant's interest in the lands taken from him or as a measure of the damage done to his tenancy of the whole holding by its reduction ... both bases are equally proper." (MoT v Pettitt)

The great question is equivalence overall and this must be the ultimate focus of the study whether for tenants or owner-occupiers.

14.7 Land Price

14.7.1 Agent A, the last to be interviewed, was questioned in depth on land price effects noticed when writing up earlier cases. He agreed with our hypotheses that a figure above market price was paid and that the price had been higher at the Weston-Super-Mare end. Expounding on these matters he put a figure of 10-15% above market price on the D.V.'s levels. The first land-price case to be settled he believed was no 19. The impression gained was that the D.V. was looking for a case around £400 to set as the basic figure. It is important that this was agreed around mid 1970, for one of the reasons behind searching closely for the earliest case of settlement was that it had been suggested as an explanation for the high land price paid that the D.V. was seeking to placate those affected when prices were beginning to rise sharply. Table 14.10 was constructed to test this idea but adds little support. There is no evidence therein that prices were rising by 1970.

Table 14.10 : Land Prices South-West Dairying, April - September 1969 and 1970 (Vacant Possession Basis)

Size Group (Acres)	Price Per Acre (£) 1969	Price Per Acre (£) 1970
Land with Buildings		
10 - 49	388	405
50 - 99	251	204
100 - 149	217	241
150 - 299	205	159
300 and over	183	147*
All over 10 Acres	238	218
Land Only		
10 - 49	215	217
50 - 99	199	140
100 - 149	258*	217*
150 - 229	110*	213*
300 and over	None	None
All over 10 Acres	204	205

Source: MAFF, Agricultural Lands Service Tech. Reports 20/1 and 20/3

* Less than 5 instances

14.7.2 This is not to say that the high land price question is not important. The other agents, too, drew attention to land price as a major factor in farmer satisfaction. Agent C indicated that although farmers were more concerned about procedural and accommodation matters, the one aspect of financial compensation which was really immediate and important to them was land price, in that it fit the market bargaining terms in which they thought. IA by comparison was a fiscal concept of little relevance. Agent B supported this and indicated the trade-off in satisfaction between a high price for 1969, but not collecting it till 1973. There was little market support for any price over £300 p/a, he argued. Table 14.11 supports the idea of higher prices in the north within limits such as the excellent estate land and Grade I arable land of Farm 14. Given the site specific limitations of the MAFF classification nonetheless it does, read with the empirical descriptions, give the picture of grade 3 grassland broken only by Mendip Vale in the centre but including a patch of low-lying wetter land in the south. In the view of Agent B some poor farms on genuinely difficult land in this wet area received compensation prices above their merit by comparison with the best land. He was, of course, speaking in valuation terms rather than output potential itself. The difference between price paid on the highest and lowest compensated farms (23 and 22) is 31%.

Table 14.11 : Land Price Paid on M5 from North to South (£)

Farm no	MAFF Land Classification	Land description	Price per acre
20	3	Good pasture	425
26	3	"	436
19	3	"	400
33	3	"	450
22	3/4	"	455
2	3/4	"	383
Estate (13,15,34)	2/3/4	Valley bottom and Mendip foothills	450
14	1/3	"	Unsettled
37	3/4	Fair pasture	422-50
23	3/4	Damp pasture	348
53	4	"	350
28	4	"	375
27	4	"	380
1	3	Good pasture	375
4	3	"	363
16	3	"	380
29	3	"	400

Table 14.12 : Land Price, 10-49 acres, South West Dairying and Mixed (£)

½ year ending	Price per acre Dairying	Mixed
September 1969	215	151 (1)
March 1970	205	142 (1)
September 1970	217	160 (1)
March 1971	214 (2)	214 (2)
March 1972	236	182
September 1972 (3)	283	202
September 1973 (3)	485	368
September 1974 (3)	674	499
September 1975 (3)	525	412

Based on MAFF Land Service Technical Report Series 20

NOTES: (1) All farms in South West
(2) Full year ending March, national figures, series ceased for 18 months
(3) Series became annual, figures for year ending September

14.7.3 The prices paid must, on the evidence of the case studies, be read with the settlements in general, and care should be taken not to read too much into this element itself on any individual case. Overall it can be said that the price paid was surpassingly generous as a market price. Comparison with Table 14.10 illustrates this, and another of the dichotomies and valuation problems which arise from trying to find a price for the 'no-scheme world'. Assuming that there were land sales in the area - and the evidence is that comparable ones were thin on the ground - then which of the figures in Table 14.10 is the appropriate comparison? The land take is not land with buildings for if any are demolished or injured they are compensated separately, and thus the price falls below what was probably paid per acre by the farmer if he purchased it recently - or what farms are seen to be fetching in the area. Equally important is the question of whether the land to be valued is to be taken as a small area of land, or as part of a large one, with a commensurately lower price. There are inevitable difficulties in pricing a strip of land running through a number of farms - it is an item not often sold on the open market.

14.7.4 Take for instance the figure for small (10-49 acres) pieces of land sold without buildings as the appropriate comparison. Then the figures for land price in the area from the same source as Table 14.10 (returns by the D.V. himself) are given in Table 14.12.

With all due respect to the intricacies of valuation, and recognising that every piece of land is different, it is very difficult to conclude other than that an above-the-market price was paid on M5. Even given the artificially boasted market created by M5 (and its resultant Capital Gains worries) land severed from Farm 20 only fetched £250 p/a in mid-1973.

14.7.5 The vital questions in terms of satisfaction on land prices are thus two:

- the comparability of settlement levels between the best and worst land,
- the timing of settlements

The contrast in satisfaction terms arising from the first question is illustrated, for example, by cases 37 and 14, for the sense of relative success or deprivation was frequently noted as being of importance within the limited and intimate world of agriculture. Farm 37 gained better land by using his compensation monies, leaving himself extremely satisfied - almost unto smugness - on this score. Farm 14 by comparison comprised some of the best land in the area within a holding of balanced land quality. The possibility of his being satisfied, (even ignoring the fact that he had not settled by April 1977), looks low. The time factor however can hardly be ignored in a decade when the price fluctuations of agricultural land have been of great moment to the farming community. Although the Government pays undeniably fair interest

on land held, possibly higher than that generally obtainable in the open market, this has in no way kept up with the soaring prices of the period from 1973 which peaked in March 1974. Prices which are now back regularly over £1000 p/a and averaging £727 (British Farmer & Stockbreeder 19/3/77 and 25/6/77). The rates of interest paid have gone from 12½% to 13½% (August 1976), to 14½% (October 1976) and finally to 15% (November 1976) and continue to be regularly monitored (S.Is 1976/1124/1660 and 1798). Against this background and the time taken to settle, illustrated by Table 14.3, farmers' satisfaction with land prices is shown in Table 14.13.

14.7.6 Summarising Table 14.13, 16 cases give:

Satisfied	6
Dissatisfied	4
Extremely dissatisfied	5
No Comment	1

The evidence of the case studies from which the table is composed supports the exercise of carrying out an objective assessment to cut through the problems of individual subjective cases. Nonetheless, compensation and justice itself are connected with treating the individual case on its merits and there is considerable importance in this evidence, pertaining as it does to an aspect of compensation which has come in for considerable critical discussion (Davies, Ch 6).

This is the reason the element of timing and price rises has been distinguished in the objective analysis because it would colour the entire study. Land, although a factor of production to a farmer, is compensated as an investment. If the compensation for this invested capital is deficient then it has repercussions throughout the farm system. The capital withdrawn was capital which could have been used for investment in the readjustment which underlies both the national and individual cost of the road.

Table 14.13 : Satisfaction with Land Price Settlement

Farm No.	Price received (£)	Years to settle	Farmer perception of settlement
1	375	n/a	"Appalling", no aid to readjustment
2	383	8	Extreme dissatisfaction with amount and timing
4	363	2	Satisfied, land from D.V.
14		Unsettled	Probably dissatisfied with time and amount
16	380	2	Satisfied, extra land obtained
19	400	3	Extreme dissatisfaction, too late to acquire land
20	425	6	"Below contempt", nowhere near loss
22	455	2	Satisfied, retired
23	348	3	Dissatisfied with both
26	436	7	"Derisory" due to price rise
27	380	2	Dissatisfied with fixed date for assessment
28	375	5	Dissatisfied with amount and timing
29	400	2	No comment
33	450	2	Satisfied, gained extra land
37	422-50	3	Satisfied, extra land obtained
53	350	6	Satisfied, retired

14.7.7 Table 14.13 exhibits what is yet more evident from the studies themselves, that to the working farmer the questions of price, procedure and timing are essentially comparative ones. He will tend to compare these elements with how well off he might have been had the road not come. It must always be a matter for concern and interest when 9 of 16 individuals affected by public works are found to be disgruntled by any aspect of it. Starting an analysis of the problem with the exceptions shows that the six satisfied exhibit two syndromes. Two of them were retiring and four gained extra land severed from neighbours at prices below those they received for their own land. To put it the other way around, all those farming properly who did not gain land from some other unfortunate neighbour are dissatisfied with the land price paid. How much this is caused by price and how much by timing is a question to be addressed. Table 14.13 is open to a number of interpretations. Looking back to the case study data base support is for the idea that length of time to settle grows commensurately with disagreement generally. It is not simply that those taking over three years to settle are dissatisfied. That could be the case if there was evidence of an affected farmer, who did not gain gratuitous land, settling early and being even reasonably satisfied. This is simply not so. Those who desired to go on farming, most of whom have managed to do so, evidently feel deprived of the basic asset of the industry, land, without sufficient capital to make it up.

14.7.8 There are some cases, it should be emphasised, where the dissàtisfaction is a more, or even purely, subjective matter. Of particular interest is case 27, where an entrepreneurial farmer vehemently protested his deeply-felt sense of injustice at the price paid for his land, yet did not anticipate the market when selling other land on his own account. Admittedly he may not have sold the supplementary piece at the time had it not been for the impact of the road itself. Nonetheless, it is an indication of the depth of feeling stirred by compulsory acquisition and partly what makes the whole process of road building such an important aspect of public administration. It may, in fact, be an enforced sale, but if the procedures exhibit substantial imperfections, it can readily appear something akin to partly recompensed confiscation. Certainly on the evidence of M5 the system of paying market value as at date of possession produces great dissatisfaction amongst most of those affected unless relieved by some unrelated blessing such as land, or coming as a well-timed retirement present - yet even this last seems less likely with owner occupiers. In a time of rising prices it may be that the system requires adaptation.

14.8 Severance and Injurious Affection

14.8.1 The evidence in the thesis has pointed to severance as the aspect of road planning where the discrete agencies involved come together, whether coordinatedly

or not, to produce decisions of long term moment for agriculture. The words of Agent C confirmed the picture fieldwork had built up, that of an active and interested D.V. who took upon himself a praiseworthy amount of personal responsibility for the question of severance and access provision. Agent C gained an impression that £50,000 had been the D.V.'s "working figure" for providing access. Such an 'active' approach, allied to a tendency to look to overall compensation rather than specific items means that the concentration in this section must be on the subtleties of the D.V.'s approach - and nothing was to be gained by tabulation. For instance, a facet of IA provision which merits drawing out arises from the high land price. This produced a situation where, in case 37 for example, injurious affection was paid at levels above the apparent market price for purchasing the land outright. Up to £400 p/a was paid. To consider this, within the strict terms of the law, as showing that land had lost 8/9 of its value would be ludicrous as well as fallacious. In an arable area it is possible that land left in a triangular field corner may be virtually valueless, in an area of pasturage it is less conceivable that an acre of land has been reduced to only £50 in value. In such a case as 37 or 28, it was felt by the agent that the D.V. recognised a spoilt farm holding and did his best to compensate it within the heads. This is doing in practice what our overall equivalence tests

attempt theoretically - using IA to compensate farm system losses rather than land interest losses.

14.8.2 Severance presents a much more accessible aspect of the study for dealing with in a quantitative way. Table 14.14 illustrates the attitude taken to severed land by the D.V. Immediately striking is the paucity of specifically agricultural access provision. Only two accesses were provided and both were shared, one between three farms and one between two (not all the users were fully interviewed). In addition, 82 acres is the largest totally inaccessible area discovered on any of our fieldwork. The case (no 23) is a very interesting one and reading the most reasonable interpretation into somewhat contradictory evidence (neither farmer nor agent were completely sure of the basis of the decision not to provide a facility) it would seem to have been on primarily valuation grounds. Such a decision appears to accord with a generally "hard" line on access provision.

14.8.3 Looking at the levels of compensation provision such a line certainly appears justified in valuation terms. With the exception of case 23 which is an extreme case in many ways, there was only one case where acres severed amounted to double figures. In that case (no. 37) there was a public road close by and no further provision was really merited. Interestingly, extremely high IA was paid on the severed land in case 37 and it was suggested by farmer and agent as a case where the D.V. had taken upon himself the responsibility

Table 14.14 : Severance on M5

Case No	Total Acres Severed	Acres without public access	Accommodation Provision	Financial Provision
1	9	9	None	N/A
3	3	-	None. Sold by landlord	High disturbance payment
4	23	-	Public road	£400
13	60	60	Shared agricultural bridge	High profit loss payment
14	30	-	Public road	Not settled
15	44	16	Public agricultural bridge	None
16	11	-	Public road	£3120
17	32	32	Shared agricultural bridge	Non-compensatable
19	7	7	None	£60 p/a (tenant loss)
20	7	7	Extremely complicated public road: sold off	£2975
21	9	-	1½ mile public road	Settled with landlord
22	5	5	None	£2275
23	82	82	None	£28536
26	23	12	None	£5232 (part of land given to a tenant)
27	5	5	None	£1900
28	32	12	None. 1¾ mile public road	£7222
29	20	-	None	£400 (ceased farming)
33	2	2	None	£810
34	60	-	New gateway and track 1 mile public road	Settled with landlord
37	112	-	Public road	£20691
53	N/A	N/A	None	£2739

for turning down extra access provision but had then gone out of his way to ensure good compensation. Unlike M40, where (especially in case 1) land severed without direct access caused long-standing problems or was provided with agricultural accesses, on M5 the D.V. took a more active but negative role. Land severed without access was either purchased by the D.V. at the same fairly high land price and then sold off to neighbours, or sold off independently with the price being 'made up' by the D.V. Thus there is a group distinct from anything on M40, a group of 'gainers' from severance. £100 per acre appears to have been the conventional price to pay for enclave land which only one's own farm could take in. The major gainer was Farm 32. To any farmer, some 90 acres at $\frac{1}{4}$ of its market price must be akin to manna from heaven, but a far more important case (no 4) was examined in detail. This farm, it can fairly be said, achieved equivalence directly because of the D.V.'s initiative in selling to it, cheaply, land inaccessibly severed from a neighbour.

14.9 Achievement of Equivalence

14.9.1 Table 14.15 sums up equivalence as empirically calculated. It will be remembered that extraneous and supplementary gains, other than land gains arising directly out of the scheme are excluded. The distinction

drawn is that of betterment as against gains from effects not integrally related to the scheme. On the other hand is the caveat that rising land prices are excluded. Although pertaining to a range of different farms, farmers and impacts equivalence calculation threw up usefully generalisable facts which the table summarises well. The 22 cases may be summed up:

Achieved equivalence	13
Possibly achieved equivalence	2
Probably did not	1
Did not achieve equivalence	6
Total	22

14.9.2 The first and most essential point is that all six non-achievers were farmers who desired to go on with their operations after the road, that is to readjust around it. The "probably not" (i.e. a lack of certain information precludes definite conclusions) and the two "possibles" are also full-time agricultural units which have maintained themselves despite the road. Of those who achieved equivalence on the other hand more than half (7) retired or ceased farming. Of the other six, one (case 20) was not far off retiring and moved into a less intensive beef enterprise. It should also be mentioned that his assessment as achieving equivalence depends on classifying him under the receipts of his family's trust fund, when, were his assessment undertaken on the basis of his own

tenant element receipts, he would be a clear loser. To look first at the positive side. Seven farmers who were of retiring age achieved equivalence. "Retirement" as used here is not in the total sense normally implied, for farmers seem to retain some small interest in the profession, "business discontinued" or "ceased full-time trading" might be more strictly accurate. In the common-sense meaning, however, they retired, even if - as many farmers do - they retained control of some land or continued to run some beasts. Five of the seven continued their holdings in a small way. The two who ceased entirely (nos 27 and 29) were both acute business men who concentrated on non-agricultural activities. The distinction proved no great difficulty to the appraisal method except in case 23. Although above retiring age it is fair to say he had no intention of doing so except if offered a very good price for his farm. Losing so much of it to compulsory purchase, allied to the major decision not to provide access rankled greatly. At the end of the day, however, loss on his farm is attributable to the land price rise after the date of assessment.

14.9.3 For the majority of those retiring, and interestingly this includes the two tenants 21 and 53, the road was a blessing in disguise. Even if they did not approach the road with the positive intention of maximising gains, (like Farmer 22 appears to have done) they received useful amounts which were - and this

Table 14.15 : Achievement of Equivalence

Case No	Interest in the land	Equivalence	Determining Factor(s)
1	Owner	Probably not	Uncompensatable interest/ readjustment
2	"	Possibly	Length of time to settle
3	Tenant	Yes	Generous disturbance
4	Owner/tenant	No	Inadequate accommodation
13	Tenant	No	Curtailed expansion
14	Owner	Possibly	Unsettled
15	Tenant	No	Apportionment
16	Owner	Yes	Gained land.
17	Grazing licence	No	Uncompensatable interest
19	Owner/tenant	No	Length of time to settle
20	Family Trust/ Grazing licence	Yes	Length of time to settle/ system change
21	Tenant	Yes	Good system change/retired
22	Owner	Yes	Retired
23	"	Yes	"
26	"	Yes	"
27	"	Yes	"
28	Owner/tenant	No	Severance
29	Owner	Yes	Retired
33	"	Yes	Gained land
34	Tenant	Yes	Good system change
37	Owner	Yes	Generous IA
53	Owner/tenant	Yes	Retired

is fundamental - not to be eaten away by the costs of farm readjustment. It is interesting that even Farm 27 where there remains a feeling of subjective loss because of land price rise, did not anticipate it and was content to sell at the time to gain the D.V.'s useful top-up to his offering price.

