

**RULES, DISCRETION AND LOCAL RESPONSIBILITY:
DEVELOPMENT CONTROL CASE STUDIES IN THE
URBAN COMMUNITY OF LYON**

Thesis submitted for the degree of PhD

by

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Dedicated to the memory of

EB and HMB

with love.

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Summary

The research presented in this thesis rests on the premise that the administrative and legal systems of France have a critical bearing on the way that decisions on applications for permissions to build are taken, and the nature of the decisions themselves. In the knowledge that the French system of law offered a legalistic, regulatory framework for planning policy and policy implementation, four specific questions are posed: firstly about the relationship of plans to development control decisions; secondly about the effects of the system on applicants; thirdly about the possibilities for third parties to be involved in, and seek redress from, development control decisions and fourthly about the effects of the decentralisation of development control powers that has taken place since 1983. These questions are then located within a broader discussion of discretion, accountability and the management of uncertainty.

The theoretical discussion of the first chapter paves the way for a more detailed presentation of the nature and origins of French local administration and French planning law and procedure which in turn lead to a case study of the 55 communes of the Urban Community of Lyon and eight studies of development control applications which are explored through an examination of the case file documents and interviews with participants.

Two sets of conclusions are drawn from the study. The first set concerns the effects of a legalised system on the making and implementation of planning policy. The first conclusion is that the legalistic approach of the French planning system appears to create serious difficulties for finding an appropriate expression for policy. In part the problem is shown to be as much a question of ethos as of what is really possible under the law, and some examples of practice in Lyon show how flexibility is still possible even within a legalised system. The second conclusion is that once the rules are departed from, the system offers no alternative means of testing policy in its specific application, although the use of non-statutory consultation meetings in

Lyon has gone some way to meeting the problem. The third is that the pattern of zoning and regulations does not appear to help the maintenance of a planning strategy. The fourth is that a legalised system does not promote certainty for either administrators or applicants. The fifth is that a legalised system does not permit third parties to participate in the decision-making and ensures that objections are seen mainly as being about property values.

The second set of conclusions has to do with the question of the power to decide and the accountability of decision-makers. The first is that the legalised system, while offering potential for agency discretion, nevertheless appears to favour officer discretion which on the evidence of the case studies is rife. While offering mayors the possibility of tactical power, it appears to reduce the accountability for decisions taken. Moreover, the control of the legality of decisions is dependent equally upon the discretion of the prefect. The second is that the pattern of cross-regulation within the French system of local government has ensured the continuity of dependencies between the principal actors in the planning system. The final conclusion is that decentralisation has had relatively little effect on the balance of power. In the Lyon conurbation, COURLY would appear to be the principal beneficiary of the new powers, which would suggest that more power will be concentrated in future at the local level, but that the power will not be any more susceptible to control by the electorate.

Acronyms used in the text

ABF	Architecte des Bâtiments de France; <i>Architect for historic buildings</i>
AGIUD	Agence intercommunale d'Urbanisme de l'Agglomération dijonnaise; <i>Intercommunal planning agency for the Dijon conurbation</i>
CAUE	Conseil d'Architecture, d'Urbanisme et d'Environnement; <i>Council for Architecture</i>
CDU	Commission Départementale d'Urbanisme; <i>Departmental town planning committee</i>
COS	Coefficient d'Occupation des sols; <i>plot ratio</i>
COURLY	Communauté urbaine de Lyon; <i>Urban Community of Lyon</i>
CPPC	Conférence permanente des Permis de construire; <i>Standing conference on permissions to build</i>
DATAR	Délégation à l'Aménagement du Territoire et à l'Action régionale; <i>Delegation for regional development</i>
DDAF	Direction départementale de l'Agriculture et de la Forêt; <i>Departmental field service of the Ministry of Agriculture and Forestry</i>
DDASS	Direction départementale des Affaires sanitaires et sociales; <i>Departmental field services of the Ministry of Health and Social Services.</i>
DDE	Direction départementale de l'Équipement; <i>Departmental field service of the Ministry of Infrastructure</i>
DGE	Dotation globale de l'Équipement; <i>Block infrastructure grant</i>
DGF	Dotation globale de fonctionnement; <i>Block revenue support grant</i>
DOE	Department of the Environment
EPCI	Établissement public de coopération intercommunale; <i>Public authority for intercommunal cooperation</i>
GMF	Groupe Maison Familiale; <i>Private house-building company</i>

IILM	Habitations à loyer modér; <i>low cost housing</i>
IAURIF	Institut de l'Aménagement et de l'Urbanisme de l'Agglomération dijonnaise; <i>Intercommunal planning agency for the Dijon conurbation</i>
IFG	Institut français de Gestion; <i>French management institute</i>
INSEE	Institut national de la Statistique et des Études économiques; <i>National Institute for Statistics and Economic Studies</i>
LGV	Ligne à grande vitesse; <i>High speed line</i>
LOF	Loi d'Orientation foncière; <i>Outline planning and land act</i>
MARNU	Modalités d'Application de la Réglementation nationale urbaine; <i>Agreements on the application of national planning regulations</i>
MELATT	Ministère de l'Équipement du Logement, de l'Aménagement du territoire et des Transports; <i>Ministry of Infrastructure, Housing, Development and Transport</i>
MULT	Ministère de l'Urbanisme, du Logement et des Transports; <i>Ministry of Town Planning, Housing and Transport</i>
PIG	Project d'intérêt général; <i>project in the public interest</i>
PLD	Plafond légal de densité; <i>legal density limit</i>
POS	Plan d'Occupation des sols; <i>Local land-use plan</i>
PUD	Plan d'Urbanisme directeur; <i>Town guidance plan</i>
RNU	Réglementation nationale urbaine; <i>National planning regulations</i>
SD	Schéma directeur; <i>Strategic plan</i>
SDAU	Schéma directeur d'Aménagement et d'Urbanisme; <i>Strategic plan for development and planning</i>
SEM	Société d'économie mixte; <i>Mixed economy company</i>

SERL	Société d'Équipement de la Région lyonnaise; <i>The Lyon region's infrastructure company</i>
SIVOM	Syndicat intercommunal de Vocation mixte; <i>Multi-purpose intercommunal syndicate</i>
SIVU	Syndicat intercommunal de Vocation unique; <i>Single purpose intercommunal syndicate</i>
TGV	Train à grande vitesse; <i>High speed train</i>
TLE	Taxe Locale d'équipement; <i>Local infrastructure tax</i>
ZAC	Zone d'Aménagement concerté; <i>Concerted development zone</i>
ZUP	Zone à urbaniser en priorité; <i>Zone for priority development</i>

1. INTRODUCTION

1.1 The Genesis of the Project

Because Britain developed a planning system somewhat in advance of other industrial countries, and because aspects of the planning have been much admired and emulated overseas, there has been a tendency to self-sufficiency in Britain's attitudes towards planning which has underplayed the value of looking at other planning systems. There are two reasons why it has become increasingly difficult to sustain such an attitude. Firstly, an assumption about the superiority of British planning can certainly no longer be taken for granted, if it ever could, now that all industrialised countries have sophisticated planning machinery; secondly, membership of the European community actually requires an understanding of what takes place in the member states, as a prerequisite for greater harmonization between them.

Apart from adding to the store of knowledge and to planners' cultural awareness, there nevertheless remains a doubt about what value such examination of other systems actually has. One approach is to see whether other countries might actually offer a way of doing things that could be usefully applied at home. But there is an inherent danger in that approach. You may study solutions to a particular planning problem, or the use of a particular policy tool, or even a kind of procedure, only to discover that each is dependent upon circumstances that do not obtain at home. The conclusion is then to say that countries differ because they differ, and that the findings are interesting but irrelevant. Any tendency to insularity is thereby reinforced, and nothing very useful has been gained.

The thrust of this thesis is that a mechanistic study of planning instruments or policy in other countries tells one too little to be of real value. With decisions on changes in land use, the important focus, it will be argued, must be upon the process by which decisions are taken. The process not only concerns the way in which

decisions are taken, but who takes them, and what kind of decisions they are. And the process is determined by the nature of the transactions between certain actors and the understanding that the actors have of themselves and of each other. In this light, the plans and the policy tools, the procedures and the methods of control, must be seen as products of deep-seated cultural forces and not determinants of the process: they formalise and maybe come to constrain, relationships and transactions, but they do not at the origin alter the way in which the actors behave. The real lessons come from the awareness of this relationship between the visible aspects of the planning system and the context in which it operates.

The purpose of this research project is not to make a detailed comparison of two planning systems, but to examine in depth one system from without. It has thus avoided some of the methodological difficulties of cross-national comparison. On the other hand, the chosen field, of French development control, was a direct extension of work on the British development control process (Booth, 1979, 1981, 1983; Beer and Booth, 1982) which to some extent had explored the way in which participants in the planning process in this country had actually behaved. Most of this research had used case studies to investigate the processes and confirmed the value of case studies as a method of investigation. The same approach was adopted here, and development control in France has been studied through examples of developments for which approval was given in the Lyon conurbation. As it turned out, there are in effect case studies at two levels: at the larger scale the urban community of Lyon itself forms a case study - in many respects a special case in France - and the individual developments amplify the process at the smaller scale.

If the concentration on one planning system avoided the methodological problems inherent in making comparisons, it ran the risk of making imperfect judgments upon the processes observed through a failure to understand the cultural forces that determine the transactions that took place between people and organisations. In the end there is no substitute for long association with the culture

whose planning system is under study, through observation of how people treat each other, through an understanding of the formative points in the country's history, through friendships, through literature and the use of language. In the present study that process was aided by the work of informed outsiders like Ardagh or insiders like Peyrefitte or de Beauvoir. But it is never complete: there are always new discoveries to be made, that may cast the understanding of the development control process itself into a new and unexpected light.

1.11 An Approach to French Planning

It has to be said also that the point of departure for this study of French development control was not some well-conceived conviction about the value of the study of planning in other cultures. There was not in the first instance any well-developed theoretical formulation which it was hoped that empirical research could test; nor did the study arise at the outset from a desire to explore the effects of policy in action. Rather it was the result of a somewhat indiscriminate inquisitiveness about how things were done 'over there', a land of summer holidays spent by the sea or strolling along tree-lined boulevards, where the wine and the food were by definition good, but where presumably there was also some concern for the distribution of activities and the need to control physical development. The inquisitiveness was fuelled by a more immediate and practical need: that of having to explain to students what happened in France and why as a necessary preparation for field trips to northern France in 1980 and 1981. The difficulty in making sense of the planning system represented an important spur to becoming more deeply involved.

English language texts on what was happening in France appeared to be few and far between. Those by English writers have tended to concentrate on special areas, be they the new towns or regional planning in the Île-de-France. Those by French writers have tended to be based on assumptions that English readers would not

share and describe what the law allows for but not what happens in practice. There seemed to be an equal dearth of empirical study among the standard French texts, which appeared in the main to be legal textbooks written by lawyers, and for an outsider rendered opaque by the attention to the fine detail of planning law. If anything did emerge from this initial reading it was that France has had successes in sectoral planning and in regional development of a kind that find little comparison in Britain. For the rest, France evidently had a land-use planning system with a hierarchy of plans and a system of control, which one might be tempted to think was similar to our own. But such comparisons are nugatory and say nothing about how decisions are taken and on what basis, and what the results have tended to be.

At this point the temptation would be to embark on a comparative study of comparable developments in Britain and France, say housing estates or hypermarkets, and see what had happened in each country. The approach was rejected at the outset, however. 'Comparable' developments may be superficially similar, but would in practice be sure to reveal a host of dissimilarities, be they in terms of housing finance, land acquisition, retail markets and catchment areas, household expenditure (to name but few), not to mention topography, climate or building materials and techniques. Thus there would be no guarantee of holding the development as a constant to analyse the respective, differing, systems of control: both, one may argue, are the products of socio-economic forces which are specific to the countries. Any investigation of the French system of development control was going to have to be internal to the system, examining the process from within the constraints and the definitions that the system itself imposes.

Yet an outsider does not come to a foreign system of development control necessarily capable of penetrating that system and dealing with it as an insider could, because he will come equipped with a pattern of expectations about how things should work and assumptions about the purpose of development control which will almost certainly not be shared. The opaqueness at first sight of so much of the literature is

precisely because it is based upon expectations and assumptions which are neither shared nor explicit and the excitement comes from trying to detect what those assumptions might be.

Little by little, light began to emerge from what had been rather unpromising beginnings. One clue was the fact that the only books on French development control appeared to be by lawyers and to deal with legal basis for decision-making in a way that suggested that the role of law in our two countries is of a very different order. This was taken an important stage further by the discovery of the book by Prats, et al (1976) on *dérogations d'urbanisme* (departures from planning regulations in force) which suggested that within the French planning system, departures were a far more agonising problem than was the case in Britain, and clearly threatened the legitimacy of the system. Prats' book was not important because it described current practise – by the time the book was published the law had been changed – but because it shed light on what other texts had taken for granted, that the control of development was essentially an act of law, and that accountability before the courts was a potential factor in every decision taken. It had the added advantage of being based on case studies which made it amenable for someone whose experience had been as a practising planner in a way that the theoretical texts was not.

A second text that proved formative was the collection of essays on French and British local government, edited by Lagroye and Wright (1979). Although only one of the chapters is related to town planning, it describes a pattern of local government based upon principles which are seemingly far removed from those which underpin our own. It provided the answer to such baffling questions as why the French remain wedded to an institution as apparently anachronistic as the commune. It also revealed a pattern of relationships between elected representatives and civil servants, and a pattern of assumptions about the nature of local decision-making that looked as though it might be central to understanding how the French development control system might work. As it turned out, the of role of law and the specific

nature of local government in France were to be understood as facets of the concern for the country's proper administration that is deeply rooted in the history of the past two centuries, but which had a direct bearing on the way in which town planning, and specifically the control of development, is carried out.

Here at last, then, seemed to be something worth exploring. For it became increasingly clear that the pattern of local government and the role of the law were not simply a 'context' with which to flesh out the opening chapters of a thesis, they were part and parcel of the problem to be investigated. They gave rise to two intriguing sets of questions.

The first concerned who actually had the power to take development control decisions, and to whom the decision-makers were responsible. Armed with Anglo-Saxon prejudices, one wanted to be able to say, "this is the real seat of power; this, or this, is the body to which authority has been given to act with discretion in the best interests of the inhabitants of this place", and then to build up a pattern of power relationships on that basis. No such convenient pattern emerged, however, because the premise on which French local administration is founded is not that there are some things which it is better to let local authorities to do unimpeded within broad limits set by Parliament. Apparent responsibilities, such as the power of mayors to sign permissions to build in the name of the commune, came to look like an illusory freedom, given the external constraints imposed by the regulations and the availability of technical expertise. It was by no means necessarily 'real power'. Instead, one had to look at an often very complex pattern of relationships between organisations and between individuals, at all levels in the hierarchy of government, that could and did shift according to time and place. All this raised the question of the effect of such complexities on the practice of development control.

The question of the role of the law raised the second set of questions. A regulatory, codified system of administrative law such as obtains in France is

evidently geared to providing the maximum degree of certainty both for those who administer and those subject to administration (the *administrés*, as the French often refer to the population at large). Here, for example, were regulations which spelled out precisely the nature and content of development control decisions; here too, was a system of plans which had to become legally binding documents, themselves providing the regulations for given areas which were all-embracing in their content and their coverage. How, one wondered, could such a system respond to the inherent uncertainties of forward planning? What happened when for all the care with which the regulations may have been prepared, reality had moved on by the time a decision had to be taken? The experience of Prats' work suggests that the system responded badly, because the legitimacy of the system (accountability before the courts) vanished if for what ever reason the rule of the regulation was departed from. But this clearly was not the whole story. Starting from the premise that in practice no system of controlling development can work without a measure of discretionary freedom, it seemed reasonable to investigate how that discretion was in practice incorporated and to whom it was given to exercise. There was not questions of "other material considerations" or "conditions such as the local authority may think fit", so much was certain from the outset; but discretion there proved to be, though with a far less clear indication as to whom the power to use the discretion was given.

To these general questions about the way in which the French development control system operates, must be added the interesting complication of the change brought about by the decentralisation of powers to local government. For the 1980s have witnessed major legislative change introduced by Mitterrand's socialist government of 1980-1986 which purport to give local government real power to act in their own best interests and to try to lay to rest the bogey of the stifling stranglehold of centralised power. Since the decentralisation of planning powers was a major part of the legislation, most importantly in the Act of 7 January 1983, the effects of decentralisation on development control could under no circumstances be ignored. Indeed, they offered an excellent opportunity to explore the nature of

relationships in local government rather more thoroughly, by posing the question of what had actually changed between 1980 and 1986. Inevitably, the answer proved more difficult to find than might at first have been supposed, but all the more intriguing for that. Part of the problem was that a major restructuring of relationships and powers that the Defferre Act and the subsequent legislation set in place could not be expected to emerge fully fledged on the first appointed day; only when the new system has settled down, will a full evaluation be possible. Nevertheless there is already a good deal of evidence about the intentions and the practice of decentralisation and such as it is, it is often very confusing.

Some things manifestly, were not intended to change, like the structure and sub-division of local authority units: communes, *départements* and regions all remained as they had been. Others, like the *a priori* control of the prefect or the introduction of directly elected regional councils, are clear departures from previous practice. But a great deal more remains ambiguous. What does the new found freedom of mayors to sign permissions to build in the name of the commune if there is a plan in force really amount to if the decisions must be taken in the confines of narrowly defined regulations? What does the power to institute plan-making, available since 1983, really mean for the mayor of a small commune, if it is the same ministerial technical service that is likely to be called upon to prepare the plan? These were clearly questions of some importance to the investigation in hand.

1.12 The Research Questions

The role of the law, the nature of the relationships within local administration, and the effects of decentralisation are therefore three themes which run throughout this thesis. They offer, moreover, the foundation for a rather narrower focus on specific questions to do with the development control system which empirical research could then be designed to explore in detail.

1. *The relationship between development control decision-making and the policy base in the local plan.* The French system of planning supposes that the relationship between the *plan d'occupation des sols* (POS; local land use plan) will be direct and obvious, because the parameters of the decision are mostly contained in the POS itself. But how flexible in practice are the POS when a development proposal does not, or does not quite, accord with the regulations in force? Is it possible for the necessary adjustments to be made, in an accountable fashion, or is development in practice held up by mismatches between proposal and regulation? The hypothesis was that the system could not work without a measure of flexibility and therefore the only problem was to discover how the flexibility was introduced and to whom the power was given to exercise it.

2. *The effect of a regulatory system on the applicant.* A system which lays down clearly defined rules is in principle one that ought to commend itself to developers, of whatever kind, because provided they can meet the requirements of the POS they should be able to receive permission to proceed with the development swiftly, assuming that the paperwork is efficiently handled. That, however, assumes that the regulations relate accurately to the particularities of every site and that developers in practice are always prepared to conform to the regulations. The hypothesis was that the certainty was probably illusory, that there would be doubt about how the regulations were to be applied and that it would be difficult for developers to achieve a flexibility on the part of the authorities that would respond to their needs.

3. *The ability of third parties to enter into the debate and to find redress against the decisions of their local authority.* Writers on French administrative law suggest that it confers on third parties guarantees without equal against the arbitrary exercise of power by those in authority. In particular, the power

to appeal against a local authority's decision to grant consent, only rarely present in the British system, appears an enormous advantage for third parties. There is a difference, however, between being able to seek redress when the decision is unfavourable and being able to enter into the process by which decisions are taken. The hypothesis was that if redress of grievance was well catered for by French administrative law, the right to be consulted, far less to participate in the process, was scarcely available in the system and that therefore, the public at large was poorly served.

4. *The effect of the decentralisation of powers on the preceding factors.* In theory, the decentralisation of planning powers should have set in train a massive transformation of relationships and distribution of power whose reverberations would have been felt in the flexibility and the certainty offered by POS and in the capacity of third parties to enter into the process. Initial reading and some preliminary fieldwork suggested that this was far from the case. First of all, the territorial subdivisions of the country had not been altered. Secondly, there were no major changes in the participants and the process, even if, as with the prefect now renamed Commissaire de la République, they might exercise their authority in a rather different way. Thirdly, the relationship between regulation and decision has not changed at all, even if law had been modified. The springs of the system remained, one could argue, as they had ever been. Moreover, decentralisation which one might have assumed would imply a system more accountable to the population affected by it, in practice appeared to offer nothing to the public. The hypothesis, then, was that research would reveal that little had changed since 1983.

These four questions gave a specific focus for the research and permitted the development of a programme to work to test the hypothesis. But behind the specifics of the question of the development control system, behind the more general questions

of the impact of a regulatory system or the characteristics of the local government system, lurk some important theoretical issues which need to be considered in some detail. These are; discretion in decision-making, the accountability for decisions taken, and the management of future uncertainty. It is to these three that we must now turn.

1.2 Discretion: Government and the Rule of Law

By making the assumption that flexibility is essential to the operation of any planning system and, by extension, that the users of a planning system must have discretion to act according to circumstance, we take the discussion into a minefield at the heart of the debate in modern administration. The administrator's view, implicitly adopted in the previous section, that discretion is simply some kind of convenient lubrication that allows things to get done, does not adequately correspond to the complexity of ideas that the debate has produced from lawyers, political scientists and those concerned for social welfare. Coming to terms with discretion is clearly fundamental to understanding how the modern state does, or should, conduct its affairs.

An obvious next step is to ask whether there are adequate definitions of discretion that will help us understand why the debate is so critical. Commentators (e.g. Adler and Asquith, 1981; Ham and Hill, 1984):

"A public officer has discretion whenever the effective limits of his power leave him free to make a choice among public courses of action or inaction."(p.4)

or Jowell (1973):

"Discretion will here refer to the room for decisional manoeuvre possessed by the decision maker."

To these one might add the distinction made by both Bull and Donnisson (cited by Ham and Hill, 1984) that there is a distinction between judgement which is the "simple interpretation of rules" and discretion in which rules "give specific functionaries in particular situations the responsibility to make such decisions as they think fit" (p. 149). All these commentators, concur that discretion in Jowell's words "is rarely absolute and rarely absent". But to conclude that discretion is about choice in decision making and that there is a lot of it around hardly advances the argument very far. There must be considerable sympathy for a view such as Smith's (1981) that "the apparent supposition that we can settle upon a definition, before research begins in social work, [is] unhelpful" (p. 60)

More helpful is the discussion that tries to define discretion by antithesis. For Davis (1971) discretion is the antithesis of law and the issue was how laws could successfully control unbridled discretion in the administration. This relates to the considerable literature that opposes discretion to rules, and Ham and Hill argue that discussion of the former must sooner or later entail consideration of the latter. Thus Noble (1981) shows how the Housing Corporation formulated rules for registering housing associations which were in practice widely departed from while Bradshaw (1981), in charting the development of the Family Fund shows how it increasingly moved towards formulating instructions to predetermine its decision-making. Within such a view there is then a tendency to take sides: if town planners regard discretion as indispensable to their work (e.g. Davies, 1980; Thomas et al., 1983), for those concerned with the personal social services discretion has been seen as arbitrary and unfair, depriving those subject to it of their rights and leaving them without proper means of redress (Winkler, 1981; Bankowski and Nelken, 1981). Discretion may be necessary to free decision-makers from the inflexibility of rules; rules will be necessary to ensure that discretion is not merely a matter of personal whim. Put in this way we can see that the phenomena are not simply opposite, but are interdependent, as the quotation from Jowell (1973) given above suggests.

Yet even this conceptualisation is limiting. To suppose that rules and discretion are opposite ends of a sliding scale is more helpful than to present them as mutually exclusive antitheses. It nevertheless supposes that they are in a similar order of phenomenon. Dworkin's (1979) image of discretion suggests something rather different:

"Discretion like the hole in the doughnut does not exist except as an area left open by a surrounding belt of restriction. It is therefore a relative concept. It always makes sense to ask 'Discretion under which standards?' or 'Discretion as to which authority?'"
(cited by Harlow and Rawlings, 1984, p. 132)

There are two points to make about such a view. The first is that it re-emphasises Jowell's assertion that discretion is rarely absolute but must operate within limits. The second is that it suggests that discretion is not so much a thing in itself as a shorthand term for dealing with how the power to take decisions is allocated, the criteria by which decisions are taken, and the mechanisms by which decision makers account for their actions. Thus, as Adler and Asquith observe, discretionary power is a reflection of power relationships within society as a whole.

This begins to explain why discretion causes so much concern and why it encompasses so many fields of study. Ham and Hill (1984) identify five areas in which discretion becomes an issue: in organisation theory, in social policy, in administrative law, in criminal law and in central-local relationships. Discretion in two of these areas, administrative law and central-local relationships, is clearly of central relevance to this study of French development control and it will be important to explore the theory further in these contexts. Before doing so, however, there are two further general issues that need to be addressed.

The first of these concerns the split that Adler and Asquith (1981) identify between the discussion of discretion at micro and macro levels. In social policy, for example, the discussion appears to be rooted in the minutiae of practice. Thus Bull's

(1980) concern for discretion stems from how the supplementary benefits system affects individuals, and many of the studies in Adler and Asquith's book are concerned with precisely the same level of detail. Yet the concerns of those who write about administrative law and discretion, or about central-local relationships are with global, constitutional issues rather than with the welfare and the rights of individuals. The present study therefore faces an important conceptual gap. At one level it is to be about the day-to-day decision-making of individual officers and elected representatives, and therefore is comparable in general terms to studies like Bull's or Noble's and Bradshaw's cited earlier. At another we have already suggested that a discussion of French development control draws us willy-nilly into a discussion of institutional relationships and how the French understand the nature of government. As we shall observe later the sense of a structural continuum in government, law and decision-making will require us to bridge that gap.

The second has to do with types of discretion available. The literature makes it clear that the hole in the doughnut varies considerably in size and shape. Bull, for example, makes the important distinction between agency and officer discretion. In the former, the agency has powers conferred on it by parliament, which in the case of supplementary benefits meant the central Commission (and local offices were obliged to follow where the Commission led). Officer discretion on the other hand originates from the actions of individual officers and is subject to control, if at all, only to the local level. With officer discretion, he further distinguishes between the discretion implied by interpretation of rules, taking decisions in cases where rules are deemed inappropriate and departing from rules. Though Bull is dealing with supplementary benefits it is quite possible to see an analogous pattern in the British planning system: the Town and Country Planning Acts confer explicit discretion on local authorities as agencies; in their dealings with the public planning officers can and do exercise discretion in interpreting the acts. The model would, however, need further elaboration to incorporate the various kinds of formal delegation from members to officers that the local authority planning function often incorporates.

Bull makes it clear that to confuse these types of discretion, by whatever name they may be called, is to blur two quite separate problems:

"My concern is that the failure to distinguish between these different levels and types of activities can contribute to a confusion of issues; the extent to which parliament should leave scope for agencies and/or officials to exercise discretion in exceptional circumstances; and whether and how checks can be imposed on the inevitable power of officers at the point of delivery of a service to make a judgement about claims by their fellow human beings for that service."
(p. 68)

If there is a limitation to this model, it lies in the view of discretion being at one pole whose opposite is rules. We have already argued that the two are not phenomena that are comparable in that way; but it also fails to recognise the other means by which discretion is contained or constrained. But because it lays stress on rules it is particularly relevant to the essentially regulatory character of French development control.

There are, however, other ways of characterising discretion. Adler and Asquith (1981), for example, distinguish between professional and administrative discretion. Professionals, they argue, are prime examples of discretionary actors which are "subject to particularly weak forms of public accountability and control". They can justify their use of discretion by laying claim to "esoteric professional knowledge" and have retained the power to act "through the development of powerful forms of occupational control" (p. 13). Professionals are also more likely than administrators to have a strong commitment to certain kinds of welfare ideology built up by protracted professional education. The power these professionals wield is thus great and the exercise of what is often referred to as their professional judgement is accorded a high status. Administrative discretion on the other hand is low-status, characteristically constrained by rules or guidelines but because administrators do not share in a professional sub-culture is more likely to be distorted by personal ideology. It is also more readily criticised and controlled.

So high-order and low-order discretion may not simply be a question of institutional as against individual discretion, but also of distinctions between types of actor. Any analysis of discretionary power therefore must note who wields the power and by what right, and what the power base of the actor may be.

1.21 Discretion and Local Government

If to discuss discretion generally takes us into the vexed debate on social welfare and individual rights, to discuss local authority discretion is to broach the equally convoluted field of central-local relations. Much of this debate would appear to be about whether and to what extent local government can be autonomous (Rhodes, 1980). But in whatever terms it is couched the debate is essentially about Bull's agency discretion and has little to do with individual discretion.

A convenient starting point might be the model of British local government that Lagroye and Wright (1979) offer as a contrast to the model they perceive for French local government. In referring to it as a 'residual domain' they imply that there are areas of service and welfare provision that the central state has regarded as being better handled by local government. This Lagroye and Wright contrast with the 'conceded domain' of French local government, where the central state has grudgingly given partial control to local authorities over activities in which the state nevertheless retains a strong contact. We shall return to the question of French local government in chapter 3; the model of British local government does, however, suggest some important theoretical perspectives.