14.9.4 Six full-time units where there was no retirement have continued to operate on a level which gives them equivalence. Evidently the distinctions between them and the non-equivalence group have great implications for the study. They split fairly easily into three groups of two : good system change, generous compensation, and gained land. Obviously in human affairs there are overlaps but the labels are useful guides. The adequate system change group (and case 14 which is as yet unsettled may perhaps be added) adjusted out of milk enterprises with their logical travel difficulties as well as real costs and established new beef enterprises which, along with compensation, provided long term equivalence. The generous compensation pair have not altered their farming systems (Farms 3 and 37) to the same extent, and thus their equivalence rests on substantial amounts to cover their readjustment and longer term system injury losses. In case 3, a tenant, almost exactly half the compensation comprised the one element 'reduced profit during construction' (£2145). Although there were costs accruing from disruption and blocked gateways one only need

recollect the trivial sums so carefully collected together on Farm M40/14 to see what an amazing amount this is. Added to it was an apportionment of rent above the general. Both farmer and agent, not surprisingly, felt that the D.V. had been generous to the case by employing the available elements to produce a good sum. Case 37 has been mentioned before for its exceptional IA elements and there is little to add. Very badly injured by severance the payments were adequate to enable the purchase of substitute land and cover extra travel costs involved. It is described as generous because the amounts allowed, it is fair to say, represent almost inconceivable reductions in value in market terms. The payment was not "generous" in terms of overall equivalence, it was appropriate but, it was in the sense of using the spirit rather than the letter of the law. Finally there are the pair whose overall result rested on land gained in the process of acquisition and resale of several portions. This may be considered an exceptional way of achieving equivalence, but what merit drawing out here are the implications of this for overall justice - that there are gainers directly from the scheme, and equally for procedure in that the activity of the D.V. in purchase and resale brought land back into production, settled equivalence for two individuals and saved the nation money as it

restrained their otherwise justified claims for IA. It is only lamentable that Farm 4, on which virtually the selfsame procedure was followed and the D.V. made up land loss by selling severed land at low price is not able to be included. The difficulties continually encountered because of inadequate accommodation fencing make it impossible to say this farm is as well off as before, a consequence of the pettiest hiatus in authority responsibility. There are, of course, overlaps. Case 3 also gained a small piece severed from its landlord's adjoining farm, whilst 16 also made suitable system change to fit his new land. The categories are not watertight, nor could they be made so without losing all point. For the point of their existence is to provide generalisable bases, guidelines to the type of effects and occurrences likely to provide equivalence. Just so, the factors indicated below as working against it are elements abstracted from a number all simultaneously affecting the overall outcome.

14.9.5 Of the six who did not achieve equivalence (and the one who probably did not and will be taken in with this section for working purposes) all but one had tenanted land affected. Even that one (case 1) has suffered its major difficulty in obtaining extra grass-keep land to make up its loss of owned land. Not all the tenancies are statutory (i.e. Agricultural Holdings

Act 1948, annual tenancies with security). The most notable exception, and a truly extreme case, is no 17. A classic instance of land let on technically a grazing licence but held for many years, the agent's professional opinion was that a case might have been made for compensation as a de facto tenancy. It was not however and no compensation was received. Although there was overall equivalence the same effect was noticed in the once again borderline case 20. The fairness of the Compensation Code rules in these cases is discussed below, here we seek solely to record that uncompensated losses do occur.

14.9.6 Regarding "normal" tenancies it will be seen from Table 14.15 that only two tenants (3 and 34) achieved equivalence who were not retiring. In the other cases, 13 and 15 being the prime examples, tenant compensation plainly and simply failed to reach the levels of long term impact caused by the road. The other three cases all had both owned and tenanted land injured and in them it is the niggardly level of tenant compensation for land which was as integral to a balanced farm system as the owned land, which is striking. Farm 19 exhibits the characteristic. It is an area where a type of farm is to have a small home base of owned land with the delicate balance of the system being regulated by long term tenanted and annual grass keep land. To upset any element, although making little difference to the market price of the owned land (on which alone can IA apply), disrupts the

entire farm. Readjustment is needed, above all replacement land is needed. All of which underlies the bare phrase "Length of time to settle" in case 19. There was land available but by the time compensation came through it was sold and the balance of the farm has not yet been recovered.

14.9.7 This question of readjustment is the key. All continuing farms will attempt to readjust, and put their compensation to the task of doing so. In some cases it fails. Usually it has been possible to put a finger on a specific reason for this such as inadequate accommodation works (case 4), or loss of opportunity to purchase land (case 19), but that does not take us to the heart of the problem. On M40 there was discussion of the provision needed for a farm which attempts to alter its system but fails to do so well or quickly enough for compensation to be adequate. This crux issue is focussed again by case 28, where it is only possible ultimately to conclude that the compensation was simply inadequate, even given thorough attempts at system adaptation. The question raised, that of provision for long term losses must be a focus of attention in the next chapter. Before moving to it, however, there remains the one last aspect of the real world position of farms on M5 to discuss - that of secondary effects.

14.10 Extraneous Factors and the Overall Position of Farms

14.10.1 Nothing on M5 matched the major gains of certain M40 farms from land-fill operations, and formal tabulation is not called for. Only six farms were affected by matters outside the purview of compensation, of these the only one which has its overall position significantly affected is Farm 23. A damp, low-lying unit was used for soil dumping and had its fields raised and therefore dried. Their value rose commensurately. Possibly due to the relief of the trunk road which it adjoins, allied to a nearby intersection, the disused farmhouse was also sold as a country residence to a Londoner at a sum of around £12,000 (for a poorly maintained structure). On the overall evidence then Farmer 23 is probably considerably better offnow in his retirement than if the road never came.

14.10.2 There are two other groups of farms affected which merit a final note. Firstly 3 and 15 which gained land from their respective landlords, but not such as to effectively sway their long term position. Secondly farms 29 and 33 (by the respective intersections) were chosen as Caravan Club sites. The former has gone full-time into the business, whilst the latter has it as a useful addition on top of land gained from severed neighbours. It is pleasant to be able to complete the evidence by indicating the only significant gainers from the road.

14.11 The M5 and M40 Studies: Some Conclusions

Looking back to the hypotheses at the opening of

Chapter 13 it can be said that they were on the right lines, but lacked a great deal in precision. For instance, it can be confirmed that small farmers and tenants tend to be badly served. But it can, more importantly, be shown why this is so. They are badly served for different reasons; tenants because the statutory rent-multiplier provision is an inadequate surrogate for their actual losses; small farmers because they tend to be badly hit. Large farmers too may be badly hit - especially if junctions are sited on their land, but have the advantage not of size in itself, but of the flexibility size gives. This question of flexibility - of ability to re-organise, is the principal lesson to emerge from the detailed study. Compensation, rewarding the value of the interest, tends to be fair to those who can accept it simply as such - principally those retiring. It tends to be unfair to those to whom the loss of land results primarily in producing an inbalance in their farm business. A 10% loss of land for instance, cannot easily be matched by a 10% reduction in a tractor, or a man. Indeed, as income will want to be maintained, the question is more one of a 10% increase in a man, or a tractor. That compensation has not proved successful in many cases is not surprising when 2 of the initial hypotheses are considered together in the light of the evidence. Agriculture

land is a low value use, and little capital will therefore be generated by its acquisition. Special consideration might therefore need to be given to units which need to make major re-adjustments (a complete enterprise change perhaps), which points to the fundamental question involved in the first hypothesis. Can the failings of compensation be ironed out by minor amendments to provision, or are there systemic imperfections? Again to give more precision, is compensation actually awarded on the correct basis - the reduction in value of individual interests in land - when its job is generally to finance the re-organisation and readjustment of the farm business? In essence the problem is one encountered before, how to balance the individual and national costs of a road scheme. In the simplest case, the best way to bring a severed piece of land back into full production and thus help the national interest might be to transfer its use to another farm in a better position to use it. But that may well impinge seriously on the individual interest of the original owner who might want to continue farming it (albeit less efficiently) so as to maintain his own income. It was argued in chapter 11 that these are essentially political and ethical questions, and it is as such they are dealt with in the next chapter.

CHAPTER 15

AN EXAMINATION OF THE JUSTNESS OF COMPENSATION PROVISION

"When bale is highest, boon is nighest"

(Norse Proverb)

SUMMARY

Building on the evidence set out in the previous two chapters an attempt is made to apply the Legalistic, Utility and Fairness tests discussed in chapter 11. In order to concentrate and focus the argument three principal problems of compensation (equivalence, tenant provision and farm loss payments) are dealt with. It is argued that opportunities for useful advances have been missed in the course of the 1973 amendment of compensation law because Legalistic logic was incapable of discerning political value. For instance it is shown by calculation that a farmer could be offered up to double market value to quit his severed farm and net social product would be positively enhanced.

15.1 Introduction and Application of the Tests to Equivalence

15.1.1 The aim of this chapter is to analyse within a broad social and political context the results set out in the M40 and M5 presentations and to suggest changes in the approach to compensation based on a synthesis of conceptual thinking and empirical evidence. The intent is to realise a potential intellectual benefit of interdisciplinary study and gain an insight into the workings of one of the principal areas of interaction between state and individual, compulsory purchase. By employing relevant and academically rigorous conceptual tools from the discipline of politics, to approach a problem generally subsumed as legal it is hoped that there will be a fecund cross-fertilisation of ideas. If the analogy may be pursued the results should have a hybrid vigour to make up for the purity of the original. Finally there is a methodological dimension, in that as well as seeing if the interdisciplinary approach is useful, it is hoped to produce some comment on the usefulness of the theoretical tests chosen when applied to empirical results.

Not all elements of the study will be put under the conceptual microscope. Neither can the approach be directly comparable with the formal setting out of the results in the previous 2 chapters. The aims of the respective approaches are so radically different they do not permit this. It is not necessarily a matter of regret. That the formal setting out of results under

the heads of compensation recognised by law cannot be followed by a social analysis is itself indicative of imbalance. The law, of course, must be practical and applicable, must yield up specific amounts, rather than probabilities. If this leads to a certain imbalance the question becomes whether it is 'justified', whether it best produces justice for the parties involved.

15.1.2 Thus, the first question is whether the legal principles work in their own terms. Whether equivalence is achieved. Such a fundamental question is so rarely asked. A collation of the facts might be in order.

a. The "principle of equivalence which is at the root of statutory compensation, the principle that the owners shall be paid neither less nor more than his loss", as so defined by Scott L.J. in Horn's case still stands as the basis of the law. But note the interpretation put upon it elsewhere in the same renowned judgement. A claimant "gains the right to receive a money payment not less than the loss ... but ... no greater". (Emphasis added). Already the principle is restricted from general recompense to a monetary standard, a substantial difference but a small step compared to what the judgement termed simply an alternative way of expressing the same idea:

"the right to be put, so far as money can do it in the same position as if his land had not been taken from him." (Emphasis added)
To be right in law, then, only requires that financial equivalence be achieved, less quantitative factors are irrelevant.

b. On M40, from 14 cases 7 at least possibly achieved equivalence in this financial sense whilst the same number did not. Only one of the 14 was however satisfied with the amount.

c. On M5, of 22 cases 15 at least possibly achieved equivalence, 11 were satisfied with the amount.

15.1.3 Equivalence itself is a conservative type of justice aiming at restoring the golden mean between the community and the individual. Compulsory purchase is the method the community adopts to acquire land necessary to carry out development in its interest, that is, of value to itself. On road schemes for example a financial method of appraisal is employed and schemes are expected to yield the community more than a 10% return on capital invested (after paying compensation). This then is a peculiar kind of mean, it is far from a sharing of value between the community and the individual. As discussed in chapter 10 in regard to Jones' (1972) suggestions such an agreement would not be compulsory purchase if the individual were allowed some of the value, it would be a voluntary contract. This needs

always to be borne in mind in any attempt at taking a broad look at the justness of compensation, in compulsory purchase the community keeps all the profit. At best the individual is put back as before, "so far as money can do it".

15.1.4 A fundamental question to be asked then is which should be the end of compensation, equivalence in the limited pecuniary sense it has gained, or the wider concept of satisfaction. The evidence from the cases is indisputably that even where equivalence is achieved it does not mean that satisfaction is. The reasons vary; procedure, timing, personal affection toward land farmed for a lifetime may all be relevant, Taking them as invariables for the moment, what do the tests outlined in chapter 11 imply about a state of affairs where the community at large is gaining substantial benefit at the cost of individual dissatisfaction?

The Legalistic Test

15.1.5 The problem of equivalence, and in particular its relationship with market value, has been a pre-occupation of Legalistic thinkers. In a review article Brown (1974), the annotator of Sweet and Maxwell's practitioners' edition of the 1973 LCA, analysed developments concerning the Act.with regard to 'conflict with the principle of equivalence'. This provides a most useful starting point as he concentrated on the Pettitt and Rugby cases of major import for agricultural claimants. Brown concentrates on the question of the landlord's gain

rather than the tenant's loss but in so doing puts his finger on the problem that to breach equivalence in a 'positive' direction (as is implied in looking to satisfaction) is to give "an unearned increment" (p 696). Pointing out that the 1973 Act left such a possibility in some cases due to the new specific tenant, business loss and householder provisions he asserts "it is surely desirable that this derogation from the fundamental principle of equivalence should be expunged ..." The reason for the assertion being the underlying 'Pointe Gourde principle', defined in the case of that name:

> "Compensation for the compulsory acquisition of land cannot include any increase in value which is entirely due to the scheme underlying the acquisition." (pp 695, 697-8).

The Legalistic question may thus be seen as whether looking to satisfaction is the same as giving an unearned increment, which in turn may be the same as taking value produced by the community. Because of the need to test on this basis of treating like cases alike, a point of comparison is required.

15.1.6 If statute is to be the starting point for comparisons then the legislation is pithy enough. The 1961 Land Compensation Act has as the first rule in the vital section 5

> "No allowance shall be made on account of the acquisition being compulsory."

Rules 2-4 specify market value at existing use but, and this is important, rule 6 excludes the assessment of disturbance compensation (i.e. items not based on the value of land) from the market value rule but not from the 'no allowance' rule. It will be remembered that the rule was introduced in 1919 to overturn the custom of paying a 'solatium', usually 10%, to those affected. But then in those days the basic statute, the 1845 Act, did not distinguish land value from disturbance compensation and the operative principle was to find the value to the claimant of his interest, rather than to the purchaser as now. All of which is most interesting in terms of Legalistic theory because it was following a report by the Justice organisation that the idea of home loss payments, farm loss payments and most importantly business loss items for people over 60 years old were introduced in the 1973 Act. The unanswered questioning of the government regarding whether the new tenant provisions were not a breach of market value was discussed in chapter 10. These items push the Legalistic concept to (or past) its limit s. The logic is a little difficult but unanswerable. Either farm loss and so on are items aimed at ensuring satisfaction and not equivalence, in which case they are really disturbance items not related to market value; or they are items to ensure equivalence which allow the possibility of legally exceeding it. In either case they breach rule 1, as they are, in almost any

sense, special allowances made on account of the acquisition being compulsory.

15.1.7 It is being said then that the fine legal distinctions, so important to the Legalistic rule of comparing like with like, are somewhat in disarray following the 1973 Act's confusion of satisfaction with equivalence. The Justice Report exemplified the dilemma in its treatment of compensation for the extra cost of new property where it is 'better' than the owner needed, when the only house available costs more than the demolished one - though that was all the owner wanted. In their words

> "the extra cost of alternative accommodation, albeit it may be reflected in the capital value of the premises, is not reflected in the occupational value of the premises to the person concerned." (p 41)

In recommending that compensation be paid reflecting the difference in the two values, the Committee was in reality reintroducing the idea of value to the owner in a limited sphere. Yet all this which is indisputably a valuation based problem, was dealt with as 'Compensation for Disturbance', so as to preserve the principle of equivalence intact.

15.1.8 The passage of the 1973 Act, it is being argued, has left the theoretical underpinning of compensation in Legalistic terms behind the reality. The equivalence principle is being employed in two radically distinct ways. Firstly as a general reference to overall

compensation (market value + disturbance) adding up to total financial loss. But secondly, the equivalence principle is being applied to the newer satisfaction - directed payments too which are not like cases. It would seem that the drafters of the Act were clearer regarding their objectives. Brown (a different one) and Deakin worked respectively on the Urban Motorways Committee's investigations of compensation and the review which led to the '<u>Putting People First</u>' White Paper. In a rarely referred to paper given in Bruges in 1973 they wrote basic home truths:

> "The whole concept of compulsory purchase and dispossession is by its nature likely to be resented by the individuals affected, and it is necessary that they should have a <u>fair and satisfactory</u> remedy under the compensation code." (p 76) (Emphasis added)

<u>Utility Test</u>

15.1.9 It may well be important in seeing how Legalistic theory could find itself with such problems to remember that one of the major items to help agricultural compensation, the new tenants' provisions, were only introduced part way through the bill and were designed, in the Minister's words, to fulfil "the undertaking which I gave in Committee on 25th January to help the tenant farmer without breaching the market value principle". (HC Debs 1973, vol 851, col 805). This was attempted by introducing a new payment based on the

value of security of tenure to replace the 4-times rental payment which was aimed at aiding re-organisation. That is, a valuation element has been brought in to replace a disturbance element. Evidently, however government approaches compensation, it is not with the same conceptual devices as Legalistic theory does. The reality of the approach was perhaps best expressed in an exasperated moment by a Minister in the third reading debate on the 1973 Act:

> "These are the figures which go as far as we can go at the moment on this type of compensation. If we spend a lot of money on one form of compensation, obviously we deprive ourselves of putting right anomalies elsewhere. In the Bill we have used a lot of money, if I may put it this way, in tidying up small hardships. Had we concentrated on one major item of compensation, we should have been unable to spread it over the rest." (Ibid, col 895)

For governments then, justice is a tradeable commodity. It is net social product which is their concern, and they have decided that "tidying up small hardships" yields a higher one than getting major items right. It is manifestly good to realise that the problem we face here is not so extensive as that facing government - of obtaining the best product from a range of decisions (road <u>versus</u> compensation), only that of asking what the Utility test, used informally by Mr. Page above, tells us about paying for satisfaction.