First of all, the idea that local government has an equal role accorded to it by parliament with central government suggests in Rhodes' words a view of central and local government being in partnership which in turn leads to a view that local government is or should be essentially autonomous within the constraints imposed by

acts of parliament. Such a view has led to what Rhodes can describe as the 'conventional wisdom' that local government autonomy has been eroded by successive stages, through directive and financial control, and local authorities have been reduced to mere agents of central government. Rhodes argues that the conventional wisdom is not supported by the facts and that if the concept of complete autonomy was something of a myth, so, too, was the idea that central control was removing all local authorities' discretion to act.

The first point that Rhodes makes is that so far from being easily described by clear concepts such as 'partnerships', 'residual domain' and *ultra vires*, the relationship between the two levels of government is essentially ambiguous and confused, and multi- rather than uni-dimensional. Thus a local authority does not deal with central government as a single phenomenon, but with a multiplicity of departments, agencies and quangos. Moreover these relationships are mediated by policy committees which straddle institutional boundaries and what Rhodes calls the 'national community of local government' to produce a very complicated structure indeed. It is hardly surprising that central government finds it much harder to control local government than popular imagination would suppose. The real problem for local government, Rhodes argued, in echoing the Layfield report was that local authorities were forced to operate in an atmosphere of considerable uncertainty that made long-term strategy difficult if not impossible (Rhodes, 1980, 1986).

The second point that Rhodes makes is that local authorities have never been fully autonomous. On the other hand, the multiplicity of relationships between the tiers of government and central government's need to rely upon local authorities to implement policy offers local government considerable leeway to negotiate, and in negotiating to exercise discretion. Howells (1983) exemplifies, in his study of transport policy in South Yorkshire the essentially ambiguous character of the local authorities' relationship with central government and the way in which that relationship was in a state of constant evolution born of the *interdependence* of both

levels of government in making policy and implementing it. And even in the 1980s Rhodes argues that apparent directive control by central government has been offset by evasive action by local authorities that has resulted in unforeseen impacts on other policy areas. This holds true even if the relationship between the actors is asymmetric, as the state's "monopoly of legislative resources" led Rhodes to recognise that they were often not:

"In short, there is a tension between interdependence and the exercise of executive authority and analysis must focus on the interaction between the two. Neither bargaining nor control is the appropriate focus, even when the relationship is asymmetric."
(Rhodes, 1986, p. 6).

In this light it is clear that, even if we were to retain the more simplistic 'partnership' and 'agency' models of local-central relations, and to persist in arguing that there was a shift towards local authorities as agents of the state, local authorities would not thereby lose all their discretionary power. Indeed organisation theory posits that the very act of delegating results in the transfer of at least some discretionary power (Ham and Hill 1984) and that transfer must presumably occur between organisations as between individuals. The point is reinforced by the practice of the present British government not to make local authorities mere ciphers made under the control of the state, but to circumvent them altogether by transferring powers to other bodies or by giving ministries direct responsibility for what have hitherto been local authority functions.

The messages that come across from this largely British discussion of local government and discretion must nevertheless have a wider application. The first must be that in a unitary state, local authorities cannot be wholly autonomous: they will work for better or worse in a context of national policy for which part of their function is to be the implementing agency. The second is that if local authorities in a unitary state are never wholly autonomous, they can to a greater or lesser extent act with discretion because their relationship with the state is one of interdependence and

not simple subservience: there is room for manoeuvre. The real question is how that discretion is used and what constraints there are upon its use. The third message is that local authorities are likely to have many different types of relationship with central government and that these will modify over time. The specific dynamics of a given relationship and the specific context within which the actors operate will be of paramount importance in knowing the extent of the discretionary power available and the likely outcome of negotiation.

1.22 Discretion and Administrative Law

If the issue of discretion in local government is really to do with the relative freedom of local authorities in relation to the central state, seen from a legal perspective the issue is about whether there should be administrative discretion at all, and if there should, how the law might then control it. The origins of this debate lie ultimately with the 19th century theorist Dicey who argued that there was no such thing in England as administrative law and that "the state possessed no *exceptional* powers and . . . *individual* public servants were responsible to the ordinary courts of the land for their use of statutory powers" (Harlow and Rawlings, 1984, p. 15). Dicey is therefore the progenitor of what Harlow and Rawlings call 'red light theories' of administrative law that see the power of state as arbitrary and something therefore to be resisted through legal control. It is from this attitude that modern calls for a return to the rule of law derive in relation to specific acts of administration that are perceived as arbitrary.

Adler and Asquith (1981), following Tay and Kamenka, regard this desire for legality as presenting a crisis in the law itself lawyers raised in the tradition of *gesellschaft* law based on "atomic individualism and private interests" find it hard to cope with administrative law in which private interest is often subordinate to the achievement of public policies. The argument goes further that *gesellschaft* law is

unable to deal with the discretion wielded by modern government, and the return to the rule of the law produces procedural rights without necessarily tackling "basic social and structural inequalities". (pp. 20-21)

There is, however, a rather different view encompassed by what Rawlings calls 'green light theories' of administrative law that recognises that discretion was inevitable, even desirable for the operation of modern administration, but there remained a problem about how to make the exercise of discretionary power more accountable. For such commentators as Wade, administrative law is necessary to ensure that the executive conforms "to the principles of liberty and fair dealing" (Ham and Hill, 1984, p. 159). Davis (1971) believed the answer lay in the legalisation of the administrative process by developing administrative rules than relying upon adjudication through the courts to control and to create policy. Rules are fair because they are explicit, but the limits of their effectiveness had to be recognised. Davis thus goes a stage beyond what he describes as the 'extravagant rule version of the law' which argues that only the law can provide certainty and justice for the individual. Firstly, the rule of law does not in fact provide that certainty in that judges themselves act with discretion according to circumstance. Secondly, Davis recognised it would be incompatible with the needs of modern administration. But his analysis rests on the need to distinguish between necessary and unnecessary discretion and then that necessary administrative discretion can only be confined by rules.

Jowell's (1973) analysis takes the discussion further. We have already noted that he recognised the necessity for, and the ambiguity of, discretion: he proceeds to examine how, and how far, the law can in fact control it. For Jowell there are in effect two legal means: by 'legalisation' the formulation of explicit rules for action, and 'judicialisation', or the subjecting of decisions to the adjudicative procedures of courts of law. In examining these two processes Jowell argues there must be two criteria by which they should be judged. First at a strategic level, it is important to

know "whether legal techniques will prove effective means to achieve given ends" (p. 183). Second, it is necessary to know whether in fact the task in hand is susceptible to legal control.

Arguments at the strategic level are familiar from other sources. Jowell notes that rules bring the benefits of clarity and accountability to administration, will aid efficiency and serve to protect individual administrators. On the other hand they may prove rigid and encourage legalistic behaviour. Adjudication similarly has strengths in allowing participation in the decision-making process, and by requiring the decision-maker to give a justification on the basis of a declared principle, rule or standard. It allows, too, the "incremental elaboration of laws on the basis of a case-by-case treatment of issues" (p. 198). On the other hand, adjudication may confer procedural rights without substantive rights, and the focus on an individual's rights may make it difficult to generalise for the administrative task from the particular case; to that extent adjudication is inferior to rule-making.

There are three observations to be made about this argument as it stands. The first is that the formulation of rules does not of itself presume that decisions will also be the subject of adjudication, although decisions subject to adjudication may be justified in the light of a rule. The second is that adjudication always requires the justification of decisions, but by reference in principle to more than just a legal code. The third observation to make is that a rule once it is in place may avoid arbitrary decision-making, but the process by which rules themselves are made may not necessarily be free of arbitrariness. How rules are made in a legalised system of administration will need to be scrutinised; so, too, will the other means by which decisions are justified.

The argument cannot end there, however; we need to consider Jowell's criterion for assessing legal control:

"What are the limits of rule-governed conduct? The essential limit arises as a corollary of the fact that a rule is a general direction applicable to a number of 'like' situations that may arise in future . . .

.. The corollary therefore of the impersonal nature of rules is that they are unsuited to the guidance of situations where the action to be controlled is non-recurring." (p. 202).

Jowell is thus departing from commentators like Davis (1971) who see rule-making as the only antidote to unfettered discretion by affirming that rules will only help in assisting with certain tasks. Standards, on the other hand, are means of measuring flexibility in policy making because they require "in addition to the finding of a fact . . . a qualitative appraisal of the fact, in terms of its probably consequences or moral justification." (p. 203) They clearly do allow for a greater responsiveness to a particular circumstance, and can adapt to changes over time. The application of a standard to a specific problem would thus appear to be an essentially discretionary act on the part of the administrator, but one which becomes susceptible to adjudication because its basis is clear. Standards nonetheless can only be used, like rules, where the problems recur.

Legal control not only becomes difficult in dealing with unique problems, it becomes difficult too where the problem that Jowell, following Polanyi, calls polycentric. Jowell argues that adjudication deals invariably with "yes-no" questions or "more or less" questions, and it is clear that rules and standards also entail this kind of simple choice in decision-making. Where a problem consists of several interrelated factors, the adversarial process of the law court and the right-or-wrong application of the rule does not work satisfactorily.

The purpose of discussing Jowell's work at length is to emphasise the importance of deciding whether in fact a particular kind of discretionary action can be subject to either legalisation or judicialisation. In town planning, there must be doubt whether the multi-faceted problems of land-use allocation and control can reasonably be subject to rules, both because they *are* multi-faceted and because there can be no certainty that a problem will recur, or worse, can even be foreseen. The use of standards has also been criticised as inappropriate. Woodford et al. (1976)

argue that standards in residential layout fail to recognise the interaction of factors in the housing environment and all too often employ quantified criteria that are inappropriate to the specific end.

The potential judicialisation of planning poses rather different questions. The success in Britain of the quasi-judicial public inquiry suggests that judicialisation is both possible and desirable but the limitations of the adversarial approach have been criticised in major public inquiries and the move away from the judicial model would appear to have accelerated since the 1970s. The emphasis on pre-inquiry meetings and the introduction of informal hearings all tends in the direction of greater accessibility and participation in the process (Great Britain, 1986) and perhaps also the representation of multiple viewpoints. There is also the question of the basis that is used for adjudication. On the one hand there is the point already raised about whether the possibility of recourse to judicial determination allows substantive rights as well as merely procedural ones (Jowell, 1973; Adler and Asquith, 1981). On the other, adjudication based on legal rules must tend, we can argue, to encourage a legalistic approach, that will be concerned about whether the rule has been complied with than with the justification for the rule in the first place. Legalisation of planning thus runs the risk of failing to cope with the complexity of planning problems, limits true participation in the decision-making process and fails to explore fully the justification for decisions taken.

1.23 Discretion and Accountability

One of the problems associated with discretionary power is how those who use that power account for its use. Discretion that is accorded to local authorities by statute implies the possibility of political discretion for which politicians are answerable to their electorate. Politicians are served by administrators who though they may also use discretion, are responsible to the authority that employs them and

account in this way for their actions. In the same way, at central government level, ministers are responsible to parliament for the activities of their ministries.

There are a number of snags to this theory of accountability. The electoral process may be good for holding politicians to account for the accumulation of decisions that take, but it is not very effective for dealing with individual decisions, which only in the cases of grossest misconduct lead to resignation. Then the link between electorate, politician and administrator may become so attenuated that there is no effective accountability at all. The classic case of Crichton Down in the 1950s exposed, in Harlow and Rawlings' (1984) words, "a world of administrative policy and decision-making apparently immune from political and parliamentary controls" (p. 43). And, finally, professionals in local and central government will consider themselves to have a responsibility to written and unwritten codes of conduct and to uphold the status of their profession perhaps in the face of political pressure. In the last case, perhaps, one kind of discretion and accountability is balanced with another such that arbitrary decision-making is held in check, but this is clearly not enough. There would also be the possibility of collusion which could destroy the balance. There have to be other means to prevent the arbitrariness and unfairness of decisions such as Crichton Down.

Requiring accountability by judicial or quasi-judicial procedure is clearly one way forward. But as Ham and Hall (1984) observe, seeking "to counteract the discretionary behaviour of officials with the rule of law, merely comes up against a further set of discretionary actors, the judges" (p. 160). In legal opinion there would appear to be an increasing view in favour of finding in Elliott's words "new form for administrative disputes" with judicial review as a device used from time to time (Harlow and Rawlings 1984, p. 94). Certainly such a view is reflected in the proliferation of tribunals in Britain whose function and purpose varies, and not all were or are intended to be quasi-judicial (Wraith and Lamb, 1971). The emphasis appears to have shifted to procedural fairness as a way of making administrative

decision-making transparent. Certainly courts of law on their own are now seen as inadequate to ensure administrative justice and accountability and this poses considerable problems for lawyers.

1.24 Discretion and Certainty

The final question about discretion relates to the issue of certainty. It matters little whether the need for certainty is primarily a psychological or practical one: the fact that options may be left open for eventual decision reduces the certainty that participants in a process may have about the outcome. In these terms, so far from being a necessary strategy for dealing with future uncertainty, discretionary powers are of themselves productive of uncertainty. There is an assumption therefore that the more clearly guidelines for development are set out, the more expeditious is the development process likely to be. McBride (1979) therefore criticises the British planning system for allowing too much bureaucracy and argues in favour of zoning regulations on the basis that delay is a factor of the fluid relationship between plans and development control decisions. A system that lays down clear rules for development thus eliminates uncertainty and a source of unproductive delay.

Such a view begs two questions. The first is whether in practice the rules so devised will be easy to apply or whether the process of verifying a development proposal in the light of the regulations in force will not itself be a time-consuming and difficult operation. The second is that not all participants will necessarily regard certainty as being beneficial. Healey (1983) argues that in the face of uncertainties in economic investment opportunities and public policy, developers actually welcome the ability to maintain a negotiative relationship with local authorities rather than one constrained by too clearly defined policy guidelines. The point here is that uncertainty about future development decisions is not solely related to uncertainty about the rules governing land-use change.

Christensen (1975) formulates the problem in a different way in analysing how American planners behave in the face of uncertainty. She establishes a matrix whose axes are 'technology' and 'goal'. Where goals and technology are both known, the problems are most susceptible to regulation and the use of standards. Other combinations are likely to involve varying kinds of discretion in order that uncertainty can be handled. Thus where the goal is not agreed but the technology is known, the field is open for negotiation and bargaining, while an agreed goal with the lack of human technology encourages experimentation and research. Rules in this analysis may be used but only under certain conditions, and this implies that systems dedicated to rule-making might only attempt to deal with certain kinds of problem.

Thus for rules to bring certainty requires a direct and contained relationship between the rule and its object. Where other factors have a bearing on an outcome, then there must remain some doubt about the effect of the rule. In these terms, the doubt about the certainty of legal rules as a medium for expressing planning policy does not hinge simply on the particularist nature of planning and the general question of uncertainty, but on the overlay of uncertainties, only some of which could be directly by a system of rules.