15.1.10 The first question must be, how much extra would satisfaction cost over and above equivalence? The question was specifically put during Information Pack. work. Respondents were asked to put a percentage figure on the amount over and above market price which would ensure satisfaction. That is, where they would achieve their 'point of indifference' - not positively desire to sell, nor actively oppose a taking. M11 Contract 3 provided the best opportunity for detailed questioning of this type. Fifteen useful responses were obtained, two of them volunteering the idea of paying over market value to aid satisfaction. The amounts estimated were as follows:

Market Value and 10%	2
Market Value and 25%	3
Market Value and 50%	3
Double Market Value	3
Treble Market Value	1
Discretionary	2[1]
Irrelevant, correct procedure is needed	1
Total	15

[1] That is, the engineers should be allowed to settled matters directly out of hand.

Similar questioning did not fit appropriately into the M5 or M40 research unfortunately, but agents were asked their opinion of market value. Inevitably replies were more complex, but there was a distinct feeling that some kind of 'solatium' would make the course of negotiation

much smoother. This element of the Utility function, the cost of settlement, is of major importance here. All the evidence from M5, M40 and M11 points to major time, trouble and expense (all 'costs') being invested in lengthy negotiations over minor details. This, it may be surmised, is inevitable given the fine balance between loss and gain involved in the concept of equivalence. It will be noted that the questioning was in terms of market value. It was an early lesson that, psychologically, land price, (or in tenant cases the re-organisation payment) was most important. Disturbance or crop loss items were expected to be settled at cost. There is evidence then, to put it simply, that those affected by compulsory purchase crave a specific allowance because of the acquisition being a forced sale.

15.1.11 On a 10 mile scheme requiring 350 acres selling at £500 p/a an addition of almost £44,000 would be required to pay 25% above land price, and a similar amount to tenants. It is an informed impression that the higher estimates of point of indifference cited above were more the product of exasperation on the part of specific badly disturbed individuals. Certainly in reality comparatively small gains such as a little more land or slightly better land seem to help respondents to their point of indifference. How much of the £44,000 would be immediately clawed back to the net social product by reduced settlement costs is difficult to estimate. If no fair price has been reached then even small items

will be pressed remorselessly, if a good amount fairly satisfactory to the client is arrived at then other elements tend to be abandoned. It is reasonable thus to allow for settlement costs to whittle the sum down. After that it is a case of paying an amount for two reasons: the utility value of leaving people satisfied, and the value (akin to Michelman's demoralisation cost) of building the next road easier because opposition will be limited to that based on reasoned views regarding the scheme itself; the opposition engendered by being below indifference level having been removed. Summing these costs there would seem to be a very strong utilitarian argument for moving toward people's point of indifference. That is, to make satisfaction the end of compensation rather than equivalence.

Fairness Test

15.1.12 Compulsory purchase and its compensation offers an excellent analogy for men acting with Rawlsian disinterested interest and giving their best generalised consideration to the matter, deciding on principles to apply to all. In the nineteenth century, people were unlikely to face compulsory purchase. Government activity was low and the power was comparatively rarely exercised. As has been discussed in chapter 10 the origins of compensation were based in the common law. When the law was consolidated in the 1845 Act the question of assessment was left to lay arbitrators or, in larger cases, juries. Until the question was handed over to an official Lands Tribunal acting within stricter

laws in 1919, there was a Rawlsian situation with a group of men deciding on how to pay a worse-off fellow affected by social processes for producing general social goods. The feelings of juries on the basis of compensating are described by two prominent but antipathetic lawyers who refer to the "mischief of excessive compensation" as follows:

> "The statutory right to receive compensation based upon the value of the land acquired, was interpreted by juries and arbitrators as requiring it to be calculated on the sympathetic hypothesis that the transaction was between an unwilling seller and a willing buyer. That interpretation gave rise to many cases in which the sums of compensation awarded seemed to predicate an almost punitive measure of damages for eviction by compulsion of law. The most important manifestation of this approach was seen in the customary practice of adding 10 per cent to the value of the land acquired as a consolation for the compulsory nature of the transaction." (Widdicombe and Moore, p18).

The quotation captures the matter excellently. Members of the public at large, invested with the responsibility arising from jury service, expressed their feeling that the position of a representative of the worst-off group in public development should be improved if possible. This accords excellently with the fairness principle.

15.1.13 The 10% is regularly quoted but research into the practice of juries reveals an even more interesting fact. The committee sitting in 1918 on the problem tended to the descriptive and offer little analysis of practice and its rationale. But they do draw attention to the fact that although the norm was 10% the amount was variable and on the lowest valued land - that in agricultural use in Scotland - it reached 100% (Cd 9229). The two great reports reforming compensation law in favour of governmental development have both arisen out of the collectivist social force of war. (Marwick; Nuffield College). The famed Uthwatt Report at the end of the second world war and that cited above at the end of the first were both concerned to ensure that land profiteers did not stand in the way of national reconstruction. That is, they were concerned with building land and development land value. In the face of the great national questions that of the proverbial little man with land at only agricultural use value was given but small consideration. It has been suggested however that the 1918 Committee were concerned at the problem of those for whom market value compensation would be insufficient, and place a greater stress on equivalent re-instatement than was the case in the eventual 1919 Act. In a sense this is a reformulation of that question of the golden mean between public and private requirements we started with. The law as it stands has arisen in times when the needs of the public were strong. It may be felt that rules

drawn up based on a wartime ideology are not those rules a society would choose in the abstract, and this is the re-direction prompted by fariness. It is notable that when the question of introducing a 'solatium' in the shape of home, and to a lesser extent farm, loss payments was discussed by the Urban Motorways Committee the division was between departmental and lay members of the committee. It was the latter who recommended "the establishment of an additional head of compensation ... in recognition of the real personal disturbance that is inflicted ..." (New Roads in Towns, para 12.19). A head, that is looking to satisfaction over and above equivalence. The concept of fairness would seem to have in it the essence of the approach of the abstracted free-thinking person. Departmental people are excluded because they are aware of their position in society and their role. It is a rough and ready application of high theory, but a justifiable one, it is nice to feel Rawls would like it.

15.2 The Tests and Tenant Provision

15.2.1 The idea of employing wider tests worked regarding the general principle of equivalence, the question is now to apply it to specific provision. Although different from the question above by lacking its all-embracing nature, tenant matters nonetheless go to the heart of compensation by throwing up questions of relevant and irrelevant distinctions and, more especially, the

lessons to be drawn from them. Put simply the problem may be formulated as follows; at present compensation is based on the value of an interest in land, a tenancy-being a comparatively limited interest - therefore receives equivalently limited compensation. Yet it is common ground that tenancies are much more difficult to obtain than owned land and justness might require that <u>more</u> attention be paid to the tenant than the owner (a relevant distinction). It is at the least an interesting hypothesis to test. Again a brief recapitulation of facts may help guide the analysis.

a. On both schemes tenants were an identifiable group who failed to achieve equivalence. On M5, of the seven distinct 'losers', all but one had tenanted land affected and that one suffered its major loss through inability to obtain alternative tenanted or grass-keep land. Similarly M40 tenants constituted two of the four non-achievers and two more who probably would not. Generally only retiring tenants were well served.

b. At the time of our investigations tenants could claim (basically) a re-organisation payment of 4-times the rent of the land taken, plus loss of crop for normally 2 years, tenant right and disturbance.

c. Under the 1973 Act a new main head of claim is added, the value of the tenancy in terms

of years' purchase on profit (probably 5), added to this are severance, disturbance and tenant right. The tenant now has the right to opt for either this basis or that described in b) above.

Legalistic Test

15.2.2 Putting the provisions in context Hamilton set the test to be employed:

"Prior to 1968 a tenant farmer might suffer considerable financial hardship on dispossession from his holding, particularly because the compensation payable would not enable him to resume his chosen occupation as tenant of another farm. The Agriculture (Miscellaneous Provisions) Act 1968 and the Land Compensation Act 1973 have done much to improve his position, though there may still be many cases where the tenant may not receive enough to enable him to set himself up again." (p 21)

The concept is reformulated later when Hamilton refers to equivalence measured by allowing the tenant to go out into the market to buy the tenancy of an equivalent holding (p 28).

This practical common-sense definition of equivalence shows the peculiar nature of tenant compensation. It is based on a rental which in the ordinary course of events becomes "discounted" and falls behind the rentals offered in the very limited open market. To

pay a tenant equivalence is then, of necessity, to pay him a figure considerably in excess of his existing rental. Yet were that not complicated enough the test simply does not apply because of the nature of land acquisitions for a road which damages but does not destroy. A tenant can serve notice for the rest of the farm to be taken, but only where it is incapable of being farmed on its own. This concept of farm loss is so important that it will form the third element of justness to be discussed in this chapter. Here the argument sticks firmly to the mainstream question of loss of part of the tenancy with the commensurate impairment of the rest.

15.2.3 The strict Legalist position on a tenant's status was well expressed by an anonymous 'Chartered Surveyor' animadverting to the British Farmer and Stockbreeder's unquestioning support of tenants.

> "Let no tenant farmer forget that (as) a tenant he has very precise rights and duties ... Many are the scrambles for the tenancy of farm land when it appears on the open market. But how many of those bidding for such land ever pause to consider how far-reaching are their liabilities? ... Tenants resist rent increases, while bidding three or four times as much for other land ..." (7/5/77, p 7)

The implication is that rental has a role to play in that, properly set, it should reflect the balance

which is the tenant's position. As was pointed out on M5 and M40 this applies to lettings but not directly to takings, because a farm is more valuable to a farmer as the rent becomes discounted compared to the profit potential. The move to replace rental by a multiplier of profit as the basis of assessment in the 1973 Act was thus a move at once toward realism and a break with the traditional basis of valuation by reference to market forces. Profit is a much more individual measure and in that sense reflects the important Legalistic rule of distinguishing relevant differences. That it is also in the interest of tenants is evinced by the claim by the NFU:

> "That the Union has clearly established loss of profit ... as a yardstick for the chief head of a tenant's compensation claim is itself a notable achievement."
>
> (23/4/77. British Farmer and Stockbreeder, p19)

The claim is then that it was political pressure and not pursuit of justice by the judiciary which obtained the concession. When in the decisive Wakerley case the Lands Tribunal spoke of recognising that the agricultural code had gradually improved the security of tenants and commensurately their compensation it was in no way praise for decisive judicial action. (Estates Gazette, 1977, p 49). A good argument for adopting political measures or tests in itself.

15.2.4 This reasoning is important because legal reasoning has done little for tenant farmers. As demonstrated in chapter 10 part of the inspiration for the 1973 Act's provision were the legal decisions in the Pettitt and Foottit cases which left the tenant with virtually no security of tenure or therefore value in his tenancy. Inevitably in Legalistic theory assessment must follow the political action otherwise it would not be balancing the realities. But it has not even done that. Barring Lord Denning's remarkable dissenting judgement in Pettitt the courts have simply not even approached their own criterion of equivalence in tenant cases. The rules in the 1973 Act were clearly in the correct direction and it is too early to assess their success. It is notable that the Lands Tribunal in the Wakerley case referred to the principle of equivalence but the allusion was limited to the set off aspect of the case (Ibid, p 52).

It may be felt that the argument herein is harsh, and unmerited in its aspersions to judicial failings. It is countered that the main agricultural commentator, Hamilton, criticises matters in no uncertain terms. It is justifiable to go further and argue that the problem is by its nature incapable of being dealt with by Legalistic theory, and indeed this is one of the reasons tenant provision was chosen for examination. Legalistic theory is circular, is about putting back as was, 'commutative justice'

in Aristotle's phrase. This demands established interests but the position of the tenant since the 1948 Act granted security has not been constant. It has been a continuous steady development of security, a development well ahead of its recognition in rental price. This was pointed out in the Second Reading Debate of the 1973 Act when the government had not agreed to the new tenant provisions and was resisting suggestions. Sir Frederick Corfield, amply skilled in valuation matters, took the Minister to task.

> "I hope that my right hon. Friend will not dismiss too easily the anomalies which are gowing up in the agricultural world ... We are up against a rather extraordinary paradox that ... what is absolutely certain is that the quantity of farms is decreasing ... We have a situation in which the farmer is displaced and has almost certainly got less chance of re-establishing himself ..."
>
> (H.C. Debs, 1972, vol 847, cols 45 and 64-5)

Sir Frederick was speaking as a politician not a legalist and the rationale he pointed out to the House for compensation reform was none other than demoralization cost. It was that security of tenure is a vital element in the development of agriculture and was for that reason incorporated into the 1948 Act for the benefit of good husbandry and not particularly "for the benefit of the individual tenant or anybody else". (Ibid, col 65).

It is for this reason that the Thin Theory employed by the legal profession must stand accused of being imperfect from the prosthetic angle, and when dealing with changing situations. Indeed the barrister commenting for Estate Gazette on tenant compensation following the Wakerley case accepted that "security of tenure has formed the basis of agricultural prosperity" but could draw no other conclusion than to turn the full circle, "and thus, indirectly, of a healthy and secure market for land"!

Utility Test

15.2.5 In this case the Utility test's preconditions have been laid out above and it is possible to be brief. A number of tenant farmers at any time are either losing their land to development, or threatened by it. Less so now than in the boom time of the sixties when extensive areas mentioned as potential New Towns or Airports, but still a considerable number. If it were the case that on losing land he would not be compensated as secure, the investment in tenants' improvements which form a solid basis of agricultural growth at 2½% per annum would be cut into. It is noteworthy in this context that the controversy over the interpretation of rent under the Agricultural Holdings legislation is a major topic of debate at present with tenants worried about rising rent levels. The vital fact is the spiral effect of high output and high rents based on high investment, the "treadmill" effect was the analogy employed by a recent British Farmer and Stockbreeder correspondent. (21/5/77, p 7)

15.2.6 There is little evidence from the period following the Pettitt case directly related to the question of demoralisation. The one major study of farm land faced by a development threat was of the Milton Keynes designated area by the University of Reading. In many ways this was a far from satisfactory study but offers some interesting insights. It is unsatisfactory partly because it is not a good control having had detailed consultancy work on how to minimise blight, and partly because the study aimed more at macro cost-benefit than specifics. There is nonetheless interest in the finding that it was mainly tenant farmers who left early having settled directly with their landlords to give them vacant possession. Only two compulsory purchase orders were required. Even with the care given to lease-back arrangements and timing of development it was found that tenant capital declined significantly (1972, pp 10-18; 1974, pp 3 and 6)

Even with the most careful planning then there was evidence of a decline in output and lack of investment. The studies do not really come to grips with the presentation of alternative costs regarding whether more or less concern would have been in the national interest. It was tenants who were the first to leave, some production being sustained by short-term leases to the remaining owners. There is thus a utilitarian argument indicating that firm moves are required in one or two apparently contradictory directions. Either

toward paying high compensation to tenants in order that they optimally farm the land, on a type of free lease- back if required. Or that they be inspired to quit their land as early as possible and sent out to find other farms. Reflection will show that Utility makes this paradox more apparent than real. If farmers must, to save demoralization, be compensated by a fairly high amount (say 5 Y P on profit as now), then there is a strong marginal Utility argument for paying an amount more where there is substantial farm loss to have them move on. The authority taking the needed land into its possession and leasing it to neighbours until required, perhaps with some provision for any profit thus made to be set off against that neighbours compensation (at his point of indifference for farming it, a guide having been given by the lease-back findings in Wakerley's case at present going to appeal). To balance against this it would be necessary to have the promise of high compensation for those who opted to stay so that production would be maximised on the land before it were taken. Sums based on profit would work well toward the re-organisation which is required when system is disturbed.

The language of former times confuses matters at this point. Compensation under a Utility test should be based on profit but designed to aid re-organisation. It should be made clear that when the latter term is employed it holds no implication of rental payment. In fact, for CPO purposes Utility would wipe out a multiplied

rental basis altogether as either irrelevant or an unmerited subsidy to retiring farmers. The Legalistic theory might fight shy of distinguishing between individuals and their comparable interests but Utility would be strict regarding it as an impermissable waste of money to fully compensate those who could be persuaded to retire. Thus the importance of widening farm loss payments to be discussed in section 3.

Fairness Test

15.2.7 The question of the tenant was chosen for testing partly because it represents the problem of a worst-off representative group. It will be remembered that it is part of Rawlsian ideology that rational far-sighted moral men will accept a procedure which makes all better off, provided that there is a better than average increment for the worst affected. A procedure which penalises the tenant, and in particular the poorer or smaller holding tenant who cannot easily readjust is almost precisely what would be rejected out-of-hand. Behind a 'veil of ignorance', where one would not know if the position to be held in life would be that of such a tenant, it is certain that a procedure productive of the results set out in chapters 13 and 14 would not be accepted. That, other things being equal, the road should take its best traffic route fits the criterion of a development bringing long-term advantage for all. Rawlsian men, being that much less maximising of immediate personal utility,

would dislike to see a scheme prevented by such short-term utility considerations. But they would want to ensure that the particular burden of the worst off was relieved so that costs were spread fairly across the affected community. The development then would become an acceptable one because although it imposes unequal burdens (restrictions on liberty) between groups, they are ones compatible with a like liberty for all because the generality of society will be better off in the longer term.

15.2.8 It is no difficult task to deduce acceptable provisions in Rawlsian terms. The main problem is only how far human beings desire to play safe. In the case of tenants the dividing line would seem to be between procedures,

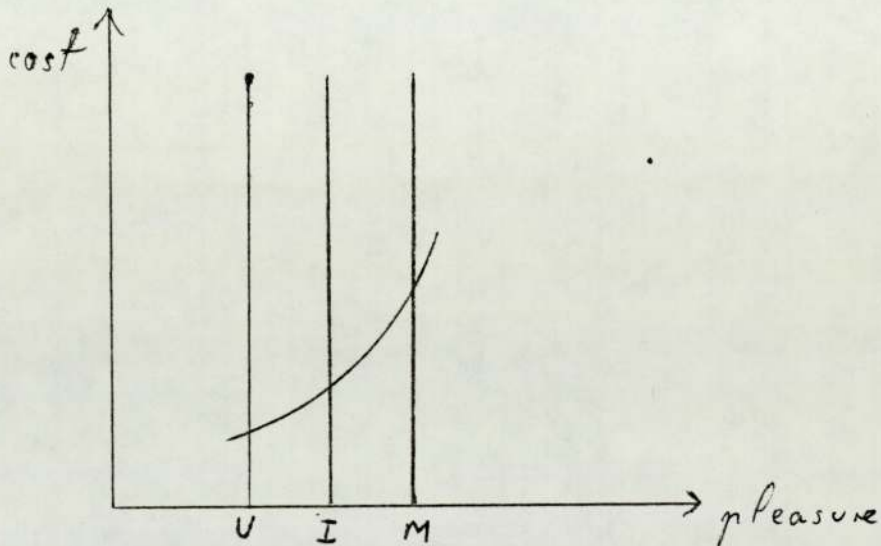
a. ensuring that the tenant obtains another farm or is put in a better position on his own, or

b. ensuring that he is given a reasonable opportunity to do so.