1.3 The Study of French Development Control and Discretion

These studies of British social administration and administrative law shed an important light on the conduct of this study. Firstly, they make it clear that if the issue is to discover what element of flexibility exists in the granting of permissions for development, and if by flexibility we intend the use of discretion in given circumstances, it is of paramount importance to ask what kind of discretion is at issue. In a regulatory system the expectation must be that the prime source of discretion is in the interpretation and the departing from rules in force and therefore is primarily a matter of officer discretion. That in turn, however, begs the questions

of which officers are able to act in this way and what is the context within which they work. The answers are likely to give us a clue as to how the discretion will be exercised. It will also be important to know if the statutes themselves confer discretionary powers, and if so, to which agency within the hierarchy of organisations. We might suspect there to be an interesting interaction in planning between these forms of discretion.

Secondly, the issue of discretion in central-local relations must lead us to ask whether decentralised local government in France can really have the autonomy that the decentralisation statutes purport to give it. The British literature suggests we need to look very closely at the *types* of local authority and the *parts* of central government that are involved in the planning system. We shall be moving into the field of what Rhodes (1986) calls policy networks, or rather into one specific policy network, where there is likely to be as much to unite as to divide the central and local institutions. It reminds us, too, that what will hold good for the development control system is not necessarily true for other parts of French local authorities' functions. All of this might suggest that in studying French local authorities and their links with central government we are not after all dealing with phenomena that are substantially different: both are involved in what is essentially the same kind of game. What we can argue is different, however, is the understanding that the actors have of themselves in relation to others and this is born of history and the cultural environment. Understanding the concepts which underpin the French system will be critical to understanding how far the actors are autonomous and how they use their discretionary freedom. Rhodes (1986) thus underwrites in a very different context Geertz's (1973) socio-anthropological approach referred to in chapter 2 below.

Thirdly, we shall need to examine how the legal control of discretionary power in the French planning system works. We have referred to the system as being 'regulatory' implying that it uses legal rules extensively, and suggested that it coped badly with the uncertainties of planning; we argued following Jowell, *a priori* that

planning was inherently unsuited to control by rules. But we shall need to establish what kind of rules are used, and who establishes them; we shall need to enquire whether the statutes themselves confer discretionary power and on which agency. And all of this begs the intriguing question about what happens if you try to apply rules to a problem that is inherently unsuited to control by rule. Will we discover the kind of 'stress' that Thomas and his colleagues (1981) discovered in Leiden? The discussion of rules has to be accompanied by an examination of the use of adjudication. Here the literature would seem to suggest three questions: who adjudicates, on what basis is the adjudication carried out, and what rights does the process confer on participants?

Fourthly, we shall be concerned with the accountability of all the decision-makers and this implies some consideration of the actual relationships between politicians and their electorates, administrators and their political superiors, and the accountability of judicial decision-making.

Fifthly, we have identified an issue in relation to rule-making and certainty, namely that we shall need to be interested in not only the question of whether rules really do provide certainty, but whether this is what the participants in the development control process actually appear to want.

Such discussion apparently takes the argument well away from the classic territory of how to formulate planning policy and maintain it through the development of control process; indeed it is relatively unfamiliar ground for planners. But in fact the emphasis on process has an important bearing on the work of planners, in that the 'how' of decision-making is inextricably linked to the quality and effectiveness of the decisions taken. In looking at rules, we are forced to consider how planning policy is best formulated; in asking questions about discretion, we are probing the rationale that specific actors adopt for taking decisions within their power.

1.4 The Organisation of the Thesis

The rest of this thesis is organised in the light of the specific research questions outlined in section 1.12 (see page 9 above) and the theoretical issues which are addressed in the rest of this chapter. Chapter 2 looks at the methodological questions that a study of a control system in an unfamiliar culture give rise to. Chapter 3 expresses the nature of the French local government system in terms of the administrative units and the powers they exercise and in terms of the underlying assumptions that are made about the nature of local government. The chapter also examines attempts at reform, as a key to penetrating the assumptions, and in particular outlines the reforms that have been implemented since 1982. Chapter 4 begins with an examination of the nature of French administrative law as a prerequisite for understanding the statutory basis for French planning which follows. Chapter 5 presents the local government structure of Lyon and the way in which planning and specifically planning control is handled in the conurbation. Chapter 6 then takes specific cases of development to exemplify the application of locally and nationally derived regulations, and the effect that these regulations and the actors who use them have on the decisions taken. Chapter 7 analyses the findings and presents the conclusions to be drawn from the study.

2. THE METHODOLOGY OF THE STUDY

2.1 Introduction

The research questions posed in the first chapter and the concern for process rather than for policy and procedures as such, required an approach that would permit the analysis of the detail of decision-making as well as of the administrative framework in which those decisions were set. An analysis of published and unpublished official statistics, even had they been available in a form that would have made it possible to comment on the relationships of planning policy to eventual control decisions, would not therefore have been an adequate basis for the research. Nor again would an analysis of the wording and effect of the regulations, in the legalistic fashion that is popular in France. Nearer the mark might have been an analysis of decisions made on cases that reach the *tribunaux administratifs* (for an explanation of these courts see below p. 85), for these would be likely to reveal some of the preoccupations of participants on contentious cases, and shed light on how they perceived and used the planning control mechanisms. Using cases which are the subject of litigation has an essential weakness, however: the focus is on the exceptional and not the typical, for only a minority of cases actually reach the courts, in France as much as in England. There is undoubtedly important work to be done from the source, but the method did not correspond to the purposes of this research project.

The preferred research method was thus to use the classic development control case study which now has a longstanding pedigree in British planning research. It combines a reading of the relevant case files with a study of policy and informal interviews with participants. It has mainly been used to investigate how certain kinds of policy have been implemented in practice, and is particularly appropriate for British development control in which local planning authorities are given a great deal of discretionary freedom and the accretion of decisions thus becomes a major factor

in the evolution of policy as well as in its implementation. Conversely, case study research of this kind in France appears to be very rare, and perhaps precisely because of the legalistic nature of French planning. The choice of the method for dealing with French development control was not because of a desire to focus on the implementation of specific policy or because it appeared little charted territory in France. The case study of this kind is a unique opportunity to explore the unfolding of a process over time and of the interactions of the participants with each other and the planning machinery they have at their disposal.

The research was carried out in France in three periods. An exploratory visit to Dijon in 1985 from mid-April to mid-May established the feasibility of doing case study research from files. That research has already been reported on (Booth 1985) but some of the findings are also incorporated into this thesis. In 1985 contact was made with the planning agency at Lyon. The main research was conducted in Lyon in a four-month period from April 1986 when the bulk of the material from primary and secondary sources was gathered. A follow-up visit was made for three weeks in September 1987. Legislative change up to July 1986 is incorporated in the body of this thesis but the changes introduced since then, most importantly the Méhaignerie Act, which was in project at the time but not made law until December 1986, has been omitted.

This chapter looks at the way in which the case studies were chosen, the nature of the cases, and the way in which they are treated. This is followed by a section which deals with the limitations of the method. The final section looks at the wider methodological problems set by undertaking research in a foreign country.

2.2 The Case Studies

Though the intention was to study individual cases of development that were subject of the control process and thereby to demonstrate how the procedure laid down in the statutes worked in practice, it soon became clear at an early stage that the study would have to be geographically limited if the constraints of time and resources were to be met. Thus there would be in effect two levels of case study: the first concerning the specific application of legal provisions and administrative arrangements to the particularities of a given area; the second nested within the first, of particular cases of development within that area.

2.21 Lyon

The choice of Lyon it has to be said was partly opportunistic. A preliminary visit had established the availability of suitable case material and the willingness of the administration to lend support to a research project of this kind. There were, however, signal advantages in the choice of Lyon. Firstly, as a large and prosperous conurbation it afforded the prospect of a wide choice of cases to study in detail. Secondly, as a *communauté urbaine* (urban community), it brought together 55 communes of widely varying types into a single administrative system for planning purposes. The conurbation thus was a self-contained unit but at the same time offered considerable diversity in a relatively small area. Thirdly, its specialist planning agency offered the type of organisation and expertise that most closely approaches a British local authority planning department and thus minimised the problems of adjustment to unfamiliar surroundings.

The study of the planning system in the Lyon conurbation was assessed through four types of work. First, there was a certain quantity of published and unpublished material about the administration for planning to be found in the

professional press and in documentation produced by the Communauté urbaine de Lyon (COURLY). Second, interviews were conducted with representatives of three principal organisations in the conurbation: the Direction départementale de l'Équipement (DDE; field service of what is now the Ministry of Infrastructure); the planning agency, and the administration of COURLY. Third, it was possible to attend three meetings of the *consultation préalable*, the preliminary consultation by applicants of the deputy Mayor of Lyon and the Consultant Architect of the *département* of Rhône that take place monthly for development in the commune of Lyons. This was supplemented by attending a meeting of the *groupe de travail* (working party) for a revision of the plan for the south-west of the conurbation and a public participation meeting in the suburb of St.-Clair. Fourth, published and unpublished development control statistics were available to give the order of the administrative task that confronts the authorities.

2.22 The Cases of Development

The original intention had been to select one application for permission to build and to follow it through the period in which it was being determined in order to chart the process with the greatest immediacy. It quickly became apparent that the time available did not permit such a study. A suitable case was not immediately forthcoming; it would in any case almost certainly have taken longer to process than the period of the main study; and to have studied a case from the point at which an application was lodged would have overlooked the critical period of informal and semi-formal negotiations that precedes the lodging of an application. The focus thus shifted to cases that had already been determined, which were originally intended as back-up for the main case.

Selecting the cases was not necessarily an easy task. A prime requirement was that they should be recent so that memories of what had happened and why were still

fresh in the minds of participants. The selection was thus limited to decisions taken in the period from 1 April 1985 to 1 April 1986, i.e. the year immediately before the main study visit. A second decision had to be made as to whether the cases should represent different types of development and different types of commune. Quite apart from the fact that the permutations of these differences were potentially endless, and the cases could never be fully representative, such an approach would have rested on a fallacy, that the process varied according to the type of development. Except insofar as the participants were different in, say, an industrial as against a residential case, reflection suggested that this was not self-evident. The differences between communes, however, looked more significant and it did seem appropriate to enquire what the relative power of mayors whose communes had no more than several hundred inhabitants, and the mayor of Lyon whose commune had a population of several hundred thousand, might be.

Fortunately the conurbation is divided into five sectors and the method adopted was to select, with the assistance of the sector group leaders in the planning agency, cases for exploration. The group leaders were asked to identify cases in which there had been problems with the regulations or disagreement between participants. This yielded a total of ten cases which were explored in detail. Seven were cases which had already been determined, and of them, two were found to have insufficient interest to be worth reporting. Three more were cases that were in the process of being determined. Two were in Lyon itself and were presented at the *consultation préalable* in June 1986; the third was in Rillieux-la-Pape and was the subject of an internal meeting with the technical officers involved and the developers' architect. An eleventh case, which because of its sensitivity could only be studied from the extensive coverage in the local and national press, was that of the proposed Lyon mosque. Though worth a monograph in its own right, the nature of the material gathered and of the issues involved made it unsuitable for inclusion in this thesis.

Of the cases that are reported on, the majority concern housing. Four are of detached or semi-detached housing on green field sites; one concerns terraced housing in part of a suburban centre redevelopment project and one inner mixed residential and commercial development on a small inner area site. The other two concern the extension to commercial premises, and the conversion of, and addition to, a 19th century villa for an old people's home. The geographical distribution was such that there was at least one case in each sector, although in the event there was no cases chosen from Villeurbanne. The two cases rejected were both in the eastern sector. One was an industrial layout where planning regulations proved to be a less important factor than hesitations on the part of the developer. The other was a hostel for handicapped children in which problems - in the event trivial - had to do with the ownership of the site.

Each of these cases, with the exception of the eleventh, was studied from the case file, by reference to the appropriate *plan d'occupation des sols* (POS; local land use plan) and by interview with as many of the participants as possible. The interviews were unstructured, but sought in every case to do three things. First, the participants were asked to give their version of what had happened before and during the processing of the cases and to comment on their attitude to the events. Second, they were asked for their opinions on the decentralisation of planning process. Third, they were asked for their opinions on the deregulation of the planning system.

The interviews lasted between one and two hours and were not tape-recorded, but were written up immediately following the interview from notes. They reflect the views of administrators, professional planners, state and municipal authorities, elected representatives, architects, developers and local residents. The interviews thus served a triple purpose: they promoted information on, and perceptions of, the cases studied; they offered perceptions of the planning process in Lyon; and they gave a cross-section of professional and lay opinions of the French planning system in general.

Each of the sites was visited, sometimes on more than one occasion, and most were recorded photographically. As far as possible, plans, extracts from the POS, copies of the decision notices and other documentation were obtained and some of them are incorporated in chapter six.

The analysis of the cases follows a consistent pattern. The importance of the period before the application for permission to build were lodged came to be seen as critical, since it appeared that much decision-making occurred then rather than during the processing of the application itself. The case studies were thus analysed specifically with a view to determining what decisions had been taken and by whom before the application had been lodged, as well as in the formal processing period. They were also analysed in terms of the interests of the participants in order that decisions could be seen in the light of participants' priorities. The timing of decisions, their nature and the participants' interests are also related to the procedural mechanisms provided for by the *code de l'urbanisme*.

The use of case study methodology was thus geared to the objectives of the research and the nature of the hypotheses to be tested. It is equally true to say, however, that the desire and the ability to do case study research was an important factor at the outset and to some extent generated the research questions. In part, the incentive was the knowledge of what case studies would yield, as against say, gathering statistical data; in part it was a love of the concrete detail, the desire to visualise the system and know what it 'felt like'. To present research of this kind as logical progression from knowledge of the research area to the formulation of research hypotheses to the selection of appropriate methodology is a falsification of the actual research process, a falsification which ignores the looping that takes place, and the impact of the researcher's interests and abilities. This in turn suggests a high degree of engagement of the researcher in the process which is both essential, and dangerous insofar as enthusiasm may obscure the logic of the method. There is

nevertheless a purpose in presenting the process as linear, apart from the observance of academic proprieties, and that is to demonstrate that engagement and looping do not necessarily lead to inconsistency.

2.23 Limitations of the Case Study Method

There are invariably shortcomings as well as strengths in using case studies as the major research method, and within the present project are of two kinds. The first was to do with the inherent problems associated with case studies. The second has to do with the particular problems of the choices made. In relation to the first, there is the inevitable fear, drawn very vaguely from a conception that scientific endeavour must generalise from the particular, that the cases may not be 'typical' and that the result is 'merely anecdotal'. Yet this approach is a fundamental misunderstanding of the nature and value of the case study. The truth must be that no case can ever be typical of other than itself, be the method of choosing the case never so rigorous. As the anthropologist Geertz (1973) puts it:

"The notion that one can find the essence of national societies, civilizations, great religions or whatever summed up and simplified in so-called 'typical' small towns and villages is palpable nonsense. What one finds in small towns and villages is (alas) small-town or village life. If localised, microscopic studies were really dependent for their greater relevance on such a premise - that they captured the great world in the little - they wouldn't have any relevance.