It is a question of degree. Exactly how far maximin should apply. The former is the ultimate non-gambling position. It is the extreme Rawlsian position of the type of rule to be set down in case one's opponent assigned positions in society. It would be rejected under Utility as commiting the society to potentially expensive outlay to achieve in the end only minimal increments of pleasure. There is merit in pausing a moment and pointing out the obvious fact that a Utility solution will generally point to slightly below the

point where actual indifference occurs if the costs of the final increments are rising disproportionately with pleasure gains. The graph below illustrates this.

Graph 15.1 : Utility (U), Indifference (I), and Maximin (M) in a Situation of Rising Incremental Pleasure Cost



15.2.9 The maximin solution shown is the failsafe case set out at a) above. It will always be at greater cost than indifference as it must ensure that the worst off is improved. The alternative interpretation b) is, for want of a better phrase, a 'reformist' interpretation of Rawls. It is maximin adapted to fit the reality of public administration. In practice the former of the rules would entail the acquisition of another farm or extra land (or conversion of tenanted land into owned land perhaps) with settlement coming afterwards or via some loan or other supportive mechanism. To suit the administrative imperatives of having rules to work to and a fixed settlement to aim at, the second

interpretation is preferable. Not only does the approach restrict settlement costs but it appears from the fieldwork to be preferable to respondents to have matters settled. The most dramatic break with present procedure would be to shift the date of assessment from entry to settlement. Otherwise valuation should be somewhat eased, for it is arguably a simpler matter to tell what sum (in the post-scheme world) would ensure tenant A could obtain land (or intensify, invest or squander at his choice) so as to make him better off than it is to search for strict equivalence. Once again the question of the balance between farm loss and farm re-adjustment has raised itself as a central facet of justness and the analysis appropriately concentrates on this as the major application of the tests.

15.3 Farm Loss Payments

Legalistic Test

15.3.1 The newly introduced concept of the farm loss payment is one of the most stimulating and conceptually interesting developments in compensation provision. It is a move away from the rationale of land valuation and equivalence toward provision based more on the type of political reasoning set out in this attempt at breaking down disciplinary barriers. Without going all the way with Diesing in his isolation of potentially competitive forms of economic, legal and political rationality, it is feasible to take note of his brilliant simple distinction:

> "Legal organisation produces rules which are clear, detailed, intelligible, consistent: these rules make possible the exact classification of actions and the specification of rights and duties."

Whereas:

> "People living within a socially organised society learn to be sensitive to feelings, to meanings hidden beneath the surface of overt action, to frustration levels ..." (p 169)

The supreme rationality he argues is that of the political good, "the ability of a whole society or personality to effectively solve the problems confronting it". Against this are the limited, petty rationalities of specific social approaches. His comments have relevance for our tests:

> "Excessive reliance on calculation in the pursuit of utility alienates people from each other ... Excessive reliance on judicial reasoning legalizes a structure and makes it insensitive to nonlegal problems." (p 234)

15.3.2 The introduction of the farm loss payment was a move away from a mere legal rationale of equivalence, the problem is the ill-definition of exactly what is being employed in its place. Put simply the question is whether farm loss payments are Utility-based (aimed at maximising the use of agricultural resources by releasing badly severed land for redistribution) or Fairness-based (looking to meeting the especial loss of the worst off who can appreciate the longer-term benefit of moving).

The relevant sections 34-6 of the 1973 Act pertain only to owner-occupiers or leasehold tenants who must "in consequence of the compulsory acquisition" be displaced from the whole of a farm unit. Within 3 years from displacement they must commence farming a new holding, which may be only on an annual tenancy. Not only are annual tenants excluded from claiming, but so is anyone who serves a blight notice. The aim of the provision is exemplified by sub-section 5 which refers to the tenant's re-organisation payment as the appropriate remedy for him. The annotated version of the Act (Brown, 1973) picks this up:

> "Such a payment is intended to compensate for any temporary loss of yield on taking up a new farm. It does not affect the compensation for the acquisition."

15.3.3 Legalistic theory is in a little trouble here. To fit the overall idea of equivalence the new payment needs must be tied to a disturbance element previously uncompensated, otherwise there would have to be a corresponding reduction in some other element. That is, it is to be viewed as a qualitatively different thing from the home loss payment introduced at the same time which was, in the DoE's words "in recognition of the upset and distress involved in having to move home". (1972, note). Whilst a farmer might also claim a home loss payment (DoE 1974, no. 4, para 20), it was clear from the White Paper that the two matters

had arisen separately although so closely related in name. This points to the crux of the argument put forward here. The concept of a farm loss payment, like that of a home loss solatium, offers the possibility of breaking new ground and moving compensation toward a political rather than merely legal rationale in Diesing's sense. That is, moving to at once a Fairer foundation and one offering greater social Utility in our terms. Due to the need to concur with Legalistic theory and subsume the payment under 'disturbance' the opportunity has not been seized. This merits a little exposition. The original 1969 report of Justice contained no comment on farm loss but the 1972 Supplemental Report drew attention to the arguments of the Chartered Land Societies Committee that the discretionary powers made available in the 1963 Agriculture (Miscellaneous Provisions) Act had also been made mandatory in the Clywedog Reservoir Joint Authority Act of the same year. The generalised provision was to pay "such sums as will be equal to the loss or expense which such person sustains or is put to by reason of his having to quit the land ..." (para 113). Because of the compartmentalisation of public administration, and the tradition of respecting the representations of interests, the 1972 White Paper (paras 54-6) dealt with farm loss strictly as a disturbance item as it had been in the Justice report. It should be remembered that home loss payments arose differently - out of the recommendations of the Urban

Motorways Committee. (Cmnd 5124, p 36). Indeed in the White Paper no cross-connection was made at all. The reference was to "owner occupiers' temporary loss of yield" (Ibid, para 55). The neater retitling as 'Farm Loss' came later.

15.3.4 Although the title changed to accord with the ideas of the day, the actual payment and provisions remained the same. The amount of one year's net farm income proposed in the White Paper and incorporated in the Act, is a long way from the 1963 Act idea of a sum to cover all income losses from moving. It is an arbitrary contribution toward the financial and psychological loss of losing a farm. Note that there is three years allowed to find a farm yet only one year's profit offered. Similarly the White Paper reads strangely. The difficulties causing loss when moving were emphasised:

> "Because of the long timescale of agricultural production, its peculiar dependence on land and the complex effects of climatic and other factors on yield."

Yet only one year's income was to be allowed. In the Second Reading debate Sir Frederick Corfield was at pains to welcome the idea but point out its failings in terms of equivalence (27/11/72, colls 63-5). The N.F.U. had briefed M.P.'s on the point that every development scheme cut down the land available elsewhere for those forced to move, and it was frequently alluded to in the debate (Ibid, cols 92, 90 and 85). The other string to the government's bow, that of allowing people

to have all their land taken ('enlarge the notice of entry') where an uneconomic unit would remain also received approbation, (Ibid, cols 92 and 103). But approaching the matter with the logic of legalism the two were not put together, where the logic of politics would as described below.

Utility Tests

15.3.5 The Utility dimension of farm loss, or better potential dimension, lies in the linkage between the giving up of affected units and minimisation thereby of severance. That the two matters could be set out next to each other in the White Paper yet not linked by those developing the provisions of the 1973 Act is some measure of the powerful logic of compartmentalised administration. We have isolated severance in other chapters as the area of concern where the differing strands of road, land and compensation administration must come together. Here the lack of integration is again shown up. Put simply, there has been major concern in farm policy since the 1947 Agriculture Act ushered in the modern age of state planning to improve holding structure. Grant schemes directed at boundary re-adjustment and especially encouraging outgoing farmers whose holdings could be merged have been supported by the taxpayer. They still are via the 'Guidance' elements in common market FEOGA policies. The prime counterveiling tendency working against consolidation of holdings has been fragmentation by

modern land-use structures, of which roads are the example *par excellence*. A Utility approach would have seized upon the opportunity that roads at once present and necessitate, to aid structural effectiveness.

15.3.6 At the moment, it was found in our fieldwork, one of the few places where the law gives the individual a strong whip-hand over the road promoter is in the case of certain forms of severance. Because of the concern with individual farm unit value underlying compensation, two farmers who knew they could exchange matching severed lands could (and have) nonetheless claimed compensation first on the basis of an impaired holding. Similarly, the retiring farmer does best to retain his land and claim as if continuing. People, it seems, are perfectly capable (especially with professional advice), of recognising their interest when it is put before them. A Utility test would overturn equivalence in favour of saying where there are national advantages in paying above market value so as to prevent there being a low valued severed holding in perpetuity, then do so. If a synthesis of theory and evidence may be attempted a working rule might be to retain the present idea of expanding a notice into taking the whole of a unit - without the 'incapable of being separately farmed clause - and to pay;

a. to retiring farmers an annuity as was popular under the now superseded 'outgoers' scheme

b. to those desiring to restart elsewhere say provision allowing them to bid for and acquire at a fair market price a holding no more than 10% more valuable than their own prior to acquisition. Any supplementary value would be borne by the farmer himself. Added to this would be the costs of acquiring new land and a year's profit. That is equivalence plus an attraction to leave. The original holding could be farmed on lease-back until a new holding was found (with obviously a time limit on finding it).

15.3.7 The abolition of the 'incapable of being separately farmed as a viable agricultural unit' clause is integral to the Utility concept. The idea is to achieve positive benefits, not to recompense those especially injured. At present the rule appears to serve little function. The payment offered, one year's NFI, is unlikely to attract a man with a severed farm capable of continuing at a lower plane. (Assuming naturally that compensation would be paid to properly cover all his losses.) Thus the nation bears the full cost of the continued farming of an impaired holding. Even the wording itself regarding the capability of being farmed is problematic. According to MAFF standard definitions a great many of the farms in the country are unviable insofar as they fall below the threshold

regarding how many standard man-days they require. Are all these farms to be allowed to claim if they so desire? And may they move onto other 'non-viable' holdings, which may be all that can be afforded? If the castigation seems severe, it is simply that the possibility of a useful innovation has been missed. The 1973 Act represents a major step forward in politicising compensation at the level of the small-man and turning the focus away from the property speculator. The M40 and M5 studies strongly confirm the need for many of its provisions, statutory 90% payment, profit not rental for tenants and so on. Yet here is an area where there would be benefit for individual and nation alike, not perceived due to discrete administrative responsibilities and which merits attention calling to it, and a little more practical examination.

15.3.8 To take a standard farm example and subject it to Utility testing might shed some light on the practical implications.

Turning to cases which were severely injured and therefore might have considered a farm loss payment, a good example is found in farm M5/28. A former dairy holding, every attempt was made to adapt the system to land loss of 9% and 25% severance, some 1/3 of it landlocked. It succeeded in the sense of establishing

a new, fairly profitable beef enterprise, but failed in falling from around the 700 s.m.d. level to just over 300. In MAFF terms this is an "uncommercial" unit only a little above the level (275 s.m.d.) where it would become ineligable for grant aid. Compensation for injury, severance, tenant loss and a generalised disturbance (re-organisation?) lump sum payment amounted to almost £11,000. The agent accepted that there would be some slight loss of value on the injured lands but generally felt the D.V. had utilised the elements available to generously recognise a spoilt farm unit. Including land price the nation paid out £14,000 to a farm whose NFI has dropped from 91% of the national average for the four years prior to the road, to only 48% for the four years since for which accounts were ready. There was no evidence of any improvement to come. This is a 52% difference arising from only a 9% land loss. Even leaving aside the idea that beef trading is a non-productive activity in national terms, the land is clearly being underused. Assuming Farmer 28 would accept the possibility of leaving then his payment can be assessed as below. The land price paid figure is retained because it erred on the high side anyway.

Value of 42 acres owned land (@ £375 p/a)	15,750
Value of 44 acres tenancy (10 times profit)	2,640
10% solatium on the above	1,839
One year's NFI (average of previous 3)	1,713
Legal/Agent expenses, say	500
SAY	£22,500

The authority could then take the land required and dispose of the rest. The tenancy is a problem but let us assume some 'key-money' provision.

34 acres @ £375 p/a	12,750
43 acres tenancy either re-let or vacant possession bought back by landlord @ £50 p/a	2,150
Subtracted from above	£7,600

15.3.9 By pursuing a Utility-based test then the nation would expend just over ½ what was eventually paid in compensation, probably produce a more satisfied individual and put land back into fuller production. Some £7,300 had been lost off its output in only four years and will presumably continue until - at the least - the death of the present farmer. With gains of this magnitude, (added to which are considerable settlement cost savings) i.e. £15,000 at least, the utility test would tolerate an almost 100% solatium!

Fairness Test

15.3.10 If the utility test points so convincingly to an extension of the farm loss payment, what of our other political test? Again it indicates an extension but given the far-sighted nature of men under the Rawlsian world-view a slightly different policy is put forward than in the harsh self-maximising Utility model. Because people could see that they would be better off in the long term then only the promise of an equivalent farm with an allowance for disturbance and expenses

would be established as the rule. What would be changed immediately however would be the ludicrous rule preventing people claiming farm loss payments if they choose to move <u>before</u> the road is actually built. That is, if they serve a blight notice. (Section 34, subsection 6). This amounts to a penalty on the far-sighted and <u>produces</u> national blight cost whether the holding is underfarmed for some time or (as our evidence indicates) the man facing loss attempts to farm it up until the last moment ensuring crop loss and disturbance claims.

15.3.11 At one time disturbance itself was unclaimable under blight notice procedures. Whilst attempting to base itself on a Legalistic argument, the point was made by the 1968 Chartered Land Societies' Committee. Their exposition concluded:

> "It has been suggested that this exclusion can be justified by the consideration that it is the owner who himself sets the procedure for compulsory purchase in motion. This however is a superficial view. The owner has only taken this action because his hand has been forced by external events. The present exclusion places the owner-occupier of a business in the unfortunate dilemma of either invoking the planning blight procedure and accepting compensation which may fall very far substantially short of his true loss or continuing in occupation and nursing a dwindling business ..." (pp 33-4)

The point is quoted at length and deliberately chosen to round off this analysis because it typifies at once

the weakness of Legalistic theory and the poverty of considering aspects of an overall system or procedure with the logic of but one of its component facets. The important point is how close it comes to saying what Fairness says and then falls short because the comparability leap to 'like cases' so essential to Legalistic theory cannot be made. It could accommodate neither tenants, nor could it (given our finding of a lack of blight) accommodate most agricultural owner-occupiers. Because only an owner has a claim for this type of loss anyway, the extension applies only to owners, and not tenants to whom similar political criteria apply. Again, because the focus of Legalistic thinking is the circumstances of the individual then where there is no blight in the strict sense the theory fails whereas Fairness demands a wider and longer term view.

15.3.12 The meeting points of politics and law are many and growing. Complaints are, for one instance, frequently voiced regarding over-legislation in the compensation field (J.P.E.L. 1975). If lawyers feel their hands tied by attempts at over detailed exposition in Acts, then our analysis indicates that politics too could gain from avoiding too much reliance on legally-derived principles. The division of function which underlies our social system necessitates reflection in the

administration of that system. Administrators must administer and lawyers must uphold the law. Thus the merit of interdisciplinary study when it focusses on the overlaps and areas of conflict. Sometimes, as in this chapter, it can highlight possibilities for a new approach from a new standpoint, wherein no blame attaches regarding the functioning of the extant system which is under review as a system. Elsewhere (in the case studies of sections II and III), then the system itself is examined in its own terms. Unfortunately it must be reported that there are failings on a number of counts. Just as in section II there were found to be responsibility voids, but also failings where responsibility was clear. So here too although there are problems arising from the laws themselves, significant improvements would arise first from a will to apply them effectively. In the end a quick slightly 'imperfect' settlement might be better than a long drawn out 'perfect' one. But that is perhaps to introduce political logic into the legal field.

APPENDIX I

WRITTEN SUBMISSION FOR 'THE LEITCH COMMITTEE'

ON TRUNK ROAD ASSESSMENT

BY : Dr D J van Rest, PhD., A Hearne, B.A. and M Bell, M.A.

OF : The Wolfson Group (The University of Aston in Birmingham, Interdisciplinary Higher Degrees Unit) investigating :

THE IMPACT OF MAJOR ROAD SCHEMES ON AGRICULTURE

1. Wolfson Group : Basis and Experience

1.1 The study group was founded upon a grant from the Wolfson Foundation and commenced work in 1974. It has always aimed at producing results which were at once practical and academically creditable. To this end considerable efforts have been made to meet and discuss the area with the different professional specialists working in it including members of the Department of Environment/Transport (DTp), its Road Construction Units (RCU's), the Ministry of Agriculture (MAFF), District Valuation Offices (DV's), and leading consultants.

Case material has been developed from interviews with affected farmers and their advisers and attendance and participation in public inquiries.

The National Farmers Union (NFU) have also given help and generally ensured the co-operation of their members, although our financial independence has avoided any possibly constraining reliance on any of these bodies.

1.2 This submission is intended to provide an overview for the Committee's benefit, of the principal issues relating to agriculture affecting their brief. Insofar as little or no work had been done on many aspects of the problems shown up for agriculture by the planning and construction of major roads, the ranking of these problems has been a major facet of our work. Such assumptions as underlie what follows are based on this empirical work. Two recently prepared papers are thus appended for their value in placing the arguments here presented to you in a wider context.

1.3 The first of these was presented to a recent colloquium organised by the Roads Board of the Institute of Civil Engineers, the second has been accepted for early publication in The International Journal of Environmental Sciences. We will naturally be most happy to answer such points as you may wish to put to us.