But, of course, they are not. The locus of the study is not the object of study. Anthropologists don't study villages (tribes, towns, neighbourhoods. . .) they study in villages.

. . . The methodological problem which the microscopic nature of ethnography presents is both real and critical. But it is not to be resolved by regarding a remote locality as the world in a teacup . . . It is to be resolved . . . by realizing that social actions are comments on more than themselves; that where an interpretation comes from does not determine where it can be impelled to go."
(pp. 22,23).

The relevance of Geertz's observations extend well beyond the field of ethnography which was his concern in this quotation. Apart from considering the

irrelevance of the search for the typical or the general from the case, Geertz shifts the emphasis to the interpretation of the actions, the origins and the statements. The purpose of this study, then, cannot be to say that French development control is always thus; but nor does it have to confine itself to saying that French development control was like this in this particular place at this particular point in time. There is an important interaction between the behaviour of people planning in Lyon and the culture which they share with the rest of France: they act through that shared culture, but by acting further develop it.

The risk of becoming anecdotal in the interpretation of cases remains, however. There can be no ultimate proof that the interpretations are sufficiently articulated, if indeed even correct. It was salutary, for example, that observation of the *consultation préalable* on three separate occasions over a period of more than two years yielded rather different perceptions of what was actually happening. On each occasion the ability to interpret events had been developed by the growing understanding of the context in which the participants operated. Indeed, there are only two guarantees against inadequate interpretation. The first is that the choice of the parts of the context to study in depth, namely the system of French administrative law and the character of French local government, was correct in relation to an analysis of interactions between people in development control cases. The second is that those variables were adequately understood.

To justify case study research in this way might be to imply that any case study would have done. It is important to recognise, however, that the choices that were made have in practice excluded certain kinds of analysis. Firstly, Lyon is not like other parts of France. As a *communauté urbaine* (urban community) it shares an administrative structure with only eight other places in France. As a conurbation with a specialist planning agency funded jointly by central and local government, it is one of only 30 places in France. Its administration is thus more sophisticated and more complex than that which obtains in most of France, and there are more

participants in the planning process. At the same time the constituent communes of the urban community are in the main far larger and more powerful than the vast majority of French communes, and some have a longstanding history of local autonomy. Any residual temptation to say that Lyon is typical of France as a whole is thus eliminated. Nevertheless the sophistications and the complexities reside within, and are dependent on, the same explicit understanding of how the country should be governed and to that extent the cases observed reflect a prevailing culture.

More specifically, the choice of Lyon and of the particular cases on principle limited an analysis of the decentralisation of planning powers. The whole of the urban community had POS in force from well before 1983, and thus there could be no question of assessing changing attitudes by seeing which communes had begun to prepare plans (a necessary prerequisite for the local control of development) in response to the new legislation. Nor was it possible to compare what happened in communes with and without a plan but both served by the same administration.

The same kind of limitation applied to the choice of time period for cases in that it specifically excluded cases determined before the new powers came into force. One justification for this was that it ensured that the cases were still fresh in the minds of participants; another that attitudes to events before decentralisation might have been coloured by hindsight in a way which would have been difficult to unravel. Nevertheless, there was a more compelling reason for believing that the choice of cases did not entirely preclude a useful analysis of decentralisation. Preliminary investigation had suggested that before-and-after comparisons might not be very revealing, in that it would be easy to conclude that nothing had changed in spite of the intentions of the government. The hypothesis that decentralisation did not amount to dramatic revolution but could be seen as an interesting staging post in a continuous evolution of French administration and French planning, suggested that investigation of how participants responded after the event, and the extent to which what they had done had only been done because of the new legislation, would be at

least as rewarding.

The method of choosing the cases of development carried with it other dangers. Reliance upon sector group leaders' assistance ran the risk of seeing only those cases which they regarded as interesting, and of their perceptions therefore colouring the analysis. Nevertheless the perceptions of the sector group leaders were themselves revealing: the fact that regulations were frequently seen as a problem even though the regulations were often of the planners' own devising; or that in the central sector there were no problems between the town hall of Villeurbanne and the planning agency because of the close working relationships. The nature of the choices was thus part of the material to be analysed.

More difficult, however, was the fact that not all the group leaders were able to identify suitable cases. The reason for this was not self evidently the lack of potentially suitable cases. On the other hand, all the cases yielded points of interest that had not been identified by the group leaders. The point of entry may have been through the perception of what group leaders assumed would have been of interest given the nature of the research; but analysis went well beyond that perception.

2.24 Background Research and Sources

The work on the case studies was backed by reading on French planning law, on French local government and upon the decentralisation of powers. On all these there is a fairly extensive literature in France. A detailed reading of the *code de l'urbanisme* was essential and was simplified by using the regularly updated annotated version edited by Bouyssou and Hugot. Various text books provided an overview of the law and a commentary on it. Prats' book already referred to (Prats et al 1976) and Tanguy's study (1979) went beyond the interpretation of legal texts towards a consideration of cases which was invaluable.

The law and the text books was backed up by two other important sources. The first were ministerial circulars that were issued in conjunction with the new legislation. The status of these circulars is roughly equivalent to their British counterparts, although those connected with decentralisation are mainly concerned with current administrative procedure, and all contain detailed directives to prefects and mayors. To that extent they exemplify the relationship between central and local government in France. The second was the professional press. From 1982 onwards there were innumerable articles explaining the decentralisation of powers, and many of these have been cited in this thesis. A particularly valuable source proved to be the weekly, *Le Moniteur des travaux publics*, which contains regular news items on new legislation, current practice, the state of planning and the development industry. None of this literature is readily available in Britain. A final source for the case study of Lyon, not used systematically, was the local press. The quality of local journalism in *Lyon-Matin* and *Le Progrès* is not high, but there is regular reporting of local development news. More reflective local journalism was available in the Rhône-Alpes regional edition of *Le Monde*, which appeared for the first time shortly before the main study visit. By 1987 this had been joined by Lyon editions of the national dailies *Libération* and *Le Figaro*.

2.3 The Problems of Research in other Countries

By embarking upon a research project which did not seek to compare systems of planning, the methodological problems of comparative studies were eliminated. But studying in a foreign country and in a different culture carries with it dangers that must be recognised and overcome. Any model of the research process that casts the researcher as the detached, observing eye overlooks the associated quality of this kind of case study research noted earlier. Moreover, the commitment is essentially in two dimensions: on one axis to the study in hand, on another to a series of

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professional, academic and philosophical concepts, however poorly expressed, that are the legacy of so many years thinking and working. These Anglo-Saxon attitudes run the grave risk of colouring the interpretation of the case studies to the point of saying, because this planning system is not British, it fails.

One way out of this dilemma is to ensure that there is an evaluatory frame of reference that is derived from the culture itself, by asking what the system's declared aims are and how far they have been achieved. That places a high premium on being able to use and interpret the language of the culture being studied. Williams (1986) insists on the desirability of understanding the language of the countries studied in comparative research; for the present study it was indispensable.

Understanding and using the language has to operate at various levels however. First, there is the ability to understand the general intentions of usage, the deployment of habitual phrases or constructions and other nuances of style. Second, is the ability to understand professional jargon. Here the problem is twofold. The easy part of the task is learning terms which have precise definitions by virtue perhaps of the statutes. More difficult is understanding those technical words whose meaning is not precise or which are used in different ways in different contexts. The classic case for a British researcher is the word *aménagement* which might be translated variously as *improvement* or *development* with suitable qualifying adjectives, but which largely eludes easy or precise translation. Third, is the ability to use the language. Here again there are two aspects to the problem. One is the ability to frame questions to elicit the desired reply. The other is using language as a means of developing an understanding of its nuances. The process of formulating and communicating ideas in a foreign language is itself part of the research process.

To say that the researcher simply has to immerse himself in the system to be studied and make the evaluation internal to that system would be to give a false impression, however. The Anglo-Saxon attitudes persist obstinately. Sooner or later

the question arises as to whether such and such a planning instrument or such and such an administrative management 'is like' something already familiar to the researcher. The value of such a process is not really in the comparison. The real purpose is to discover what it is about the phenomenon that does *not* match experience, and by understanding what it is not, to locate the phenomenon securely in its system rather than make inferences about its position by false analogy. Comparison of this kind also serves as an antidote to hubris. For however much a foreign researcher may believe he understands the system he is studying, he is essentially an outsider, with all that the term implies for both detailed observation and lack of insight.

A final comment must be made on the use of translations in the thesis. Wherever possible, English translations have been found for the French terms. The original French has been retained, however, wherever an English translation would be confusing or insufficiently precise. Thus *enquête publique* is not translated as *public inquiry* because they conjure up very different phenomena in the two countries even though a dictionary definition would suggest the translation cannot be faulted. Many organisations and some planning instruments are known in France by their acronyms. These have been retained and explained in each chapter on the first occasion which they are used. The acronyms are certainly confusing, but are less unwieldy than full titles. Quotations from French writers are given in translation which are by this author except where noted.

3. THE PATTERN OF FRENCH LOCAL GOVERNMENT

3.1 The Traditional Pattern

The purpose of this study is to enquire into the nature of decision-making within the development control system and by looking closely at the way decisions are taken, to understand the nature of the control exercised and the power that all the actors within the system exercise. It is impossible to undertake such a study in any meaningful way, however, without understanding the assumptions about the nature of authority and responsibility that decision-making implies: who, in other words, is acting for whom, and where does their power to act come from. The structure and purpose of local government and its relationship to central government thus quickly become to be seen as key issues. And the more one explores these key issues in the French context and compares them with the British context, the more one is forced to adopt a different attitude and a different vocabulary: not central government but *l'État*; not local councils but *maires*. To embark upon a detailed consideration of French local government is not, therefore, a digression. It is essential to an understanding of how land-use changes take place.

Insofar as anything very much is known about French local government in England, it is seen as a highly centralised system dominated by Paris, and based on the sternest rationality. The contrast with a British system in which local government has a fair degree of autonomy, and which is based upon pragmatism and an ability to muddle through, is thus easily made. Such images are curiously distorting. The lack of autonomy and the degree of central government interference in British local government is striking in a system that is in theory dedicated to local accountability and control. So, too, the dilution of central power and the confusion of roles in French local government puts paid to any concept of stern Cartesian logic. We need to explore in what the real differences consist.

3.11 The Concept of the State

The starting point for a discussion of French local government has to be with the concept of the state, which as Dyson (1980) has shown is as absent in the Anglo-American intellectual tradition as it is prevalent in continental European thinking. It is particularly strong in France. Under the *ancien régime* already, the idea of national unity was becoming a preoccupation, that found its resolution in the person of the absolute monarch. Indeed while the King personally exercised power, the unity of the state came from him in a way that permitted a certain diversity among the population (Guichard, 1976). The Revolution and the introduction of a democratic system removed the very force that kept France unified and the diversities began to look threateningly disruptive. And the diversities were real enough. In 1790, for example, nearly half the population of France either spoke no French at all or were unable to carry on a sustained conversation in the language; only 12 per cent could speak the language purely (Rickards, 1974). The response to this potentially centrifugal tendency was to substitute the concept of state for the concept of monarchy and to invest the state with the status of a legal institution. The opening words of the French constitution thus stress the unity of the state as a prime consideration: "La République Française est une et indivisible . . .". The administration set in place by Napoleon was destined to ensure that these were not merely empty words. At the same time, another important feature of the concept of state in France, is the extent to which it may be personified. The absolute monarch whose power came from the divine right to rule had gone, but the state as a legal entity could still be represented at all levels of the national hierarchy: by the President (or Emperor), but also by the prefects in each of the *départements*, and the mayors in each of the communes.

The concept of unity of the state has had to coexist since the Revolution with the new-found desire to mobilise a local democracy. The establishment of the communes was in part at least motivated by such a desire to develop local control over

local services. Thus the law of 14 December 1789 entrusted to the municipal council "the management of the entirety of public services within the communal boundaries" (Bourjol, 1975) which suggests already the exercise of democratic liberties. This was no mere administrative function: for de Tocqueville for example

"Communal institutions are to liberty what schools are to science; they put it in the grasp of the people and make them taste the possible uses of it by habituating them in the use of it."
(quoted by Guichard 1976, p. 201).

Such a bias has entered deeply into French thinking. Bourjol quotes the rapporteur of a bill in 1946 as saying,

"The French Republic is one and indivisible. Nevertheless it recognises the existence of local authorities whose past and the common will of whose residents confers the character and the right to administer themselves freely within the framework of the general laws of the nation."
(Arès-Lapoque quoted by Bourjol 1975, p.113).

The vision of the lowest level of local government as being the seat of democracy thus appears deeply ingrained, but is also to some considerable extent at odds with reality. The law of 1789 gave the communes the power to administer services of public utility, but the act of 28 pluviôse an VIII specifically forbade communal intervention, and while acts of 1837 and 1884 provided communal councils with a consultative role, the state has by and large acted to restrict democratic involvement in the administration of public services. The Bonnevey Act of 1912, for example, which set up the system of '*habitations à bon marché*' (low-rent housing, the precursor of the '*habitations à loyer modéré*', the current public sector rented housing system) specifically excluded them from local authority control.

There is a very real tension, then, between the belief in unity of the state and the desire for local democracy and one which lies at the heart of the debate about decentralisation in France. Lagroye and Wright's (1979) analysis helps to put the

relationship between control and local government into perspective: they refer to local government in France as a 'conceded domain' in which the state grudgingly allows local authorities to undertake certain functions without necessarily granting complete local control over these functions. The comparison is with the 'residual domain' of British local government, where central government has long recognised that certain functions are more appropriate for local government to perform within certain limits and without interference from central government. This has allowed central government to act as an arbitrator in cases of dispute and to provide the necessary protection against inequitable decisions at the local level. It could act in this way precisely because it was not directly implicated in the day-to-day decision-making of local authorities.

The theory of local government in Britain depends on a view of the state as a loose aggregation of a series of different organisations, no one of which alone represents the state as a whole; as Barker (1930, quoted by Dyson, 1980, p.5) put it,

"There is a bundle of individual officials, each exercising a measure of authority under the cogniscence of the courts, but none of them, not even the Prime Minister, wielding the authority of the state."

The safeguard for the citizen is the system of checks and balances that this aggregation of institutions provides; the role of the law appears to be rather that of a longstop.