2. Agriculture's place in Trunk Road Assessment

2.1 Two essential points underlie the burden of this section :

a. In 'The Containment of Urban England' Professor Hall has given us some indication of the confused linking of agriculture and amenity in general Government land-use policy. This has occurred in the sphere of roads too. It is an error. HIGHWAY DEVELOPMENT UPON AGRICULTURAL LAND IS AN ECONOMIC IMPACT, THE PRESENT POLICY OF CATEGORISING IT WITH THE RESIDUAL/INCALCULABLE 'ENVIRONMENTAL' EFFECTS IS A SEVERE CRITICISM OF THE ANALYSIS MADE. AS IT IS NOT INCLUDED IN CoBA THE IMPACT ON FARMING IS NOT GIVEN ANY WEIGHT IN ECONOMIC ASSESSMENTS. NOR ARE THE IMPACTS CONSIDERED IN THE DETAILS NECESSARY TO ALLOW THEM TO BE GIVEN OTHER THAN SUPERFICIAL CONSIDERATIONS.

b. That the attention given to land classification along the line of the route fundamentally mistakes the nature of trunk road disturbance and costs.

ROADS AFFECT THE TOTALITY OF THE HOLDINGS THROUGH WHICH THEY PASS. THIS IS THE APPROPRIATE LEVEL FOR THE STUDY.

2.2 The loss of land to road development

2.2.1 The main focus of opposition to motorway development on agricultural grounds is around the contention that "precious, irreplacable land is being wasted" and that we can ill-afford this at a time when it is likely that food imports will become both more expensive and harder to obtain.

2.2.2 The facts of the situation are fairly simple : in England and Wales about 40,000 acres (16,000 hectares) of agricultural land are 'lost'

to urban development each year. This may or may not be serious : academics differ in interpretation, but at present the weight of opinion is with the optimistic viewpoint.

Our calculations, based on assessment of a number of Compulsory Purchase Orders, show that land take for dual 3 roads will not usually exceed 40 acres per mile and will average 30-35 acres per mile. On the assumption that about 100 miles of high standard trunk road are built each year it seems safe to conclude that about 3,500 acres of agricultural land is lost to such development. This constitutes only 8.75% of total annual agricultural land losses.

2.2.3 There is little doubt that these figures indicate that land loss cannot be a decisive factor in deciding upon the size of a future motorway network. Neither, at the level of route selection, should comparative land-take figures be considered a good criteria upon which to judge agricultural impact. The most important consideration must be the distribution of the land-take; any assessment of agricultural impact must focus upon the effect of the proposal upon individual farm units. Aggregation of individual farm impacts will indicate the level of total agricultural impact. Loss of land from a farm holding affects the economic management of the whole farm : impact should not be measured in terms of just those acres lost.

2.2.4 It is worthy of note in passing that apparently the best figure available on land take per mile of new motorway to the Department of Transport is 20 acres (House of Commons December 1976) and to the Ministry of Agriculture "at least 100 acres" (ADAS bulletin Berkshire Feb. 1975). This lack of accurate information must be a matter of concern, and illustrates the extent to which it has been neglected.

2.3 Land Classifications and the "Jefferson Report"

2.3.1 The present RCU method of assessment focusses upon extent and quality of land to be taken. Quality assessment is based upon the Ministry of Agriculture (MAFF) series of Land Classification Maps, which divide all agricultural land in England and Wales into 5 grades.

2.3.2 There are a number of difficulties with the use of these maps :

a) 48.9% of all agricultural land is classified into Grade 3, whilst only 2.3% is Grade 1.

b) The MAFF admit that the survey is not accurate for parcels of land of less than 200 acres.

c) The categorization reflects only land potential, and bears no relation to the actual farming activities being carried out at any point in time.

d) No attempt has been made to attach any economic weightings to the five grades. Thus there is no way of knowing how much better Grade 1 land is than, for example, Grade 3.

e) It is very difficult, from the maps, to measure the extent of land take in the different grades for individual development proposals.

2.3.4 "The maps are of particular value for strategic planning purposes, but they are not suitable for use in evaluating individual sites."

DoE Circular 75/76
"Development Involving Agricultural Land", Annex A, Para. 7.

2.3.5 The Jefferson technique of agricultural assessment has as its starting point the MAFF land classification maps. The approach described is to attach productivity indices to each grade of land :

Land Grade	Productivity Index
1	20
2	18
3	10
4	3
5	1

The agricultural assessment is carried out on the basis of multiplying land-take by the relevant index and aggregating.

2.3.6 Major criticisms can be levelled at this approach. Foremost amongst these are :

a) The Land Classification maps provide very unsound base data. From the difficulties pointed out in 3.2 only (d) has been tackled : the other problems remain.

b) No attempt is made to assess whole farm impact on the basis of actual farm system being employed.

c) There is no way of comparing the aggregated indices one with another. Decision-makers have no way of comparing either, alternate routes on agricultural grounds, or agricultural impact with other considerations.

The Jefferson approach is only a slight improvement upon the use of the Land Classification maps alone.

3. Towards a proper assessment of agricultural costs

3.1 It is important that the present system's concept of decision-making on agriculture as a matter of separate, ad hoc considerations of land-take, classification, routing across the holding, accommodation/access and finally compensation be replaced by a comprehensive approach which can give integrated and useful information at the appropriate time.

3.2 Our general finding is that agricultural planning blight is not made worse by detailed knowledge of routing. Discussions with DTp staff point to the 'public consultation' stage as that most appropriate for the carrying out of such interviews. The monetary costs of each route, (or the route in 'limited consultation' cases) could then be assessed with a degree of accuracy and the necessary bank of information collected ready for further work to minimise the eventual effects of the chosen route.

3.3 At present one of the most controversial and in our evidence haphazard aspects of rural road-building is the provision of accesses, (bridges, underpasses, cattle/sheep creeps and wayleaves). In the matters of provision or not, what level/size of provision and location alike we have found this aspect of decision-making approached with no lack of any consistency, apart from its being undertaken too late. For the Committee's information our calculations indicate that the cost of a wrong decision on such accesses alone would pay for the complete agricultural appraisal several times over.

4 The Role of Compensation

4.1 In practical terms matters such as farm accesses have, in a considerable number of cases (but not in all), been relegated two stages down the decision-making chain. Costs of field re-organisation, farm severance (travel, time, wear and tear), losses in the period of changeover to a new pattern of farming, drainage, re-instatement and so forth ARE REAL COSTS TO THE NATION. If they are not included in the road appraisal then this must be a severe criticism of practice.

However, not only have such matters been avoided, there has been a tendency by a number of authorities to abdicate any administrative responsibility for dealing with them. This has taken the form of 'leaving it for compensation'.

4.2 The arguments against this practice are numerous and detailed analysis would be out of place here. In basic terms they run as follows :

a) Compensation is paid to the individual; the losses in question ARE LOSSES TO THE NATION.

b) Compensation is assessed on the loss of market value of the holding. The multiplicity of factors influencing the state of the market for a given farm on a given day ensure that it BEARS NO NECESSARY RELATION TO THE LOSS OF AGRICULTURAL PRODUCTION INVOLVED.

c) The road is assessed, quite rightly, in terms of a design period. To deal with the holding as per the day of entry onto the land is to ignore both fairness and the well-established trends in farm improvement and productivity increase. FARMS TOO MUST BE CONSIDERED WITH THE FUTURE IN MIND.

d) The linkage between national policy aids to food production and the privately-owned farm holding has become one of the most successfully refined elements of the mixed economy. A complex structure of state investment in grant aid, drainage, advisory services and support policies is based on this, The inability of an engineer (we emphasise, not all) to accommodate such considerations SHOULD NOT BE AN EXCUSE FOR RELYING ON COMPENSATION. It is hard to avoid the conclusion that this has been 'an escape route'.

e) It is assumed that a farmer will be able to submit details of the losses and hardships that he will or has suffered and these will then be a matter for valuation. The nature of farming is such that many of the effects of moving to new systems of production or new crops as may be required may never be identified. They may be masked by price movements and other considerations. The farmer may not be aware of them. Some may not appear until 2-3 years later when the claim may have been irrevocably settled or there is considerable pressure to do so. The scale fees and circumstances in which these are allowable (not until CPO stage) are strong deterents to the employment of professional help in replanning the farm and adjusting to the new circumstances and assessing the full financial impact.

The farmers complaints usually fail to bring out the economic damage to their businesses but stress the elements that caused them personal grief.

The result is that a proper assessment simply is not made.

5. Conclusion on Agricultural Considerations

Under the Highways Act, 1958, section 7(2) and 11(6) there is placed on the Secretary of State a statutory requirement to heed the requirements of agriculture.

Unfortunately we must submit to the Committee that this obligation has not been adequately fulfilled in trunk road assessment to date.

6. Resource Assessment

6.1 Agricultural land and agricultural production are real natural resources. If, as we have represented, they should be considered in economic assessments then it is necessary that they should be properly considered.

6.2 Currently time-savings by vehicle occupants and their other facet delay costs feature so largely in economic assessments that other aspects are swamped. Yet a time-saving is an intangible quantity like an opportunity that may or may not be used. Time-savings are dimensionally dissimilar to "real" assets such as land costs. Their inclusion on the same basis in appraisals must produce distortions. A review of the practical application of appraisal methods is included as appendix 3 to explain this more fully, and summarise the considerable attention that has already been given to this. Briefly it illustrates that timesavings are aggregates of a number of quantities of different sizes and different resource values. Small time savings and savings to private motorists cannot be automatically equated with benefits to the nation. Yet to date little attempt to make the distinction has been incorporated in trunk road appraisal methods.

6.3 Hence if proper appraisals are to be made either time-savings should be factored down to a level equivalent to their real resource values or real resources should be correspondingly factured up.

Failure to do this is again failure to give due consideration to the requirements of agriculture.

7. Summary of Recommendations

1. The onus should be on the promoters of a road scheme to make a proper economic assessment of the impact of a proposed new road scheme on agriculture, and the nature and extent of the modifications to farming patterns that will be required.

2. This assessment should be made by aggregating the effects on the individual farm units affected.

3. Consideration of the effects of secondary aspects of the scheme such as junction positioning and layout and service areas should be included.

4. The effects on agriculture should be given full weight as real resource losses against less tangible losses such as delays to vehicle occupants.

APPENDIX 2

SELECTED CASE STUDIES

The case studies included here are intended to give the reader some idea of the type and depth of analysis undertaken. They cannot be termed 'representative' insofar as each case was different, but certain common or continuing features stand out:

a. The development of the method and resultant shortening of many studies, particularly following the development of the 13-point analytic checklist described in the text.

b. The robustness of the methodology, especially its ease of application when all sources are available but adaptability when some are missing or imperfect.

c. That like valuation itself the method cannot claim to be a 'perfect science'. Judgement was and will always be needed and it was felt only right to include some cases where difficult judgements were required as well as those easily categorised.

Finally it should be pointed out that it has been decided to bind in the original working studies. The only amendments made are the wiping out of names and rephrasings of the views of valuers at their request. Thus, although the studies do not then represent the 'final word' in the cases (some unsettled now are, on others we have further information), it can fairly be said that this "warts and all" approach avoid the human tendency to bowdlerise, dissemble or smooth-off comers which would be tempting in a re-writing of the cases.

A brief view of the cases included may help:

Case M40/3

A saddening case, this begins the examples by showing how inadequate compensation was to a severely injured farm. It illustrates how the method, even in its early days, could focus on overall losses where agent information was not obtained until sometime later. In fact it closely supported the conclusions of this initial study, which is nonetheless left basically as drafted to give an example of the solid basis for speculation the method presents.

Case M40/5

One of the first cases written up it is included to show a) the depth of detail which was occasionally necessary; b) the difference in approach to compensation between a trust (collecting purely investment value) and a working farmer; c) one, unfortunately, of many cases where initially avoidable problems lead to eventually drawn-out compensation negotiation; and d) aspects of the settlement which do not appear to conform to the strict letter of practice. It was the

first case to throw up some of these eventually important aspects. There are few figures given in the study as, at first compensation cases were written as a second part to Hearne's economic assessment. Upon the request of readers this was altered to make the compensation case studies stand on their own.

Case M5/15

By the time of the M5 study the 13-point method of assessment had been developed, this makes the cases more readable, organised and permits ready cross-referencing. Case M5/15 shows this is an example of the M5 D.V.'s acceptance of generous disturbance claims and in particular details the especial difficulties for tenants claiming under the 1968 Act. It also shows the robustness of the gross margin method, even where precise data is missing.

Case M5/19

An example of how comparatively easy to assess where some of the smaller M5 farms once the methodology was well-established. Nonetheless a sad case, where compensation amount would have been correct had slow procedures not spoilt the chance of equivalence. It also raises the question (as many farms did) of whether compensation really can apply itself to the circumstances of individual farms.

Case M5/28

One of the last cases written up it shows the assessment method working efficiently and precisely. It is arguably the most important single case in that it shows that even with goodwill from the District Valuer stretching the conventional heads of compensation, and a competent system change, the farm's losses could not be met under extant rules. It is also the case used (15.3.8) for utilitarian calculations.

COMPENSATION CASE STUDY M5/28

1. Farm

This was perhaps the most complicated holding encountered on the entire section, both in terms of system and particularly in terms of land holdings. Liberty will be taken to simplify certain of the deals where they are irrelevant to the assessment.

Fundamentally, prior to M5 it was a dairy holding with followers and has gradually through severance effects been forced into mainly beef trading. The June Returns are attached and as can be seen there are also pig, poultry and sheep enterprises. Although the returns do not show it, the lambs have been usually sold off by June, the last of these is a substantial enterprise but is included with the others because none have been significantly affected.

Before M5 the holding comprised a 42 acre block of owned family land which was the heart of the holding, 44 acres in a tenancy from year to year, and another 44 acres of grass keep. It thus functioned as a 130 acre unit.

Unfortunately the road came through primarily owned land and a diagram is attached (from which grass keep land is omitted as it varied year upon year).

2. Information

Response from all concerned was excellent and it was only due to this that it is possible to piece together so complex a case. The Farmer was explicit and to the point. June Returns accurately corresponded with his replies and accounts were admirably detailed.

The agent was kind enough to take time to help overcome the final problems of assessment.

3. Farmer

Farmer 28 was upset at the loss of a farm which had been in the family for generations. Although he had managed to get his income back up to a healthy level due to successful cattle trading it was, he felt, no replacement for a soundly based family enterprise and demanded excessive capital investment and risk.

In particular he cited as items leading to discontent:

a. the length of time to settle

b. payment as at date of entry rather than settlement when the authority were responsible for dragging their feet

c. there was no attempt to assess or compensate for system loss

d. he had not been allowed the cost of a lorry purchased to enable transport round to severed land.

4. Agent

Farm 28's agent agreed with many of his colleagues that there had been a considerable amount of work to be done, particularly on accommodation, because the authorities had not formulated proper plans. This work was not properly paid and scale fees were inadequate. He had been instructed in 1967 and closed the file in November 1976. A scale fee of only £226 had been received but it was not thought proper to attempt to charge the Farmer.

In the end, fair accommodation works had been carried out but farm drainage and water supplies to fields had not been considered at first.

Compensation to the farm itself had been fairly generous, given the law as it stood, but only after taking a good deal of time and "horse-trading".

5. Claim

Was finally settled in 1974 (5 years after notice to treat). An interim payment of £5000 was taken some 6 months earlier.

The final figure was rounded off at £14,000 and comprised:

Item		Amount
Land lost @ £375 per acre	=	£2970
Differences between sale price and £375 on severed land	=	£2372
Legal and Agent costs	=	£159
Severance on 20 acres (£200 per acre)	=	£4000
Injurious Affection on 7 acres adjoining road	=	£700
Tenant loss on landlocked area (5YP)	=	£150
Stone for access lane to severed land	=	£700
Disturbance to cultivation at beginning of construction	=	£250
General disturbance losses (including travel costs, tainted milk, additional rental, extra inputs on own land, loss of milk yield - amounts no specified	=	£2700
Total (rounded)		£14000

6. Third Party

The aspects not accepted by the D.V. as legitimate claims were a major problem. Farm 28's agent had not found Farr's as amenable as some had. They simply passed claims on to their loss adjustors who rejected, disputed, or merely vaccillated over them. After an £80 claim for field damage by vehicles was rejected after considerable time it was realised that claims were not worth pursuing and recourse to the courts was a non-starter.

7. Land

See s.5 above. At £375 per acre for damp land graded mainly 4 by MAFF this would have been a good price at the time (c/f MAFF figures). The length of time to settle destroyed any such satisfaction.

8. Severance

A major problem this. Altogether 32½ acres were severed, of which 7½ owned and 5 tenanted had to be given up due to landlocking. Only 3 acres were similarly available on the Farmstead side from other holdings.

The 20 acres now left as severed land are all owned and a 3½ mile round trip is involved to reach them.

In total we can isolate the following injurious affection elements:

	£
20 severed acres	4000
7 injured acres	700
The greater part of the lump payment, say	2000
Total	6700

The agent felt that the D.V. had recognised the farm was spoilt as a unit and had done his best to be generous in the circumstances and in the law.

9. Tenant

One area where the D.V. was unable to do much was with regard to the impact on the tenancy. Had this land been owned then possibly provision could have been made for system impact by generous I.A. payments, but within the tenancy little could be done.

Certainly we can say that as 5 years purchase on profit for 5 acres the £150 is a very low figure and £6 represents only about half Farm 28's Net Farm Income p.a. This is discussed in S/11 below.

10. Disturbance

Allowing for accommodation works carried out it was expected that this was satisfactorily covered within the "lump" figure. The problem had been time awaiting responses from the D.V. and through him DoE and contractors.

11. Assessment

Because of the nature of impact on this farm, the quality of information and the lumped nature of the makeweight payment it is best if we carry out income tests.

11.1 Overall NFI

Table M5/28/1 below shows the unit's performance. By looking at this table along with the June Returns it can be seen that Farm 28 continued with its milk herd at an ever-decreasing level before giving up entirely and expanding the beef trading side into a full-time enterprise.

Table M5/28/1 : Financial Performance

	Milk Output	Cattle Output	Total NFI	National Average NFI	
1965/6	3741	1050	1270	1805	
1966/7	4108	807	1707	1594	
1967/8	4998	956	1797	2167	
1968/9	4829	427	1384	1913	
1969/70	5767	1453	1957	1876	Land taken for M5
1970/1	5223	1534	1322	2441	
1971/2	5580	1160	1350	4292	
1972/3	5205	2851	2416	5582	
1973/4	2970	2366	3028	4673	
1974/5	20	3404	4893	3786	
1975/6	0	7345	3168	-	

It is equally clear that the Farmer's comment about system disruption setting back his income level for a few years is amply born out. For the four years prior to the road, the Farmer's average NFI (£1711) was 91% of the national average (£1886).

Possession was taken in late February 1970 and for the four accounting years from then, we see that NFI (£2029) is only 48% of the national average (£4247). The 52% difference amounts to £1826 per annum, a loss of around £7300 over the four years. This is close, but a little above, injurious affection payments in total.

12. Adaptation

Farmer 28's adaptation has been as good as could be expected from a severely injured farm, and clearly the owned portion of the farm was severely injured. Gradually moving from dairying into a beef enterprise better suited to a severed farm depending for over 40% of its acreage on year by year grass keep would seem a very rational move. Although the loss of Farmer 28's production is a national loss, individually he appears to have made a success of it but - as he emphasised - it is a very risky business for the future.

13. Conclusion

The conclusion here must be that given Farm 28's successful adaptation then overall compensation may have about met its loss. That is, if we admit some element of overpayment on the land price and accept then grievous dissatisfaction with date of assessment.

Clearly there will be some loss of value on the land left to the farm scattered as it is and adjoining a busy motorway. Even taking all injurious affection however, it is still less than the Farm's reasonably estimable losses from a well-carried-out system change.

In general it is clear that whichever way one turns there is an unsatisfactory element "left over" and the Farmer's complaints in s.3 above appear well founded. Equivalence was not achieved in this case.

Table M5/28/2 : June Returns (a) Crops

1969	1970	1971	1972	1973	1974	1975	1976	
130	130	116	116	116	117	116		Perm. grass
130	130	116	116	116	117	116		Total crops/Grass
130	130	116	116	116	117	116		Total area
702	614	593	637	558	340	303		S.M.D.
								Workers f/t
								" p/t
								" seasonal

Table M5/28/3 : June Returns (b) Stock

1969	1970	1971	1972	1973	1974	1975	1976	
	4	4	4	1	3			Beef cows/heifers in milk
40	35	35	30	30				Milk cows/heifers in milk
3			4					Cows in calf but not milk
4	7							Heifers in calf
1	1	1	1					Bulls in service
0								Bulls being reared
28	14	28	41	38	81	71		Other cattle/calves
76	61	68	80	69	84	71		Total cattle/calves
2		3						Sows in pig
			2					Gilts in pig
2				3				Other sows
							1	Barren sows
9	11		1	14				Other pigs
13	12	3	4	17				Total pigs
7					21	59		Lambs 1 year
11	7		12	7	21	32		Sheep 1 year
130	137	124	130	130	159	60		Total poultry

COMPENSATION CASE STUDY M5/19

1. Farm

A classic example of the small dairy farm, this holding was 47 acres prior to M5. Of this, 18 acres were on a tenancy and the other 29 acres owned. It was ring-fenced and had a milking herd of around 24 beasts with 16 followers.

5½ acres of owned land were lost and 7 tenanted acres severed without access.

2. Information

Fairly good, all sources available except accounts which were limited to 1973/4 and 1974/5.

3. Farmer

The Farmer and main respondent has now retired and handed on to his son-in-law and daughter, although he still helps around the farm.

Not a garrulous or expansive man he nonetheless had a firm grip on the economics of his system and held that the income level was "far below" pre-M5 days. The Farm lacked land above all but had been unable to purchase that of M5/20 which came available as their own compensation was not through quickly enough. The farm is capital deficient, too.

4. Agent (See M5/22)

Although this case was settled in land price terms very early (1970), it took over two years for final details to be clarified with Treasury Solicitors and payment to come through.

5. Claim

£400 p/a was agreed as land price and payment on account of £2000 received in July 1970. Final payment was June 1972.

	£
5.5 acres taken	2200
IA on rest of farm	2000
Tenant loss (i.e. severed) @ £60 p/a	420
	4620

6. Third Party

There were a number of incidents where cattle escaped, or in the worst case were trapped in a flooded ditch under construction. Without adequate evidence they accepted the Agent's advice not to pursue the claim but almost resigned NFU membership because of their inability to prevent such impositions.

7. Land

A fair price at the date the farmer desperately wanted it to come though to go into the market for land which sold at £250 (agreed by evidence from the vendor farm). By the time compensation was received prices had escalated, bigger farmers were paying a premium because of Capital Gains Tax problems and there was general land shortage due to the road.

8. Severance

The 7 severed acres were lost. The other 11 of the tenancy on the Farm side were purchased. Thus there is no continuing severance effect.

9. Tenant

£60 p/a was received. In an area where, post-M5, grass keep rose to £40 p/a per annum this illustrates the ludicrous nature of rental-based payments.

10. Assessment

Table M5/19/1 : Income Analysis (£)

	Actual		Average		
	Whole farm	Per acre	National Whole farm (275-599smd)	Somerset per acre	Region per acre (766 acres)
1973/4	575	15	2216	34.1	38.7
1974/5	24	0.6	1602	24.1	33.6

As can be seen from the above table the Farm performed very badly indeed in the two years for which accounts are available. As these are the first two years of the son-in-law settling in too, they are clearly little use as a guide. To use general figures then as our test we are much better equipped. We know from interview and June Return that stocking has been reduced from 24 milkers with 16 followers to only 19 with 2 followers, most calves being sold off young. The poor figures shown above taught them the lesson that it was better to continue at this lower level of output than to try to keep up the numbers by buying in feed. Thus at the level of self-sufficiency required with 19 + 2 there is probably a higher profit than in the interim.

Table M5/19/2 : Original NFI compared with post M5 NFI (theoretical) (£)

	At pre M5 acreage	At post M5 acreage
1969	794	574
1970	827	598
1971	719	520
3-year average	780	564
Average difference	216	

Source: Regional Farm Management Survey

The table yields an average annual figure for around the time of M5 of £216 per annum difference. From the accounts, the farm in fact performed worse than that but would have been involved with changing ownership and providing bulk milk facilities at this time.

£2000 was awarded for IA and £420 for Tenant loss. Allowing that there would be some small diminution in value on buildings and the land then this figure seems to be of the correct order. To supply £126 p/a an investment of £1839 would be required (depreciated at 10% over 20 years).

11. Adaptation

It seems in this case that the farm had still not fully adapted as at this date of interview, although the limited accounts we have must be giving a falsely understated impression as the farm supports three people.

We have discussed before the question of whether compensation must look to the norm or take account of specific farm circumstances. Case M40/3 showed this in an extreme form. The argument has considerable importance it seems as more cases come to light where people with a well-established system need to experiment when re-establishing their farms.

12. Conclusion

Compensation in this case was at about the correct level, but too slow to actually allow the farm to achieve proper equivalence, that is, purchase suitable replacement land.

COMPENSATION CASE STUDY M5/15

1. Farm

Farm 15 is a tenant holding. Prior to M5 it was 232 acres in all. The road took 17 acres, but 12 were regained almost immediately from the allocation of land recently purchased by the landlord. Thus, overall, only 5 acres net (2.2%) was lost, although 44 acres (19.4%) were severed.

Baldly put this understates the difficulties. The holding incorporates land of radically different types. As with other farms in the area (nos. 13, 14 and 34 especially) the essential characteristic of the unit is its balance. It was all bottom land which was taken for M5.

2. Information

From Farmer 15 this was excellent. He gave time willingly and had given considerable thought to the effect of the road.

We had access to June Returns but it was felt that the accounts would be of little value as they are distorted by a caravaning enterprise, and more particularly by a partnership entered into two years after the road construction began.

The agent has retired but was kind enough to take time to see us. The case was settled some three years prior to our meeting and details were naturally not fresh in his mind, but all important facets were readily on file.

3. Farmer

Farmer 15 admitted he found it difficult to distinguish always between his feelings regarding M5's social and aesthetic impact and its effects on his farm economics. He had been actively engaged in campaigning against the road on the more general grounds, and had been concerned at landscaping provision. From a farm point of view, he had known from 1954 when he took the farm that M5 was likely to come through and was in no way blighted when it was decided. Therefore, whilst Farmer 15 had a very strong antipathy to the roads intrusion, he feels that (given the adaptation discussed below) it was not too damaging to the holding.

With compensation, however, he is much more dissatisfied. He (a) agrees with his agent that the interpretation of the 1968 Act let him down; (b) felt that it took too long to be settled when he and his agent initiated moves early, and (c) was convinced that tenant compensation as a whole, is very poor.

4. Agent

The agent had specialised in farming matters over a long career and sat on the Council of the Agricultural Valuers Association. Thus he was very interested

professionally when Farm 15's case came up, as it was not only his first road case, but an early opportunity to employ the provisions of the 1968 Agriculture (Miscellaneous Provisions) Act regarding tenant settlements. Notice to treat was served in August 1969, by September, Farm 15's agent had met the landlord's agents and agreed an apportionment of rent on the basis of the loss of bottom land. The figure of £400 was agreed as an appropriate reduction.

A claim was submitted to the D.V. in the September, with £1600 claimed under this head. The D.V. refused to accept his basis of assessment and proposed instead to take the average rental per acre, on the whole farm. After extensive consultations with colleagues he found this to be standard Inland Revenue practice and, on balance, did not feel the 1968 Act to be clear enough to justify appeal to the Lands Tribunal.

This was the essence of the compensation and resulted in Farmer 15 "probably not achieving equivalence". As the considered view of an experienced practitioner this is a most important conclusion.

5. Claim

See section 4 above for the background. The claim was eventually settled after five years, in 1974, as follows:

4X rent reorganisation payment	£720
Loss of seed/sward in sown land	£55
One year's working (not profit) due to a Lady Day tenant	£441
Disturbance during construction (mainly extra man-hours)	£383
Recompense for fencing erected by farmer	At cost
Total for Settlement	£1,750

The 4X rent payment represented £10.59 per acre as against the £25.53 agreed by the landlord. A considerable difference of opinion on the valuation of the approachable grazing acres.

As the rent in 1969 totalled £1538 for 232 acres, the overall rental was £6.63 per acre so the D.V. probably made some allowance for differences in land quality.

6. Third Party

A claim for £800 was put in regarding dust. Farmer 15 was prepared to settle quickly and therefore probably did not do as well as those who waited. £175 was

received. Whilst he admitted the claim was a negotiating position he felt £500 would have been fair. He told us his silage had been affected and milk yield noticeably rose after rain had cleaned the grass.

8. Severance

Farm 15 received no specific rent reduction to take account of severance effects, although he tried for one. The Estate considered this was wrapped up in the initial rent apportionment and that the extra land added to the holding kept up its standard as a unit.

The farm was one of a group which had land severed in the valley bottom, but no changes in ownership have taken place. Three of the farms, however, formed a silage syndicate and have altered their systems by replacing free grazing with carried-in silage. Farmer 15 is one of this group.

9. Tenant

See section 5 above.

10. Disturbance

See section 5 above. Farmer 15 and his agent were quite content that costs had been fairly recouped on these items. The Farmer's satisfaction had been significantly aided by the successful realignment of the river in his land. The canalisation has been successful, the old course filled and the land redrained. This has improved the grazing conditions in the lower land. Fencing was put up early and Farr's were generally well-behaved.

11. Assessment

We do not have Farm 15's accounts and cannot therefore undertake income analysis. There is, however, one facet of long-term farm loss which is of outstanding interest. That is the injure to the farm of losing good land yet only receiving a generalised price for it.

11.1 Rent in Context

That the apportioned rent included an element for injurious affection to the holding would seem to be clear from average figures. MAFF Agricultural Land Service Reports 19/1 and 19/2 give appropriate rental values.

The samples of upland and mixed farms in Somerset are small ones, they cover only 4% and 3-4% of the average respectively for years 1969 and 70. Thus we must treat them with some care.

They show clearly, however, that for such a mixed farm the basic rent of £6.63 per acre was quite high and that equally the D.V.'s settlement figure of £10.59 p/a was generous in that it tended toward the highest

rentals which were for farms averaging only 38 acres in total.

11.2 Output Loss

This does not tell us whether Farm 15 could be expected to lose at about that rate, however. Unfortunately the Farmer subscribed to the regional habit of taking little care over his June Return. Although we have these they are but roughly filled in and give no correct picture of the farm acreage or stocking. National figures based on them look increasingly dubious.

Nonetheless we can still test whether £720 or £1,600 best fits Farm 15's potential loss off the area taken, they differ enough to permit this. Farm 15 lost 17 acres to M5. For these purposes we shall ignore the land gained as this was irrelevant for compensation purposes. It will be dealt with in Section 12.

These 17 acres were all grazing land, laid out on a paddock system into which the beasts could be released to find their own way. From the Regional University Farm Management Handbook for cropping year 1969 we can estimate a gross margin of around £16.50 per acre for dairying land. With a loss of 17 acres this would equal some £280 reduction in Net Farm Income over the year. Accepting the Lands Tribunal "Risk Rate of 20%" method we get a 5YP figure of £1,400. At 10% discount over 20 years we obtain £2,380. In reality, Farmer 15 probably had a farming life expectancy shorter than this, possibly 15 years. This would yield a YP figure at 20% not significantly lower (4.67), expected income loss would thus be £1,308. On a 10% capitalisation basis this is £2,128 (almost 60% higher). Even on the lower assessment, (and in rural Somerset there is hardly the risk of development envisaged in the Wakerley case), it is clear that a small addition for severance cost would bring the figure up around the £1,600 mark. Certainly, £720 is a distinct underestimate.

This is our first major conclusion from this case, that the refusal of the D.V. to accept the agreed apportionment did indeed, as the agent felt, stop Farmer 15 receiving equivalence.

12. Adaptation

In the real world, however, this problem has been alleviated to a considerable degree. The silage syndicate has not only minimised severance costs it has probably made feeding more efficient than prior to the road.

It has equally made the enterprise more intensive, and to meet this, Farmer 15 has gone into partnership and increased his stocking rate accordingly. Added to which has been the 12 acres gained from the landlord which, although not on the market due to the road, were roughly allocated so as to make up the farm's losses.

13. Conclusion

From a peculiar combination of factors it would seem that in the long-term, Farm 15 has about balanced its losses with the exception of the very dusty summer. The farmer blames dust for his income fall on that year, and dust is a separate matter lying in the problem area of contractor/DTp relations. Farm 15's compensation was inadequate in the circumstances but has been balanced off.

COMPENSATION CASE STUDY M40/5

A. OWNER'S CLAIM

1. State of Claim

The farm is held by a family trust of which both tenant and former tenant are members in a personal capacity. The trust owns other land including some marching on the west but this was never considered relevant by the D.V. The claim was dealt with strictly as a matter of Farm 5 as a holding.
The claim was closed by June 1976 but had not been closed long at that date. No precise date of settlement was available but we can approximate that settlement took some 5 years from the March 1971 date of entry. As far as we could ascertain from all our interviews the length of time made no difference to the trust which does not intend to spend the money on any particular on-farm project.

2. Quality of Information

From the agents, this was excellent. The ex-tenant is, of course, an old man and we dwelt more on his former farming pattern than the trust's plans for the future. There seemed no point trying to interview anyone for the trust as it is clear that the farmer has full control over the farming operations.

3. Interests Lost

There were 25.632 acres taken by C.P.O. and 48 acres severed. The pre-motorway holding had been 452.5 acres, ∴ 426.87 acres remain, of which 378.87 acres are on the 'home' side of the road and are therefore the basis of the claim for injurious affection.

4. Accuracy of Farmer's Memory

This is an interesting facet which we cannot always compare. Farmer 5 was very accurate in his off-hand knowledge, citing 452 acres pre-M40, 425 now, 27 acres taken and 48½ severed.

5. Compensation Received and Claimed

A total of £27,400 was received, made up as follows:

HEAD	ORIGINAL CLAIM	D.V.'s OFFER	SETTLEMENT
LAND TAKEN	£8,750	£8,200	£8,200
(rent £8p/acre)	(£350 p/acre at agents' rounding, £341 in fact)		(£305 p/acre agents' rounding, £320 in fact)
SEVERED LAND	£4,900	£1,950[1]	£3,900
(48.23 acres)	(£100 per acre off its value)		(capitalised rent reduction of £2 per acre)
INJURY TO REMAINDER OF FARM	£18,900[1]	£8,520[1]	£15,250 (capitalised rent reduction of £1 per acre)
COMPENSATION FOR LOSS OF PRIVATE WATER	£3,750[2]	Refused	Withdrawn
	£36,300	£18,670	£27,350
		For settlement	£24,700

1 - No basis of claim cited by agent

2 - Interview records this as based on 50p per acre

6. Land Price

There was a problem in assessing this due to the lack of guideline sales. The valuer attended an informal meeting of agents with M40 clients prior to construction to discuss general points but especially land price. The only viable example was £400 p/acre but this had a gravel working 'hope' element. At interview he said that the problem resolved itself due to the D.V. offering a high figure of £325 p/acre for tenanted land in an early case.

7. Farmer Satisfaction re Land Price

This is included here because the ex-tenant had nothing to say about the severance but firmly told us land-price was too low a figure. In general he was less concerned at the objective price as the relative differential between his land and neighbours. He felt that it was on a belt of first-rate soil which ended at the A40 and where the land rose again northwards. It showed a lack of agricultural appreciation to pay a constant price where such good land marched with that "not worth one shilling per acre".

The agent assured us that the trust was reasonably content with the price.

He thought the land variable was in need of better drainage and gently nursing to bring it up to very good arable condition. Some of the land, especially that severed, had especially poor drainage and was mainly heavy clay. He intended retaining that land as pasture, ploughing only to reseed the leys. The land is graded 3 and 4 by MAFF.