In France, however, central government cannot act as an arbitrator precisely because it *is* implicated in day-to-day decision-making at the most local level. In such a system the law becomes far more critical as the safeguard for the citizen against the whims and vagaries of individual governments and politicians. The law defines the state but it also controls the state's behaviour: it provides the rules by which both the state and the citizen must conduct their lives and the means by which they interact. The law enters deeply into daily life and is dedicated to providing

certainty for the administrator and the *administré* alike. Paradoxically, it is a system that was one of Napoleon's totalitarian reforms, but "has survived to provide one of the most systematic guarantees of individual liberties of the individual against the state known at the present day" (Brown and Garner 1978, p. 15). The continuity of administration from the highest reaches of central government to the smallest commune can thus be envisaged, because when needed the law can provide the necessary redress. But the tension between the democratic intentions of the maintenance of the commune as the prime unit of local government, and the desire to maintain the unity of the state, suggests that local government in France depends on at least two conflicting rationales. Indeed Machin (1979) identifies four separate systems of local government in France each with their own idea of legitimacy, and an exploration of this analysis is revealing.

3.12 The Systems of Local Government

The first of these systems, and the best known, is the prefectural system introduced by Napoleon. After the Revolution, the Constituent Assembly struggled to find an appropriate means of unifying the country by providing administrative units that were "unitaire et égalitaire" (unitary and egalitarian) (François 1976) and the country was divided into 90 (now 96 in Metropolitan France) *départements* which were intended to break with old provincial loyalties by crossing traditional boundaries and by substituting the names of geographical features for traditional provincial titles. In practice, some at least of the traditional boundaries were adhered to: if the *département* of Aisne could be composed of parts of Picardy, Champagne and Île-de-France (François, 1976) the *départements* of Dordogne and Ariège, though both taking their names from rivers, had boundaries that were more or less identical to those of Périgord and the Comté de Foix respectively.

In a desire to improve centralised control Napoleon placed within each of these *départements* his own emissary, the prefect, who took the place of the elected assemblies of the Revolution and who was there to ensure that orders from Paris were carried out in the provinces. This chain of command was further developed by the existence of sub-prefects, of whom there might be between two to five in each *département* responsible for the subdivisions known as *arrondissements*, and finally by the mayors of the communes who became, like the prefects, agents of the state, and who brought the power of the administration to the smallest units of population. The success of this system lay in the way that it not only introduced control from the top downwards, it also permitted the flow of information upwards. It is hardly surprising that the system was retained throughout the changes from empire to monarchy to republic that the country experienced during the 19th century, as a major means of ensuring proper and stable administration. It is also significant that the fragmentation of the country into a constellation of communes that for the most part were, and are, tiny in surface area and population, was a key factor in ensuring that every member of the population was brought close to the power of the state. A final point to note is that just as the Emperor or President personified the state for the time being, so his agents in the *départements* and communes effectively personified the state at their respective levels.

The Third Republic introduced what might be described as the second system of local government, of locally elected municipal and departmental councils, exercising like their British counterparts a wide range of responsibilities in the provision of services. Within this system, the existing actors added new roles to that of state agent. The prefect became the departmental council's chief executive, with a responsibility for preparing the annual budget; the mayor from being a state appointee, was henceforth directly elected by members of the municipal council. Neither mayor nor prefect lost their former roles, however, and their position in relation to the elected councils possibly even strengthened their quasi-presidential power. Certainly the communal councils do not act corporately in the way that

British councils do. As Machin (1979) puts it:

"After his election, the mayor wields most of the powers of the council. Only at the annual budget meetings can the ordinary councillors influence the policies of their mayor." p.36

Of course in the larger councils there is too much work for the mayor alone to handle but his or her tasks are shared by the election of deputy mayors (*maires-adjoints*) with specific responsibilities who in their own fields may wield considerable power. In Lyon, for example, the mayor has no fewer than 22 assistants and no commune in COURLY had less than two deputies (COURLY, unpublished information). The result is to create a caucus, which is not to be equated with the collegial quality of British councils and committees.

A third system that Machin identifies is that of the democratically elected parliament. The salient point here in what would otherwise appear not to be part of local government at all, is the way that the fragmentation of majorities has led to deputies being able to bargain strongly for favours from government for their constituencies in return for support in parliament. Furthermore, advance consultation with deputies in the appointment of prefects was still apparently the rule in the 1970s. The desire and the ability to use parliament in this way is strengthened by another feature of French government, the *cumul des mandats* (accumulation of public office). Election to the office of mayor may well be the first stage in an important political career, which will not necessarily entail relinquishing the post of mayor. Deputies, senators and members of the government may well be mayors and their seniority at the level of central government is often reflected in the importance of the communes of which they are also mayor. Thus Chirac, at the time of writing Prime Minister, is mayor of Paris; Chaban-Delmas is mayor of Bordeaux, Defferre was Minister of the Interior and mayor of Marseille; Mauroy is mayor of Lille and was Mitterrand's first Prime Minister. In the conurbation of Lyon, the mayor of Lyon, Francisque Collomb, is a Senator and Charles Hernu, mayor of Villeurbanne,

was Minister of Defence until March of 1986, and notorious in this country for his role in the scandal surrounding the sinking of the 'Rainbow Warrior'.

The fourth system of local government that Machin identifies is that of the ministerial field services. Their origins are once again Napoleonic, although they derive ultimately from the old élite corps of the *ancien régime*. Napoleon, however, set in place a comprehensive system of expert officials in each of the *départements*, among the foremost of which were the engineers of the *Ponts-et-Chaussées*. In principle these élite corps were subject to the prefect, but in practice they have always had considerable freedom as local agents of their ministries in Paris and have therefore become a power to be reckoned with.

There are perhaps two significant points to be noted here. The first is that the concept of élite training and the building up of formidable administrative and technocratic expertise appears to be part and parcel of an attitude to the state: a strong administration is necessary to the maintenance of the state's unity and the control of the potentially wayward provinces. It is a bulwark against political instability. Interestingly, the power of the technocratic elite has increased rather than declined in the post-war period. The products of the *École Polytechnique* and the *École Nationale d'Administration*, the two institutions that are geared specifically to producing high-ranking civil servants, are to be found in the highest echelons of government, and have particularly since the 1960s found their way to political posts. Indeed, the existence of those élite corps is seen as a major factor in the regeneration of France and the economic miracle of the 1950s and 1960s (Ardagh, 1977). What applies in the highest reaches of the civil service also applies further down the system. For planning and development, the graduates of the *École des Ponts-et-Chaussées* were traditionally responsible for, and still in large measure control, the operation of the planning system, in spite of the emergence of the newer breed of planning professionals with whom they must increasingly work (Wilson 1983).

The second point is the way in which the decentralisation of ministerial services into departmental field services has been done in order to strengthen central control and not to make central power either more accountable or necessarily more responsive to local needs and local people. The establishment for example of the Ministère de l'Équipement (Ministry of Infrastructure) in 1966, with its system of field services in the *départements*, the Directions départementales de l'Équipement (DDE) which remain in place in spite of the disbanding of the Ministry itself and the creation of several smaller ministries, was a direct response to the threat that Lyon posed to central power in attempting to establish its own planning agency (Thoenig, 1979). The field services, therefore, are powerful and extend the control of Paris over the activities of the country as a whole. But the departmental directors of the DDE are particularly well placed to plead the cause of their areas to the Ministry in Paris, since as *fonctionnaires d'autorité* they have delegated owners to act on behalf of central government (Garrish, 1986). There is a sense therefore in which this centralised control is also responsive to local need and in which Paris can become sensitised to the needs of the regions.

3.13 Central Control and Local Power

Local government in France is thus a far more complex structure than the popular image of centralised control would have us believe. Indeed Machin's analysis leaves us wondering what the impact of these four different types of local government really is and who within this system actually holds the ultimate power to take or to influence decisions. The fear of Paris is proverbial: among residents of the provinces anti-Paris jokes are legion and appear to betray a bitterness that is deep-seated. Equally indicative is the view that the TGV (*train à grande vitesse*; high-speed train) which has reduced journey times between Lyon and Paris to two hours, so far from bringing Parisians closer to Lyon has made Lyon part of the *grande banlieue* (the Parisian outer suburbs). As Guichard (1976) put it: "In French

administration the slope favours the State." (p. 92) This in itself, perhaps explains, on the other side of the coin, the fierce commitment to retaining the commune as the base unit of local government; again Guichard's view that, "each of the 36, 394 communes of France is irreplaceable." (p. 201), is echoed by many commentators. But this is a point to which we must return later. The view of the domination of Paris, must be modified not only by the knowledge of decentralisation of activities, but more importantly by the relationships that exist between the four systems and the actors within each. Crozier's and Thoenig's (1982) analysis is useful here:

"What characterises the management of public affairs is not necessarily a disequilibrium of power in favour of Paris; it is rather the diffusion of power and the confusion of responsibilities right down the territorial hierarchy between administration and local leaders (notables). Influence is concentrated at each level, and not only at the top, in the hands of a very small number of people."

Indeed instead of straightforward top-down control, on close inspection public administration in France reveals a highly complicated interplay between the most important elements in the systems. The model that has been widely advanced to explain the system is by Thoenig's much discussed principle of *régulation croisée* (cross-regulation) which Crozier and Thoenig (1976) describe as:

"a phenomenon according to which the regulation of a relationship or an organisational channel is performed by members of another organisation which is itself eventually regulated by the former." (p. 566)

Others have elaborated the theme (for example Dupuy, 1985; Machin, 1981) and Crozier and Thoenig (1976) themselves recognise that not all relationships between centre and periphery can be characterised in this way and that "the really powerful are always those who can escape the rule of the system" (p. 566). Nevertheless it offers important insights into the way in which French administration works.

The public official of the DDE is linked to the mayor of the commune for whom he or she is providing some kind of expert service, but may equally be linked upward to the departmental council or prefect. Because each party are likely to be engaged simultaneously with the different parties, each is capable of simultaneously controlling and being controlled. Moreover, any pair of actors may rely upon a third party to reach an agreement who is likely to impose a preconceived solution. Relationships between any two partners is likely to be complex, because though in theory the power they wield may be unequal, they frequently become interdependent. And finally, though there may be no direct hierarchical control by the upper reaches of the system over the lower echelons, the criss-crossing of relationships may ensure that there is effectively indirect control being exercised (Dupuy, 1985). In planning, the classic relationship is that between the mayor and the official of the DDE. In theory much of the power traditionally rested with the DDE because they had the expertise that most mayors lacked. In practice because engineers from the DDE often act as agents for the commune for public works programmes, and receive a fee for doing so, they will need to win the confidence of the mayor to further their own position (Wilson, 1983). In the event of dispute, the prefect is there to adjudicate.

There are further complications in this system, as Dupuy shows. The general pattern of relationships between mayors, councillors and officials in the state services, the heads of those services, the prefect and the president of the general council of the department, are substantially modified in the large towns. They are also substantially modified by the *cumul de mandats* which allows actors to by-pass the normal pattern of networks. The impact of both these, and particularly the former, will be seen in the case study of Lyon. But neither factor outweighs the general point that must be made about French local government: that the equilibrium that exists is based upon the relationships of individual key actors; that the informal contacts are of prime significance; and that power shifts between actors in the system. This equilibrium is not to be compared with the system of checks and balances in the English system in which the balance is between institutions and not individuals and the state is seen

only through the actions of these institutions in relation to each other.

Centrality is not therefore a question of the state calling all the tunes, but the involvement of central government at every level of local government is equally unavoidable: it forms an essential part of the equilibrium; it provides the organising partners for elected representatives and locally employed officials alike; it creates a focus for bitterness and jealousy. Indeed, this system is perhaps more characterised by its continuity than its centrality. There may be no logical connection between the systems of government that Machin (1979) identifies, but a curious unity does emerge from the middle through the interdependence of each of its parts. The unity and the indivisibility of the French Republic appears to be based on the mutual mistrust and the endless round of bargaining which locks its actors together.

The role of the commune and its mayor within this system needs to be looked at in more detail if the questions of power and accountability are to be understood fully. If centralisation is perceived from outside as an obvious characteristic of French local government so too is its fragmentation. The fact that France still retains 36,433 communes as the basic unit of government looks incomprehensible from a country which long ago relegated its parishes to the role of consultative bodies. We have already noted, however, the importance that the French ascribe to the commune as the seat of democracy, and as the point at which the citizen is brought into close contact with the state: it also becomes a bulwark against the encroachment of the state on local affairs. These three conflicting roles are only comprehensible in the light of the discussions above on the nature of the system as a whole.

The communes vary enormously, as might be expected given their vast number, with the large cities counting their populations in hundreds of thousands down to those where populations are to be counted in tens. The overwhelming majority are, however, tiny in population. The statistics can be presented in many ways: 86 per cent of all communes in 1983 had populations less than 1,500; only 9

communes had populations greater than 200,000; but the message is the same (see Table 3.1). All these communes are identical in the eyes of the law, but in practice their differences are as great as their differences in the populations. As service providers, for example, they range from those small communes that can only provide a water supply and sewage disposal in combination with their neighbours, to the big towns that have large numbers of employees and offer a wide range of services (Thoenig, 1979). The handful of very large communes have always had considerable power and have exercised considerable autonomy, as in the case of Lyon. The small communes have mostly lacked both.

We have already noted how the power, such as it may be, of a commune is expressed in the person of the mayor. Indeed the process appears to be two-way. The mayor derives his or her prestige from the scale of the resources and the size of the commune he or she controls, but the commune will increase its prestige by the extent to which the mayor comes to hold higher political office. The dominance of the mayor is underwritten by various factors. Once elected, the mayor holds office for six years, and although in principle it is the council that elects the mayor, it appears that as often as not the incumbent mayor or mayoral candidate selects fellow candidates in the electoral list (Dupuy, 1985). Certainly the longevity of mayors is proverbial. Chaban-Delmas has been mayor of Bordeaux since 1946; Lyon has had only three mayors since 1905, of whom the first, Herriot, was in power for 52 years and at one time combined the office with that of President of the Republic; and an assistant mayor of Vénissieux could describe himself as a *jeune élu*, having only been elected in 1977 (Fischer, personal communication). Another factor is the extent to which mayors are seen as being above local politics and can adopt a paternalistic role. They are thus well placed to impose decisions on the various factions who would otherwise find it difficult to reach compromises (Birnbaum, 1979; Dupuy, 1985).

If the mayors of the large towns are people of national standing, the majority gain their authority from the extent to which they reflect the interests of their

commune. In 1983, for example, 36 per cent of all mayors were farmers or farm workers, though this has declined from 45 per cent in 1971 (Birnbaum, 1979). Other large groups include tradesmen, artisans and other heads of industrial and commercial

Table 3.1 Distribution of Communes in Metropolitan France by
Population in 1983

Population			no. of communes	percentage
less than	100	inhabitants	4104	11
200 -	499	"	18209	50
500 -	1499	"	8909	24
1500 -	2499	"	2049	6
2500 -	3499	"	935	3
3500 -	4999	"	660	2
5000 -	9999	"	799	2
10000 -	19999	"	388	2
20000 -	29999	"	162	
30000 -	39999	"	68	
40000 -	49999	"	51	
50000 -	59999	"	29	
60000 -	79999	"	24	
80000 -	99999	"	11	
100000 -	149000	"	19	0.1
150000 -	199000	"	8	
200000 -	249000	"	4	0.01
300000 and over		"	<u>5</u>	
			36433	100

Source: Association des Maires de France; reproduced in *Urbanisme* 53/202
June/July 1984.

enterprises and private sector salaried workers, but the liberal professions remain relatively poorly represented, as Birnbaum observed. There has, however, been a shift since 1971 away from the traditional occupations towards the professions which might suggest a gradual modernisation of the office of mayor (see Table 3.2).