8. Severance

This is the most interesting facet of the owner's claim as here we have a genuine case where, on the evidence, (and the agent's word) the actual wording and drift of the Acts was ignored out of fairness and good sense. As has more usually been argued regarding low-price properties in towns where there is an artificially or naturally restricted supply but high demand then the compensation provision regarding market value may become meaningless. In agriculture the history of rents in recent years has been generally that of new tenancies. There is a consistent over-demand for good tenancies, such as the Farm was, and is.

9. Assessment

The D.V. argued at first that there was no injurious affection (including severance) to take into account as there was really no evidence that there would be any the less bid for the Farm when the tenant eventually retires, or if his son takes over. Certainly that the farmer had no qualms about taking on the farm at the going rent when he knew of the road is factually correct. The rent of the farm up to September 1974 was £3,250 and is now £5,000. That is £7.61 per acre and £11.71 per acre respectively.

MAFF Technical Report 19/6 on Farm Rents for October 1974 gives the following per acre figures:

	1973	1974
South-East Region Average	£7.78	£8.91
Oxfordshire Average	£7.81	£8.84
Oxfordshire (300-499 acres) - highest rents	£13.38	£17.45
" " - lowest "	£5.91	£5.71

It is of course impossible to say anything too definite about the 'correctness' of the rent level but it is clear that the level is not dramatically low, especially as the 'high' rent figure cited is abnormally high for the size group.

10. Settlement

As stated above there was no clear evidence on why the D.V. moved his position and accepted a claim. Nonetheless he did and whilst rejecting the agent's initial method of assessment on the value of the severed land he accepted a capitalised rent reduction figure. The agent emphasised that he had had great difficulty in getting the claim up to an acceptable level. Presumably by this he mean in having the D.V. accept an injurious affection figure. For the severed land a £2 p/acre reduction (or around £80 off the value of the land) may be realistic but it is difficult to believe that the main holding is impaired to the tune of £15,250. Invested at only 10% this would yield £1,525 per annum, a rent supplement on top of rental payments of $\frac{£1525}{378.87}$ p/acre i.e. £4.03 per acre.

The reason for this disparity between the fact and the theory lies in the interest rate assumed in the capitalisation.

11. Capitalisation

The agent cited the calculations as based on a 2½% interest rate at 40 years' purchase. The latter was simply the "going rate" at the time and had not been argued on any more rational basis. The extremely low interest rate was, from his client's viewpoint, "the only good thing about the job".

In fact he underestimated the generosity of either the interest rate or the years purchase. At the cited rates then a figure of £9,511 would be required for 40 YP for injurious affection and £2,472 for the severence. In fact at 2½% interest the figure is an "impossible" one as at the 55 year level which is near infinity in size of multiplier the figure is only 29.7 when one of 40.25 is required to explain the capitalisation. This figure is achievable at, (approximate):

43 YP	@	0.25%
45 YP	@	0.50%
52 YP	@	1.00%
INFINITY	@	1.25%

Virtually similar figures apply to the severence calculation. These figures are, of course, remarkably good ones for the client and one can only compliment the agent on achieving them.

B. TENANT'S INTEREST

1. State of Claim

At 1/12/76 the claim was still open with no sign of settlement in sight. Most of the information below, however, is as at June 1976. At that time, the first 'full' claim, saving drainage matters, had just been submitted.

2. Interim Payment

This was £3,852 and was 90% of the D.V.'s initial estimate. Mr. Nixey was not terribly aware of the precise details of the claim but knew that £2 - £3,000 had gone into the farm accounts. <u>This figure implies the D.V.'s initial estimate to be £4,280.</u>

3. Heads of Claim

Crop Loss	£4,100	(includes 10.83 acres wheat @ 53.70 per acre (1973) and £45 per acre (1972) 14.8 acres of grass @ £41.5 and £38 30 acres of failed leys @ £43.80 and 0.2 acre of winter wheat These total £3,559.52)
Grazing loss	£20	
Extra sheep movement	£75	
Gate repair/replacement	£70	(This since carried out by the road contractors and dropped)
Tenant Right	£128	
Fence maintenance	£850	
Miscellaneous items	£125	(includes gate damage and tree trimming)
Nuisance	£250	(e.g. the water cut off during construction)
TOTAL	£5,618	

4. Third Party Claims

It will be noted that certain items in the above such as the Miscellaneous and Nuisance expense are third party claims which, if properly considered, should be the responsibility of the contractor; subsequent to his indemnification of the DoE. The agent explicitly recognised this, but said that the D.V. was gracious enough to accept such small items and keep the claim moving. It seems the tight legal constraints outlined by John Gilbert do not operate re small amounts.

5. Drainage Rectifications

This item was still being finalised and was on the point of submission in June 1976. At the date of farm visit, February 1976, the schedule of work stood at £3,700 - estimated by private contractors. By June, it was around

£9,000 divided into three parts:

- work to be carried out and paid for by DoE
- work to be carried out by the farm's contractors and paid for by the DoE
- work to be carried out by the farm's contractors and the costs shared.

The agent was far from optimistic about the chances of receiving a substantial proportion of this. It had been by far the "biggest problem" and dispute remained over

a. whether the catchment area had been altered

b. rate of run-off, and potential consequences

c. efficacy of ditches where hedges have been removed

d. the water troughs

6. Upper Limit on Compensation

Of great interest to us is the fact that the potential expense of this rectification has led the D.V. to fall back on the classic argument of not being able to pay 'more than the land is worth'. The agent agreed to the logic of the argument but felt it could not work in practice. The difficulty would seem to be identifying the 'area affected' to which the cost referred. £9,000 would only purchase 18 acres at £500 whilst there are nearly 30 acres severed alone. Even allowing that these severed acres have been compensated to the tune of £3,900 (£79.22 per acre) in the landlord's claim there would still be a considerable difference in price:

Drainage claim	£9,000
Severance payment	£3,900
	£12,900
Cost of 49.23 severed acres @ £320 per acre price paid on date of entry	£15,754
Difference	£2,854 (£58 per acre)

This is assuming that only severed land is affected, whereas in fact, two points contradict this:

- practically; drainage matters generally have a wide area of influence
- theoretically; there would, of course, be substantial injurious affection to other parts of the holding if nothing was done, or if the issued land were taken away.

It is then difficult to conceive that on a substantial farm the argument could have much import. Nonetheless, two relevant facts arise which deserve mention in passing. In the calculation above we assumed the land price paid

at the date of entry. Now although case .law judgements have fixed the date of assessment for land price it has proved impossible to peg the price of drainage work and so fair comparison could arguably be with land price now. If that is accepted, however, then the absurdity of the upper limitation argument stands out. It is that land's price on the market generally, and especially in recent years, has risen and fallen due to a number of trends, few of them directly connected with the agricultural output and its profitability. On this reckoning it is conceivable that a farm could have had, say, twice as much drainage when the price was at its peak around 1974 as before or after.

The second point is a national economic one, it is that of all matters, to raise the point with regard to drainage it is surely the most ludicrous. Government has recognised now for many years that the value of drainage as a long-term investment is important enough to merit extensive grant aid. It is surely as a recognition of the distortions of price on an item that has a high immediate cost but a very long life that the rates are set so high. They are at the moment:

	Normal	Less favoured areas
Farm and Horticulture Development Scheme	60%	70%
Farm Capital Grant Scheme	50%	70%

In the face of the fact that the taxpayer is prepared to grant-aid drainage to this extent anyway, the upper limit argument tends toward absurdity.

7. Accommodation Work/Farming

The agent was briefed quite late in the affairs from an accommodation viewpoint. This is as one might expect where a farmer cannot claim back fees expended. It was after the public inquiry - on 23 July 1970 - when he was first called in. (See 10 below)

Meetings were held and letters written about the type/timing of accommodation works. The agent has not got a high opinion of the RCU and says promises and assurances were given but not acted upon.

Luckily for his client the road to the farm is a public one and therefore there was never any question of the underpass not being provided. They could make no headway on the dimensions, however. This difficulty is subsumed in the severance compensation and presumably to be taken into account when assessing rent. (See below for the question of dividing landlord/ tenant items of claim.)

The outstanding items of accommodation claims (excluding 'third party' elements) are the water troughs mentioned above and fencing costs (including loss to trespass). We saw the troughs on our field visit and they are indeed poorly

set, small, not always well-sited and with easily damaged pipes. Farmer 5, in fact, has no plans for going back into cattle but requested to them to be good enough for him to do so.

The lack of fencing during construction and right up to the opening of the road is reflected in the items of grazing loss and extra sheep movement claimed. The police were sympathetic but pointed out that the Animals Act is unequivocal in the duty it lays on the farmer, even if it is not his direct fault.

8. Landord/Tenant's Claim Division

This, like third party matters, is an area which in this case differs in practice from the theoretical strict guidelines. The agent is quite openly claiming the more difficult 'small' element of loss as part of the tenant claim because the tenant is the man there and easier to deal with than the trust.

Above all, the drainage work has been taken completely in hand by Farmer 5 but there are equally smaller matters - gates, fences and the troughs which could rightly be considered matters to be claimed by the landlord and reflected in rental value. Fence maintenance, for example, is clearly a matter which will influence the value of the rent long after he has handed on the holding, yet as it is being claimed by him it presumably cannot have been part of the injurious affection claim discussed in section A.

9. Relations with the D.V.

Both agent and farmer felt that relations with the D.V. have improved slowly from an early nadir. At the beginning of the contract the D.V. was felt to be looking to retirement. The situation has now reached the level of a "working relationship". The farmer particularly noted a growing ability on the part of the D.V. to "stand up to the road-builders", and cited the eventual arrival of sheep net as the best example. At first the D.V. had seemed overwhelmed and unconfident.

10. Scale Fee

The agent refuses to act for scale 5A and makes this clear at the outset. Both tenant and the trust have accepted this, as did his Abingdon By-pass clients. He has tried to claim scale fee on value of accommodation work but was ruled out by the D.V. (N.B. Mr. Gardiner at Harlow pays this) Thus the better he does his job as agent, the less the Government pays him!

11. Agents' Views on Compensation

The agent felt that the procedures are reasonably good in theory but work too slowly. Basically, the law experts not to compensate people for nuisance and disruption, it is only a sham to imply otherwise. It could be helped by paying half again on market value which would only then be approaching willing seller level, but this is politically impossible.

The great problem on M40 was that the strictness of the date of entry meant there was injustice in that by the time money was received land prices had risen considerably.

C. EFFICACY OF PAYMENTS

1. Trust

As stated above the trust can only be seen to have done very well financially out of the settlement, due to the low rate of interest assumed. On the matter of water supply we have no further information.

2. Tenant : General

This is obviously more difficult, not least because there is as yet, no settlement. Far and away the major items are the matters of crop loss and drainage, we can only presume the other smaller items to fairly reflect incidental losses. They are so small that one can hardly presume he is "trying anything on". Again, we must conclude that trifling sums are involved in what are extremely annoying and quite disruptive construction incidents.

3. Drainage

According to the former tenant he had tile drained 27 acres of the most easterly field which was spoilt by the road. He also asserted that the field which flooded after the road, had never been too wet to keep sheep in during his time there.

The present man, too, was clear that improving the drainage of the farm was a fundamental part of his policy, including the field which flooded. His main complaints were direct not at the disruption of an existing adequate system as much as at the five-year delay imposed on his determined farm programme and the extra precautions he will now need to take to deal with faster run-off. There was a distinct impression from him and the agent that the claim was priced at a 'negotiating' level and reflected something of the farmer's psychological loss and lower cropping during the period as well as costs directly attributable to disruption by the M40.

He should, of course, also be eligible for MAFF drainage grant of 50% (or 60% of his income makes him eligible for FHDS grant), on such amounts as compensation does not meet.

4. Crop Loss

The basic question here is whether the claim is on an output price or gross margin basis. John Nix average prediction for 1972 was a Gross Margin of £40.9, sale prices for Michaelmas Quarter for average output (33cwt) drawn from the London Gazette, give an actual figure of £28.62 per ton. The output price per acre was £47.22. Due to an exceptionally high price for wheat in the same period of 1973 (£54.65½ per ton) the calculation gives £90.17.as output price for the same quantity, a good deal higher than Nix. Further evidence on prices is awaited from MAFF/HMSO but for the moment we shall conclude that output prices have been charged because Nix gives no sheep enterprise yielding a gross margin above £30 per acre even at high performance levels, and so evidence from the grass/leys figures tends to an output conclusion.

Let us remember that Gross Margin subtracts from Output only directly variable costs, seed, fertilizer and spray in the case of wheat. Therefore the following are reasons for charging Output rather than Gross Margin:

a. - that the crop is lost after these inputs are committed (e.g. when grown)

b. - that the inputs are purchased and cannot be otherwise depolyed (e.g. the seed will not keep)

c. - that the cost of these inputs does not actually vary directly but is marginal in the farm's circumstances (e.g. there is a pig enterprise yielding abundant fertilizer).

We can discard c) immediately on a factual basis, the only such animals are sheep but there is no suggestion that the fertilizer contribution is a substantial factor. Similarly b) does not apply as in this case the seed was applied and a) certainly stands for the most part. For 1972 (and completely in the case of the leys) we have the farmer's evidence that these were crops planted and tended which were lost. For 1973 the argument is not so strong as we have no evidence that he planted wheat which was lost; rather that he was injured in his system by not being able to. However, as the claim is so low compared to the sharply risen price then for want of

further evidence on prices we can only conclude that this is a fair claim reflecting the level of loss he says he incurred, and therefore quite high. No doubt this amount was influential in producing the Farm's low NFI between 1970-72 (shown by Hearne), an income which had picked up dramatically by the end of 1973.

5. Conclusions

The Farm's problems are still outstanding and therefore two matters can already be said to be unsatisfactory: the time itself and the number of petty disruptions caused by the road.

So far as the compensation as a whole is concerned, however, then assuming the claims are substantially met (there being room for negotiation on drainage especially). The farmer can be considered fairly recompensed for financial loss if not psychological upset and time.

The cost will be around £14,000.

COMPENSATION CASE STUDY M40/3

1. Quality of Information

Farm system and financial information is exceptionally good. Even allowing for the problematics of comparisons between accountants figures and those of the Reading University Farm Business Data we can still make well-informed estimates of losses. The agent was interviewed after this case study was prepared, and supported its argument.

2. State of Claim

This was one of the first farms to be fully settled, and took a considerable proportion in 'advance' payments as set out below.

Accounting Year	Amount Received (£)	% of final claim
1971-2	4,000	28%
1972-3	2,400	16%
1973-4	8,100	56%
Total	14,500	

3. Timing of Settlement

Farmer 3 felt himself to have been constantly capital deficient since taking over a holding "in poor condition" in 1963 and incurred "great expense", but had "vastly improved its fertility" by 1969 when he put this evidence before the public inquiry. (pp 478)

As can be seen from the table below the Farm's finances had been slowly improving from a very extended position indeed.

The Financial Position of the Farm (£)

	Bank Overdraft	Other Monies Owed	Capital Account	Sundry Creditors	Sundry Debtors	M40 Compensation
1968/9	10436	1012	-1397	12261	2611	
1969/70	10456	493	-736	8312	924	
1970/1	12462	800	+263	6471	1021	
1971/2	10728	1237	+2891	8434	4100	4000
1972/3	13336	1193	-797	6753	1014	2400
1973/4	12923	150	8196	2969	1431	8100
1974/5	11934	2745	7137	5289	4056	

Taking this table in conjunction with the two others below, also constructed from the farm's accounts we are led to the conclusion that by the time M40 was built Farm 3 had reached an adequate level of capitalisation for his system and was beginning to level off his investment and thereby cut down his capital borrowings. This accords with the information he himself provided at interview.

Value of Equipment and Improvements (£)

	Motor Vehicles	Tractors	Drier & Equip-ment	Combine	Plant/ Machinery	Farm Improve-ments	Total Value
1968/9	1171	554	1362	643	3844	666	8240
1969/70	937	429	1226	547	3627	280	7046
1970/1	750	975	1103	465	3264	-	6557
1971/2	600	1721	938	395	2877	-	6531
1972/3	1049	1377	797	336	3411	-	6970
1973/4	866	1102	677	286	3620	-	6551
1974/5	693	3435	576	243	3892	-	8839

To Show Additions to Capital Stock

£'s	M/Vehicles	Tractors	Drier	Combine	Plant/mach	Farm Improvements
1968/9	-	-	-	-	-	-
1969/70	-	-	-	-	-	-
1970/1	-	206	-	-	-	-
1971/2	-	621	-	-	-	-
1972/3	-240*	-	-	-	1136	-
1973/4	-	-	-	-	847	-
1974/5	-	3192	-	-	959	-

The most important facet of the case is the system change he felt to be forced upon him, this we shall examine later. Here we must note again from the above table the extra capital expenditure following from the change.
The farmer felt his financial position to be such that he was prepared to vigorously pursue his claim and close it quickly in order to have the cash available as early as possible.

4. Farmer's Perceptions and Satisfaction

The pursuit of rapid settlement and by comparison with other cases, the obtaining of it only some three years after notice to treat, has led to two contradictory results in the Farmer's perceptions. These were confirmed and emphasised by the valuer.
Firstly he expressed reasonable contentment with the way the compensation helped him in the short-term by releasing capital into the farm and providing the money to fund his change of system.

In initial stages of this process of change Farmer 3 looked to compensation to carry two distinct costs.

a. actual expenditure on equipment (i.e. immediate)

b. profit losses during transition (longer term)

(There was also the separate cost of long-term losses from a less profitable system on less land.)

We distinguish the two because he is satisfied regarding a), but distinctly dissatisifed concerning b). His system has not turned out as profitable as he hoped and in March 1976 he rang the District Valuer (DV) to point this out and request a re-opening of negotiations.

The DV refused the suggestion. Presumably he took 2 reasons into account. The first is that a claim once closed is legally considered finalised. The second is that even if the claim were still open it is difficult to see what provision there is for a claimant to receive compensation assessed by reference to his real farm-system costs. This simply not being the basis of assessment.

5. Claim

The Farmer is one amongst a number of All Souls College, Oxford, tenants in the Lewknor area. He took his farm in 1963 and, according to the tenancy agreement it has developed as follows.

Year	Acreage	Annual Rental (£)	Rent per Acre (£)	Rent/ Accounts (£)	Rates Reading F.M.S. (£)
1963	183	1,098	6		
1964	183	1,098	6		
1965	229	1,228	5.36		
1966	260	1,438	5.53		
1967	263[2]	1,440	5.48		
1968	263[3]	1,365	5.19		
1969	263	1,365	5.19	1971	2006
1970	263	1,365	5.19	2048	2073
1971	263	1,365	5.19	Not Available	2163
1972	235	1,167	4.97	1700	1988
1973	235	Not Known		1748	2158
1974	235	Not Known		2514	2684
1975	235	Not Known		Not Known	
1976	235	Not Known		Not Known	

Notes

1. Rent/rates figures refer to year beginning 1969 (i.e. accounting/ cropping year 1969-70) and so on.
2. Disused railway line added to the holding, unfarmable, used as a track.
3. Two cottages removed from tenancy.

Before the 1973 Act a tenant would have a claim to compensation based on 5 factors:

a. Severance and injurious affection

b. Loss of profit on the land taken

c. Tenant right

d. Re-organisation payment

e. Any other loss or injury

Let us take these in turn, bearing in mind what the above table shows us about the value of the farm.

6. Severance Injurious Affection and Loss of Profit on Land Taken

This is in many ways the crucial question. In the normal course of events a tenant should be financially compensated for an injured holding by a suitable reduction in rent. The landlord falling to claim for the loss of land value. However we can do little better than evoke the Lands Tribunal in the Pettitt case discussed elsewhere.

"I can see that in a world regulated perfectly by logic an injury to the tenant in his holding should at the next possible date for rent revision produce a reduction in rent which exactly balanced the injury. But this kind of logic fails when one considers that if Mr. Pettitt's figure for an annual injury is anything like correct then his rent should logically be reduced to nothing.

... I think it unreasonable to fix Mr. Pettitt with a duty to have secured a reduction in rent (before he would) have been able to assess his loss. (Three years later) Mr. Pettitt has still not asked for a reduction in rent and it seems to me most uncertain whether if he did so he would be successful."((1968) 205 E.G. 167, at p.173)

The Tribunal allowed five years loss of profit on 50 acres of injuriously affected land which had been cut into three pieces.

The argument enunciated above fits our circumstances remarkably well. For the farm suffered its main damage due to a redesigned side road, allied to a junction. It is cut into eight sections. The primary difference between the two cases is that this Farm did have a rent reduction almost immediately. For the loss of 28 acres, £198 annually was taken off the rent. This represents a figure of £7.07 per acre, considerably above the £5.19 per acre it was paying overall.

The essence of the question to us is how far the complex severance suffered by the Farm has affected its overall performance. This could clearly be greater than the simple loss of 28 acres, as in fact is recognised in the overall drop in rent per acre. The appropriate figures to take for such an examination are those of Net Farm Income (NFI) per acre as these show the eventual profit rental coming to the Farm in acreage terms.

Study Farm					Reading Average (4)	
NFI per acre £'s	Reading Single year (1)	Reading 3-year average	Accounts Single year (2)	Accounts 3-year average	Single year	Three year average
1965/6	N/A	N/A	6.52	N/A	6.30	N/A
1966/7	N/A	N/A	13.79	N/A	13.10	N/A
1967/8	N/A	N/A	15.74	12.02	16.60	12.00
1968/9	N/A	N/A	19.12	16.22	9.30	13.00
1969/70	14.31	N/A	16.14	17.00	20.60	15.50
1970/1	18.17	N/A	13.77	16.34	12.10	14.00
1971/2	9.32	13.93	N/A(6.0)[3]	c8.0	24.30	19.00
1972/3	6.28	8.92	-6.78	c4.5	29.60	22.00
1973/4	11.70	8.13	6.10	c2.0	34.90	29.60
1974/5	2.99	7.02	5.57	1.63	33.10	32.53

Notes

1. "Unpaid labour" element as used in original Reading University Town Farm calculations.
2. "Unpaid labour" element taken from Reading University FBD average data.
3. Although this figure is not available a guestimate of its magnitude has been made in order that 3-year average calculations can be approximately made.
4. 1965/6 - 1972/3 inclusive, Group 5B
   1973/4 and 1974/5 Group 5A.

Working from this table, which shows the performance of the Farm against the regional average for the appropriate farm-type group, we can examine pre and post motorway income. That is, in valuation terms, 'the damage done to him in his tenancy'. Let us remind ourselves that the rent element is already excluded from the figures.

The break-point for the Farm came when a system change was made (a point discussed later). This was between 1970/1 and 1971/2 on the table. If we average out between the accounted figures and Reading's to allow for the differences in calculation method employed as explained by Hearne, then we find the following.

	NFI per acre (£)	Acreage	Profit (£)
Pre-Motorway:			
1969/70	15.65[1]	263	4,116
1970/1	17.25[1]	263	4,537
Post-Motorway:			
1971/2	10.96[2]	235	2,576
1972/3	6.71	235	1,577
1973/4	5.56	235	1,308
1974/5	4.32	235	1,016

[1] Average Reading FMS figures and accounted 3-year average

[2] See provisos in NFI table previously

Comparing Farm 3's NFI with the regional average (as an inbuilt check against distorting caused by inflation, price reviews and so forth) we find that picture built-up above to be emphasised even more strongly.

	Study Farm		Regional Average	
(£)	NFI per acre	Profit	Three-year average per acre	Potential profit on 263 acres
1969/70	15.65	4,116	15.50	4,076
1970/1	17.25	4,537	14.00	3,682
	M O T O R W A Y			
1971/2	10.96	2,576	19.00	4,997
1972/3	6.71	1,577	22.00	5,786
1973/4	5.56	1,308	29.60	7,785
1974/5	4.32	1,016	32.53	8,555

If we accept that the Farm was performing at or about the regional average in NFI terms before the M40 this will tend to underestimate the loss but is fair given the nature of the figures available.

The post-M40 figures above then reflect the theoretical loss to the Farm caused by both land loss and severance. Both of which we presume to be reflected in the rent reduction obtained. This rent reduction let us remember was £198 per annum, £792 over the 4 years. Assuming performance at the average then over the same four years the farm lost £20,646.

7. Rent Reduction and Overall Loss

Before moving on to the secondary elements in the claim, it will prove instructive to briefly examine the question of rent reduction as a proportion of the loss in view of the Lands Tribunal's comments in the Pettitt case.

Naturally we are aware that at a time of generally rising prices the reduction of £198.00 might, in fact, be only a portion of a real reduction which is in terms of a postponed increase. We shall endeavour to check this point.

With that in mind let us concentrate on year 1972/3 when the loss was not as high as later and we know the rent reduction applied most directly, having taken effect from March 1972.

The theoretical loss in 1972/3 was £4,209, the total rent in that year was £1,167, only 28%of the loss. Clearly rent reduction alone cannot meet the loss! Prior to M40 the farm was paying £5.19 per acre, afterwards £4.97.

The 22 pence difference can thus be seen as a measure of injurious affection rather than simply land loss.

In fact in year 1970/71 the farm's NFI was £10.96 per acre, before rent this would have been (10.96 + 5.18) £16.14 p/a. Rent was thus 32% of the 'profit' made by the farm. This is of course close to the 'classic' figure of third each to the tenant, landlord and for re-investment.

After M40, by 1972/3 the NFI had dropped to £6.71 p/a - substantially more than a 22 pence p/a fall. Before rent the figure would be (6.71 + 4.97) £11.68, of which the rent element would have risen to 42%. Of the fall in NFI p/a of (17.25 - 6.71) £10.54 the 22 pence reduction represents a deirsory 2%.

8. Tenant Right

The allowance for tenant right is an amount equivalent to that which would be received in a 'normal' handover of a tenancy. It should represent a "just allowance which ought to be made to him by an incoming tenant". (Compulsory Purchase Act, 1965, s, 20 (1)).

This is for such things as unexhausted manures and can be read off tables. It is normally a low amount, under £100.

9. Re-Organisation Payment

Assuming that the £198 rent reduction represents the appropriate apportionment of the rent relative to the land lost, which seems reasonable, then the farm would have been eligible for four years rent as a tax free payment to aid 're-organisation', that is £792.

10. Other Loss and Injury

Again we have no way of knowing what precise claims were put in for what may generally be termed 'disturbance', and how they were met. From his excellent response we do know however that personally his satisfaction on this score is high. He returned repeatedly to the cutting-off of his water supply. During construction the water pipe to a 12 acre field was severed. He had put this in himself in 1965 as part of his major capitalisation programme to equip the farm for his pre-M40 system. Although water was cut off in 1972 it was 1974 by the time it was restored. Unfortunately the field affected had been re-seeded in 1972 under the Farm's eelworm programme, this being a particular pest on the farm. Eventually water was restored by the road constructors as part of the accommodatory works at no cost to the farm.

Without water the field suffered badly from the dust being blown onto it during the construction of the Chiltern Scoop cutting. Although he occasionally took spray - tankerfuls round he could only mow the grass for silage rather than graze cattle. He felt it was a very bad crop due to the dust, but had received "good compensation" for the difference. This is a fact we have noted before, that one needs to carefully distinguish satisfaction with compensation from dissatisfaction with the matters which made the claim necessary.

In his September 1972 edition John Nix (Farm Management Pocketbook, Wye College) gives a Gross Margin of £31 per Forage Acre assuming 2.2 acres per multiple suckling cow (this being the first system that farm tried post-M40). If the field had not been used at all then at this (low) output level the farm would have lost some £750 over the two years. The silage taken will clearly have reduced this somewhat.

11. Assessment of Compensation Efficacy

Elements other than the loss to the farmer in his tenancy from the loss of 28 acres and the fragmentation of the rest (re-organisation, tenant right and disturbance) may well amount then to around £1600-1700 of the received compensation of £14,500.

What is left can be reasonably apportioned to compensating for the break-up of his farm system. Whether it was treated as disturbance or injurious affection is immaterial to our assessment. For example it was evinced as

a problem in his compensation negotiation the question of a price for the sows he had to dispose of when going out of pigs. He clashed with the D.V. over whether they should be valued at a standard market price or the higher value he had paid because he had wanted good stock. Eventually a middle figure was agreed. Now, whether we call this monies for a forced sale (disturbance) or a result of the effect on the tenancy (injurious affection) is of little moment. In the words the Lands Tribunal use in such cases, both methods are equally correct insofar as they reflect the overall loss.

Do they reflect it? No, they probably do not. Whilst we claim no great accuracy for the theoretical £20-21000 figure produced for the first four years post-M40, those for which we have the figures it certainly points to the fact that the Farm is still suffering considerable losses. To put a man back where he was who is losing £5,000 per year, at 10% interest rates would of course necessitate an investment of £50,000.

The prime reason for these losses we have mentioned above, the forced abandonment of his profitable outdoor pig basic enterprise and subsequent search for another system to fit his capital, buildings and severed land. Hearne discusses the change made and examines their efficacy and economic rationality.

We also know that shortly he is to receive some 100 acres extra as part of an All Souls land re-arrangement subsequent upon the death of a tenant. Had these acres been available to the Farm immediately after M40 then its search for a new, equally profitable system might have been much easier given the option of more extensive farming.

The essential question is raised by the farmer's phone call to the D.V. asking about supplementary payments to cover the lack of an adequate system. Assuming that he has made genuine and well-informed attempt to settle his fragmented holding to a new system, assuming in fact that he has taken all those reasonable steps to minimise his loss that the law requires, how can he be granted equivalence?

It seems to us that simply keeping the claim open and providing some sum to cover all such losses is evidently unworkable in practice. The valuation progression has many hard enough artificial tasks on its hands already without the problem of apportioning losses to the road scheme or not. Yet if a farmer can loose so much obviously equivalence is not severed. Two options come to mind after considerable thought.

The first approach is a valuation one, whereas the second may be considered more that of an agricultural economist. The suggestion is for something similar to the tenant's 4x rent re-organisation payment but tied to the value of the land and therefore taxable unlike the present payment. This re-organisation sum would be paid on request as an alternative to the 4x rent payment and would comprise, say 2x the annual profit. The importance of tying the payment to the land is that it would be intended to balance against the present innurious affection payment and, it would be important to be able to 'claim-back' sums which were not actually invested (rolled-over) in capital equipment and expenditure to aid the system change. Regarding them as capital gains could achieve this. It might be necessary however to clarify the capital gain rules as they apply to such situations, but then when a farmer in No 3's position is being pursued for up to £1,000 in gains out of a sum which was probably insufficient to capitalise his changeover then some amendment is probably due anyway.

The second approach is a simpler in essence but may be more complicated in practice as it necessitates the involvement of a third-party, ADAS. It is for a system of what we might term Agricultural Adjustment Grants to support farm plans agreed with the Advisory Service. We hope to go into the possibility and its relations with extant FDS, FHDS, FEOGA and so forth schemes with the MAFF soon and so leave the idea in abeyance at this juncture.

APPENDIX III

Farm :

Date :

1. Background

1.1. Name -

1.2. Position -

1.3. Telephone number -

1.4. Length of time on present holding -

(If recent change, why ? ____________________

who had farm previously ? ____________________

did you know of M-5 ? ____________________)

1.5. Dates : notice to treat - ____________________

notice to enter - ____________________

start of construction on your land ____________________

end of construction ____________________

1.6. Nature of response/quality of information :

____

____

____

____

____

2. Physical Impact of M-5

2.1. Map

Boundaries - tenure

Buildings

Position of M-5 (including junctions)

Effective field boundaries

Drains, watercourses etc.

Rotation

Access points/routes

2.2. Farm Size

2.2.1. Farm size now : acres

2.2.2. Area owned : acres

rented : acres

2.2.3. Land lost to M-5(owned): acres

(rented) : acres

2.2.4. Land sold to contractors : acres

2.2.5. Land leased to contractors : acres

- returned on time (penalty clauses ?) ____________

- returned in good state ? ____________

2.2.6. Land transactions since M-5 ? Bought ?____________ acres

Sold ? ____________ acres

2.3. Farm System

2.3.1. Present system : crops -

rotation -

stock -

special features -

2.3.2. Did M-5 cause you to make any system changes ?

____

____

____

____

____

2.3.3. Do you regret having made/not having made any system changes ?

____

____

2.3.4. June Returns release form.

2.3.5. MAFF reference number ____________

2.4. Severance/Access

2.4.1. Acres severed : with access -

landlocked -

2.4.2. Have you been provided with an agricultural access ?

Is this shared with other farmers, or a footpath/bridleway ?

____

____

____

2.4.3. If specific access points have been provided :

(i) Are they in the 'best' position, agriculturally ? - Details

(ii) What size are they ? Do they take all the machinery you would like ?

(iii) How often (per day/per week, seasonally) do you use the accesses and for what purposes ?

(iv) What is the extra journey length compared with the pre-motorway situation (time and distance) ?

2.4.4. If it is necessary to use public roads to gain access :

(i) How often, and for what purposes is it necessary to travel (mark route on map) ?

(ii) What is the extra length of journey in time and distance compared with the pre-motorway situation ?

(iii) Does this involve making any special provision (extra men, licensing men, vehicles etc.) ?

2.5. Construction

2.5.1. What problems occurred during construction ?

Fencing :

Gates :

Drainage :

Access :

Liaison :

(Benefits :)

2.5.2. Problems remaining after contractors had left :

2.5.3. How sorted out :

2.5.4. Suggestions for improvement : ______________________

____

____

____

____

2.6. M-5 and Planning

2.6.1. Do you know of any alteration in the planning designation (i.e. possibility of development) on your land since the road ? ______________________

____

2.6.2. Have there been any specific plans drawn up, or approaches made to you about development of any kind on your land ?

____

____

____

3. Economic Impact of M-5

3.1. Income

3.1.1. Has the M-5 made any difference to your profit level ?

____

3.1.2. If it has, a) to what extent (short/long term) ?

____

b) upon what do you base your judgement ?

____

3.1.3. If not, why not ? ______________________

____

3.1.4. Has the impact been more or less severe than you anticipated ?

____

3.2. Severance

3.2.1. What have been the overall costs of severance ?

____

____

3.2.2. How are these costs made up ?

- extra travel time (distance + no. of trips)

____

____

- landlocked areas with no access

____

____

- unviable field corners

- post-M-5 land transactions

- changed rotation

- changed system

- using public road

- using extra labour

- licensing or buying new machinery/laying hard surfaces

- other

3.2.3. How could the situation have been improved ?

3.3. System change

3.3.1. How, why, and when did you decide to change your system ?

3.3.2. How profitable has the new system been ?

3.3.3. Why did you choose these particular changes ?

3.3.4. Do you think this was the right choice in economic terms ?

____

____

____

3.4. Investment

3.4.1. What is your general policy towards capital replacement and investment ? ______________________________

____

____

____

3.4.2. Was this pattern disturbed before construction began ? Did you stop investing in order to "wait and see" what effect the road would have ? ______________________

____

____

____

____

3.4.3. If 'yes', then how did you cut back ? ______________

____

____

3.4.4. If 'no', why not ? ______________________________

____

____

3.4.5. Specifically, were any investment plans you had made uneconomic/impractical because of M-5 ? ____________

____

____

3.4.6. Were any schemes that had been completed recently rendered partially or totally useless by M-5 (Details :esp. cost).

- drainage ______________________________
- fencing ______________________________
- field rationalisation ______________________
- taking on extra labour ______________________
- purchase of machinery ______________________
- purchase of livestock ______________________
- Laying hard surfaces ______________________

3.4.7. Do you think the farm is overcapitalised post-M-5 ?

What are you going to do about this ? ______________

____

____

____

3.5. Compensation

3.5.1. Have you received any compensation payments? __________

3.5.2. How many ?

How much ?

For what ?

3.5.3. How much do you feel is outstanding ? ______________

3.5.4. Name and address of agent/valuer :

____

____

____

____

3.5.5. Release forms -agent and D.V.

3.5.6. How much were you able to "roll-over" into the farm business to avoid tax ? ______________

3.5.7. How did you spend/invest the money ? ______________

____

____

3.5.8. Would you say the money has proved adequate in restoring your farm income or will it be "exhausted" in a few years ?

____

____

____

3.6. Benefits of M-5

3.6.1. Has the road enabled you to achieve cheaper or wider distribution of produce and thereby increase profits ?

____

____

____

3.6.2. Has the road produced any other agricultural benefits ?

____

____

____

____

3.7. Accounts

3.7.1. Photocopy or release form.

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