Interestingly, though the hold of the traditional occupations over the office of mayor appears to be weakening somewhat, the actual style of mayoral government was reinforced by changes introduced by the Act of 31 December 1970 which Bourjol (1975) saw as increasing "municipal presidentialism". There were three factors. The first was the need for at least 50 per cent of the municipal council to agree the calling of an extraordinary general meeting. The second was the power to delegate certain functions of the council to the mayor. The third was the approval of the budget was to be given by chapter and not as hitherto by article. The combined effect of these factors is to increase the power of the mayor and to weaken the ability of minority groups to control the way in which the mayor exercises that power.

We might argue therefore that the attachment to the institution of the commune is not rooted simply in an adherence to a belief in grass-roots democracy or in a desire to provide a counterweight to the centralising tendency of the state. It appears to come, too, from the extent to which the commune reflects a traditional pattern of life which has been increasingly under threat since the war. The threat has perhaps reinforced the desire to retain this last vestige of the rural France of peasants and artisans which provides a unit of government that alone in the administration of the country people can identify with as part of their heritage. For the mayor the commune provides a power base, be it never so paltry, and perhaps it is hardly surprising that mayors of communes should cling tenaciously to the territory that gives them authority.

Table 3.2: Mayors of Communes by Occupation

	<u>nos</u>	<u>%</u>
Agricultural workers and sailors	13,319	37
Heads of commercial and industrial undertakings	4,270	12
Private Sector Employees	5,005	14
Liberal Professions	1,981	5
Students and teachers in primary, secondary and higher education	2,799	8
Civil servants and Local Government Officers	1,219	3
Employees in Nationalised Industry	474	1
Retired Civil Servants, Local Government Officers, members of the Armed Forces	6,288	17
Others including Housewives	<u>1,090</u>	<u>3</u>
TOTAL	36,445	100

Source: Association des Maires de France; reproduced in *Urbanisme* 53/202 June/July 1984.

3.14 The Traditional Pattern: Some Conclusions

Out of this confusing pattern of centralisation and decentralisations, the wielding of power in Paris and the tenacious clinging to power in the communes, several threads emerge. The first is the extent to which the system is highly resistant to change and the reasons for it are not hard to find. In many ways it must suit the state to deal with 36,000 communes because few have the resources to be able to mount a real threat to the services of the state. The power of the DDE, for example,

is not likely to be questioned in a rural *département*, because few, if any, of its communes will be able to afford to look elsewhere than the DDE for advice and technical assistance. By the^{same} token, mayors have shown themselves highly reluctant to lose such power as they do wield. Individually, most mayors carry little real weight, but collectively through the Association des Maires de France they constitute a considerable lobby whose cause is well advanced by the few who do have power that the *cumul de mandats* confers. As a group, therefore, mayors are always able to ensure their views are proven at government level. The cross-cutting pattern of regulation that Dupuy (1985) describes also appears to reinforce the innate conservatism of the system; for if one of the actors in the network is missing, the justification for the others' existence is threatened. Indeed the system appears to encourage the development of new organisations only insofar^{as} the old ones are not removed. The creation of the urban communities *communautés urbaines*, for example, discussed below, adds another layer to the hierarchies of elected representatives and officials and has required much adjusting of roles, but none has lost his or her power to intervene in the system.

The second thread is the one of accountability. To an Anglo-Saxon mind, there appears to be only an accountability of decision-makers to the electorate, and much conflict of interest, within French local government. Indeed we are forced to conclude that citizens have relatively little direct control over local decision-making because no elected representative has much discretion to act, and the role of mayor as agents of the state as much as a servants of their electorates is still present. But French expectations of their local government system are clearly different, if the population believe that the mayor should be above politics (Birnbaum, 1979) and become a guardian or protector who can rise above petty jealousies. The system though partly justified by local elections, is not solely based on accountability by way of the ballot box. The system is, however,^{one} which is capable of being responsive to the needs of the populations it serves. Mayors are indeed close to their electorates: they do identify with each other. The existence of the commune goes far to

counteracting the problem of the remoteness of government from ordinary people that is a major preoccupation in the reorganised British local government system. As Gerbet (1973, quoted by Bourjol, 1975) put it in a report on the regrouping communes:

"But besides often being a school of democracy, the management of the commune which is effected by the simple citizen, whose devotion to the communal cause cannot be too highly praised, ensures that in the remotest corners of the country there is an administration of rare quality and humaneness." (p. 352)

Equally, the departmental field services of the ministries are, as we have argued, well placed to plead their area's cause in Paris, even if they are only accountable to the population of the *département* though the trade-offs and agreements with mayors or through democratic control exercised over government in Paris.

Both these threads are essential to an understanding of how decisions on applications for planning permission are handled and determined, particularly in the light of the decentralisation of powers under the Mitterrand reforms. But resistant though the system has proved to change, the inadequacies of the systems of local government have provided the substance for repeated attempts at reform. Before turning, therefore, to decentralisation itself and the changes since 1982, it is necessary to reflect upon those attempts at reform that preceded decentralisation and particularly those that have taken place in the post-war period.

3.2 The Reform of French Local Government

The question of reform in the French local government system is as vexed as the description of the system of itself for the very reason that the justifications for reform tend in many different directions. Specifically, reforms that appear to have increased local decision-making power have in practice sometimes derived from a desire rather to increase, or at least maintain, state control over local authority.

There are perhaps three dimensions to the analysis of reform that need to be considered. First of all, there is the question of *motives*. Some of the reforms have been undertaken with the desire to ensure the continuity of state control. Some, again, are concerned with the efficiency of service provision and a desire to modernise local institutions, some, yet again, are borne of a desire to introduce a greater rationality into the country's government and distribution of resources (Gourevitch, 1980). Secondly, there is the question of *operational scale* in that reforms have been undertaken or attempted within central government, at regional, departmental and communal level. Thirdly, there is the question of *means* by which reform has taken, whether through decentralisation of powers, the deconcentration of activities or the displacement (*délocalisation*) of organisations.

These terms need explanation insofar as they are important to an understanding of the current reforms. Within the French system, decentralisation is used to mean the transfer of both activities and the decision-making power to local authorities. Deconcentration implies that here is no sharing of power with local authorities, but that decision-making is brought closer to the population by giving a degree of autonomy to local state services. Displacement implies that only activities and not decision-making powers are transferred (*Cahiers Français*, 1982).

3.21 The Reform of Central Administration

Considering, firstly, the reform of central government institutions, the one which is perhaps most relevant to this thesis was the creation of the Ministère de l'Équipement in 1966 and the creation of new combined field services (the DDEs) in each of the *départements* which brought together construction and highways (Ponts-et-Chaussées). This new ministry emphasised the importance that de Gaulle placed on urban development and in theory was designed to shift the power from the engineers, who had traditionally held sway, to the newer breed of planners with architectural or social science training. The Ministry has changed its title and its attributions several times since 1966, but the field services have remained intact, and although Sorbets (1979) has highlighted their weaknesses, from the point of view of the communes, they still appear to be forces to be reckoned with. The reorganisation thus had a twofold impact. It was first of all a modernisation measure designed to make land-use planning and development more efficient and rational. It was also a reaffirmation of central government power achieved by the deconcentration of activity to the *départements*: the very fact that DDEs have delegated authority ensures not only that decisions may more easily reflect local needs, but also that power remains finally with the state. The creation of the new ministry and of the DDEs was only one among a number of similar attempts to deconcentrate activities of the state. Thoenig identifies two periods, from 1954 to 1968 and from 1969 to 1973 in which the government sought to lessen the burden of decision-making in Paris in order to streamline the administration and thereby maintain central control (Thoenig, 1979). Local authorities gained nothing from this shift.

The development of the regions reflects even more clearly the mixture of motives that has accompanied administrative affairs in France, and though not directly relevant to the grant or refusal of planning permission, is nonetheless revealing of the relationships that exist between centre and periphery. Much of the impetus for regional development stems from a rationalist model initiated by by

Gravier's (1947) now famous book *Paris et le désert français* which pointed to the growing imbalance between Paris and the provinces and the need to return to a more ordered hierarchy of settlements. Such thinking was developed into administrative practice with the establishment in 1963 of the Délégation à l'Aménagement du territoire et à l'Action régionale (DATAR) and the designation in 1965 of the *métropoles d'équilibre*, the major provincial cities that were to be developed as counterweights to Paris. The significance of these reforms is that they were inspired by, and maintained the control of, central government. DATAR was located within the cabinet office; its head had every access to the highest reaches of government and its creation was to interpret terms of the National Plan in spatial and economic terms for the regions (Grémion and Worms, 1975; Ardagh, 1977; Thoenig, 1979). Moreover it was DATAR that set up the planning study groups for each of the *métropoles d'équilibre*. It was, as Thoenig remarks a major administrative reform, but a reform which involved little deconcentration, far less decentralisation, of power.

The establishment of the planning regions, in 1964 tended in the same direction. The *départements* were grouped into 21 regions within which the prefect of the most important *départements* would become regional prefect presiding over a regional administrative conference and a 'regional mission' of civil servants. The region thus may have acquired a geographical and administrative identity (Thoenig, 1979, p. 81) but it did not modify the way in which the administration acted (Grémion and Worms, 1975, p. 232), nor did it give the region the status of a territorial authority. It was, as Gourevitch (1980) points out, a prime example of deconcentration in which Paris had relinquished none of its control.

De Gaulle's reforms of 1969, had they been approved, would have had a much more significant impact primarily because they would have devolved real power on the regions. The reasons for the adverse reaction to de Gaulle's referendum need not concern us here, and indeed Gourevitch doubts that de Gaulle need have lost at all. It does, however, reveal the strength of opinions to the effective devolution of power

both from above and below. Pompidou's reforms of the regions in 1972, though certainly a rationalisation of the previous structure, was 'safe' because once again there was no real transfer of power. The 'new' regional councils that Pompidou instituted were not elected and were able to debate and advise but not execute.

3.22 The Reform of Local Administration; The *Syndicat de Communes*

The question of appropriate regional government is a relatively recent issue. The reform of the communes is a question of much longer standing, and has a much more direct bearing on the implementation of planning policy through the control of development. Attempts to amalgamate communes to form larger units have by and large made little headway. Immediately after the Revolution, the Directoire had proposed the concept of the *grande commune* (large commune) which was not implemented, and the Vichy régime tried regrouping communes, but as a way of increasing state control rather than decentralising power to effective units of local government (Bourjol, 1975, pp. 311-2, 329-31). The most recent venture was the statute passed in 1971 known as the Marcellin Act (after the then Minister of the Interior) which proposed to identify those communes in rural areas or where there was "continuous urban development" which did not have the resources to cope with their own development and which would therefore be candidates for fusion. But the measure was permissive and the results disappointing. By 1974 there had been 775 fusions involving a total of 1901 communes, but this represented just over a fifth of fusions recommended by prefects and the decline in numbers of fusions after 1972 is witness to the lack of enthusiasm created by this measure (Bourjol, 1975, pp. 350-1). The commune seemed to be more or less untouchable and its status has been confirmed by successive statutes.

Yet if the status of the commune has been confirmed, the smallness of area and population of most of the communes was recognised as a problem for the

provision of services, from as early as the late 19th century. The solution that has always achieved most mileage is the - mainly voluntary - grouping of communes into syndicates which was first made possible by a law of 1890. Since then the number of such syndicates has burgeoned, and are to be found in all parts of the country. Indeed, there can be few communes which do not act jointly with some or other of their neighbours for the provision of some kind of service. By 1970 there were broadly speaking three types of intercommunal cooperation: the syndicate, the district and the urban community. We need to look at each of these in turn.

The *syndicat de communes* exists essentially in two forms: the *syndicat de vocation unique* (SIVU; single-purpose syndicate) and the *syndicat de vocation multiple* (SIVOM; multiple-purpose syndicate). The former, as its name implies, exists for the better provision of a single service, be it electricity supply, water or sewerage, by the cooperation of several communes.

The latter is a response to the growing realisation that the single purpose syndicate was inadequate for the increased number of services which communes were required to provide and was made possible by an act of 5 January 1959. But in either case the services provided jointly are agreed voluntarily although since 1959 a simple majority of communes is all that is required, rather than complete unanimity. Traditionally the SIVOM was created either by the will of the communes themselves, or by the prefect securing the agreement of two-thirds of the communes with more than half the population, or half of the communes with more than two-thirds of the population (Maurice, 1976; Thoenig, 1979). The syndicate is administered by a committee consisting of two delegates per commune, which elects a president and a presidential bureau in the same way that the mayor and the assistants are elected in the communes. The president "assures the execution of the committee's decisions and represents the syndicate in law" (Maurice, 1976, p. 15). In 1983 there were 1,980 SIVOM in existence affecting 19,157 communes and more than a third of the country's population. The average population was just over 10,000 (MULT, 1985),

but the large majority of communes are presumably involved in some kind of syndical grouping and sometimes several.

The *district* is in effect a type of SIVOM for which some tasks are prescribed by the act of 1959 and others may be added by agreement. The district has been seen largely as an instrument for urban areas which cover more than one commune and is supposed, therefore, to act as an integrating agency. The creation is rather more formal in that the general council of the *département* must agree as well as the constituent communes, but once again two-thirds of the communes with more than half the population or half the communes with two-thirds of the population may agree to the formation of the district and until decentralisation, the prefect had the power to agree its formation. The district is represented by a council whose members are delegated by the communes and who elect a president and vice-president. The communes representation may vary according to the commune's population. The district (and indeed the SIVOM) thus has a formal existence as an *établissement public* with a *personnalité morale*: that is to say its constituent members have a common purpose with an administrative centre and is recognised in law as an entity (Maurice, 1976, p. 12). It may also, unlike the SIVOM, raise its own taxes (Richard and Cotten, 1986). It is not, however, a local territorial authority.

Unlike other syndicates, the law lays down certain obligations on the district and its constituent communes. It must, for example, provide a housing and fire protection service, although other services may be added if the communes decide to delegate them to the district. Communes are not free to withdraw from the district once they have joined, although new communes may be added if the district council approves. There are many fewer districts than SIVOMs. In 1983 there were 147 covering a population of 5.4 million, and whereas almost all *départements* had several SIVOM, only just half the *départements* had a district at all. Once again the size of these districts was small by the standards of British local authorities with an average population of just over 37,000 (MULT, 1985). A district like that based on Dijon,

with thirteen communes and a population of 218,000, is thus untypical but represents the possibilities of this kind of grouping. In addition to its obligatory services, the Dijon district is also responsible for waste collection and disposal, land acquisition and public transport. It also provides through its planning agency forward planning and development control advice to the communes, but it is typical of this kind of grouping that with the exception of Dijon itself, the communes have not delegated their authority in planning matters to the district (Burdin, personal communication).

The third type of grouping is the urban community (*communauté urbaine*) which was created by an act of 1966 and part yet again of a desire to modernise the administration of the largest cities. Unlike the other forms of grouping, the law prescribes much more closely the duties and responsibilities of the community; there is much less discretion left to the constituent communes to determine the extent of powers that the community can wield. Four of the nine urban communities were those of Bordeaux, Lille, Lyon and Strasbourg imposed obligatorily by government, but the law allows for the creation of urban communities in built-up areas that exceed 50,000 population and communes around Brest, Cherbourg, Dunkerque, Le Creusot-Montceau-Les-Mines and Le Mans have also formed urban communities.

The list of services that are transferred to the urban communities is long (see Table 3.3) but in addition to these services, communes may also delegate responsibility for cultural and sports facilities, open spaces, public lighting and social and health services. The communities are able to perform these functions because they may raise taxes on property, and employment and on residence in the same way

Table 3.3 **Statutory Duties of urban communities (communautés urbaines)**

- forward planning and plan preparation
- Designation and equipping of *Zones d'aménagement concertés* (ZAC; concerted development zone, see below p. 134)
- housing service and local HLM (*habitations à loyer modéré*; low cost housing) organisations
- fire service
- urban passenger transport
- secondary schools and colleges of further education
- water, sewerage and waste disposal
- cemeteries and abattoirs
- roads and road signs
- car parks

Source: Maurice (1976, p. 16)

that the communes do; they receive a part of the income tax generated by the population; and they can raise a precept on the sums generated by central government to communes. It is also important to note that though forward planning and the creation and development of *zones d'aménagement concerté* (ZAC; for an explanation of this term see below) are all part of the urban community's statutory responsibilities, processing applications for development is not (Maurice, 1976).

The integrating effect of these communities on the urban areas they serve should not be underestimated, particularly when it is remembered that Bordeaux and Strasbourg consist of 27 communes each, Lyon of 55 communes and Lille, 87 communes (MULT, 1985a). On the other hand the urban community is still not a

territorial authority to be compared with a British district and the communes do not lose their status by virtue of this kind of grouping.

On the face of it, these syndicates of communes have gone far towards overcoming the fragmentation of authority that the multiplicity of communes creates. The practice is less reassuring. First of all the great bulk of these groupings are in the most permissive form, that of the SIVOM. Indeed Maurice recommends this form of association precisely because it is voluntarist in nature:

"By staying closer, at least in appearance, to a tradition of autonomy, the syndicate of communes appears to be the most reassuring formula for communes who wish to keep pace with the times without at the same time relinquishing their individuality."
(Maurice 1976, p.17)

In other words the SIVOM is a very good way for communes to have their cake and eat it: they lose little of their independence by membership and yet off-load some of the more troublesome aspects of service provision that would otherwise be their responsibility. Worse, the cooperation does not always appear to work. 95 per cent of the communes in the département of Lot were already members of SIVOM in 1975, but "for a third this formula disguised what in effect were syndicates with a single attribution." The district for Tours "has never worked" (Bourjol, 1975, p. 353). Bourjol concludes:

"Too often, indeed, a SIVOM is accepted for fear of a district, and a district in the wake of a refusal of an urban community . . . Is it really possible under such conditions to establish rational and serious local government upon what is little more than a fiction?"

Moreover the pattern of syndicates over the country as a whole appears to be chaotic in its current state, even if they did work. Guichard makes the point graphically by presenting the mythical *département* of Bordurie with "some of its existing subdivisions" (p. 133) and says:

"We still teach in our schools the inextricable confusion of France in 1789 in order to demonstrate the progress brought by the revolution. If school programmes were less rooted in the past, what could one say about the current state of our country? . . . the same commune may be tied to another by a specialised syndicate, with others in a SIVOM, with yet again others in a mixed syndicate. The indispensable unity of the commune is compromised. The citizen certainly benefits from more and more services, but is regarded less and less as a citizen and more and more as a consumer." (Guichard 1976, p. 28)

3.23 The Guichard Report

This critique is worth analysing because it appears in the context of the second major attempt at local government reform between 1945 and 1982. The need for reform was increasingly recognised as necessary during the years immediately after De Gaulle's resignation and Giscard D'Estaing was eventually pushed to consider a review of the possibilities for devolution by events in Perpignan in 1975. Giscard's response, announced in a speech at Dijon in November 1975, was to set up a commission headed by Olivier Guichard, mayor of La Baule, Deputy of Loire-Atlantique, formerly government minister and first General Delegate of DATAR (Gourevitch, 1980; Thoenig, 1979). The commission's terms of reference were of the widest, their only real commitment was to produce the report within a year:

"The Commission will seek to define the scope, the organisation and the functioning of local institutions; the division of competencies and resources between them and the state; their means of providing services and the status of the personnel in local public employment; the conditions under which citizens may participate; the status of mayors and municipal councillors.

"The Commission will also apply itself to defining the obstacles of whatever kind that efforts to decentralise have encountered and until now have limited their effectiveness."
(Giscard D'Estaing letter to Olivier Guichard: foreword to Guichard, 1976).

Guichard's response as a Gaullist and a modernist (Gourevitch, 1980) and in the light of Giscard's stance as someone dedicated to the *département* rather than region (Thoenig, 1979) was to focus closely upon reform at the level of the

département and commune. The current divisions of Bordurie offended against rational thinking but for Guichard went further, because the chaos he saw was neither efficient nor democratic.

On the one hand a real local democracy required the survival of the commune, although maybe this was in recognition of the impossibility of proposing the abolition of communes. On the other, the grouping of communes was essential to their continued survival. The Guichard report therefore recommended the creation of communities of communes for rural as well as urban areas, which would provide for an orderly integration of services and would "permit the development of the necessary complementarity of town and country" (p. 212). It would also permit the proper distribution of local taxes and prevent large differences between urban and rural communes. And the survival of communes in ordered groupings was more likely to assure the continuance of a real local democracy than the current chaos.

The proposals of the Guichard report were relatively straightforward. In the conurbations and towns over 200,000 population the principle of the urban community would be extended, to cover 25 built-up areas outside Paris that exceeded the limit in 1975. For rural areas, communes would also be grouped into communities of some 10 to 20 communes with a population of anywhere between 5,000 and 35,000. These rural communities, might be linked to the nearest medium-sized town where there was a strong interdependence of town and rural hinterland, but the report also allowed for single communes of perhaps 30,000 population upwards to become communities in their own right. Finally, there was provision for cooperation between communities although this represented the least developed part of the report's proposals. The approach was thus relatively constructive because it did not advocate the abandonment of the commune; but it did envisage a major recast of local government functions and an appropriate level at which they might be provided.

Guichard's proposals were not entirely without precedent. Alain Peyrefitte, after castigating the French for their lack of civic awareness in *Le Mal Français* (Peyrefitte, 1976), had proceeded to propose, in 1975, a structure of local government that suppressed the region and introduced the district with an elected executive, in his book *Décentraliser* (cited by Crozier and Thoenig, 1982). Guichard, however, did not envisage the direct election of the community councils; rather there was to be an expansion of the principles laid down for the urban communities in the statute of 1966. Guichard's structure was thus recognizably like that which already existed; it reconfirmed the importance of the commune; it rationalised relationships which were then chaotic; it introduced a measure of equity into the financial arrangements for communes, but it was hardly a radical departure. Yet even these reforms appeared unpalatable to mayors, and when a questionnaire on decentralisation was circulated to elected representatives in 1977 a significant omission was any reference to syndicates. The government took no action before the elections to the legislature in 1978. In 1979 a bill was introduced, the Bonnet Act, which drew its inspiration from the Guichard report and was approved at its first reading by the Senate on 22 April 1980. But it was already too late: it did not come before the National Assembly for debate before Giscard d'Estaing was voted out of office. Within less than a year, Mitterrand's government having been elected on a manifesto in which decentralisation was a major issue, brought forward legislation that was very different from its predecessor (Gourevitch, 1980; Gontcharoff and Milano, 1985).

3.3 Decentralisation: the Mitterrand Reforms

The Mitterrand government took office with a commitment to change local government with strong lines that were distinctly different from those of their predecessors. The work of the reform was very largely that of Gaston Defferre, mayor of Marseille and Minister of the Interior. It is hardly surprising therefore that whereas the Gaullist Guichard, deputy and first head of DATAR should have been

concerned about the rationality and efficiency of a local government structure, Defferre's main concern was with the "rights and liberties" of the communes, *départements* and regions as they then stood. The main thrust of his decentralisation proposals was to ensure that each level in the local government hierarchy was able to administer itself freely, with minimum interference from the State. The reforms did not therefore begin with a discussion of the tasks which it was appropriate for local authorities to perform and then to consider the appropriate level at which the tasks should be carried out. Nor were the reforms presented in a single package. Defferre chose instead a three stage process: first, a redefinition of the way in which the units of local government should be free to conduct new affairs; second, a transfer of tasks to those newly liberated local authorities; and third, the transfer of resources (Flockton, 1983; Gontcharoff and Milano, 1985).

3.31 The Defferre Act and Beyond

The Act of 2 March 1982 thus set about to shake off the yoke of Jacobin centralism. First and foremost, the power of the prefect's tutelage was removed. Second, the three levels of local government were formally required to exercise no control over each others' activities. Third, the prefect, renamed *Commissaire de la République* (Commissioner of the Republic), was restricted to vetting the legality of decisions taken. The structural changes that this law brought with it affected the *départements* and the regions more than the communes. Since 1871, the communes had had their democratically elected council headed by the mayor and had been constituted to administer their activities freely, even if they had only been able to administer freely what the state decreed. The *départements* were also in principle democratic and independent institutions, but in practice laboured under the severe disadvantage of having the prefect as their chief executive. The Defferre Act, therefore, set the *département* free of prefectural control by transferring powers to the president of general council who thus ceased to be a mere figurehead. The

regions gained by having from March 1986 directly elected councils, and so becoming full territorial authorities in their own right (Gontcharoff and Milano, 1985).

The Act of 7 January 1983 and subsequent legislation comprised the second major stage of the process, defining the tasks that the newly liberated authorities would undertake. The basic principles of these statutes were stated to be eightfold:

1. *There was to be no removal of local authority powers, only the addition of new ones;*
2. *The transfer of powers was not intended to attack the preeminence of the State;*
3. *The transfer was not designed to create the tutelage of one level in the hierarchy over another;*
4. *The transfer of specific tasks were defined by the function of the place of each level within the hierarchy such that:*
 - communes would be responsible for the control of development and providing local infrastructure;*
 - départements would be responsible for social support requiring local solidarity;*
 - regions would have the responsibility for planning, stimulating and encouraging activity in social, economic and cultural spheres;*
5. *The transfer would be accompanied by the corresponding transfer of resources;*
6. *The means necessary for the exercise of these powers would be provided;*
7. *There would be an effort to deconcentrate those activities which would remain the State's responsibility;*
8. *Transfer of competencies would lead to definitions of certain local authority obligations as being in the public interest.*

(Démocratie Locale, 1982)

The means by which hierarchic control of one authority of another was to be avoided was by giving each type of authority its own specific field of action. For example, the commune, or the group of communes, was to become the unit to which planning processes were to be devolved, both in terms of plan making and in the

implementation of plans through the control of development. The commune could of its own accord initiate work on a *plan d'occupation des sols* (POS: local land use plan) and the mayor would, once the POS had been approved, sign permissions to build (*permis de construire*) in the name of the commune. Similarly, the Act of 7 January 1983 made it possible for groups of communes to embark on a strategic plan (*schéma directeur*). All these had been tasks, as we shall see later, which had hitherto depended on the prefect or the director of the DDE, even if the mayors had become in recent years partners in the process. In principle the change proposed was tremendous: here was real responsibility, which made the vision of the Third Republic, of communes able to determine their own destiny, a reality. The final element in the decentralisation programme has been the transfer, from 1985 onwards, of staff at departmental level from the ministerial field services to the departmental councils.

The transfer of power and responsibilities has also been accompanied by a measure of fiscal reform. The Giscard government, following on recommendation of the Guichard report, had already introduced the *dotation globale de fonctionnement* (DGF: operating block grant) which is a revenue support grant intended like its British counterpart, to be redistributive in effect. To that, the Mitterrand government has added the *dotation globale de décentralisation* (DGD: decentralisation grant) which was intended to compensate local authorities for the increased costs incurred by the transfer of powers. The final grant to local authorities in the *dotation globale d'équipement* (DGE; infrastructure grant) which is a subsidy on capital expenditure by the communes and the départements. It replaces earlier funding that was allocated according to categories of development (Garrish, 1986). The grant, it has been argued, is itself a decentralisation measure in that it does away with the technical and financial control of individual projects by the state and allows local authorities to know in advance what they will receive each year for infrastructure. Its distribution is according to a preset formula, and thus each project does not have to be justified separately (*Démocratie Locale*, 1983).

3.32 Decentralisation in Practice

So much is the theory of the system of reform that was initiated in 1982; the development of the theme in relation to the system of land-use planning must be the subject of a separate chapter. There are nevertheless some general observations about the way in which decentralisation has worked in practice that are relevant. The first observation to be made is that decentralisation in France cannot be compared to local government reform in Great Britain, because in principle it affected some of the fundamental processes on which the state itself is funded: as Gontcharoff and Milano note:

"The free administration of local authorities must lead to a redefinition of the state." (p. 45)

No wonder, then, that Mitterrand's opponents on the right, like Debré, argued that decentralisation threatened the unity of the Republic (Nivollet, 1982a) or that Guichard himself could object that the suppression of prefectural tutelage would lead to chaos in the *départements* and unease in the *communes* (Nivollet, 1982b).

It is also no wonder that as the Defferre Act was elaborated in successive statutes decrees and circulars meant it should be sought to ensure that wider decentralisation, the unity of the state should still be protected. The *Conseil constitutionnel* (Constitutional Council) for example took the view that acts of local authorities would only become enforceable after being submitted to "a representative of the State" (i.e. the prefect) and a second statute, that of 22 July 1982, spelt out five categories of decisions which would have to be submitted in this way, and to which level within the prefectural hierarchy they would have to be submitted. The same statute also spells out the considerations under which the *contrôle de légalité* should be examined by the prefects and when read in conjunction with the appropriate circulars, it becomes clear that the legal control exercised *a posteriori* becomes a very formidable check indeed on local authorities. An Anglo-Saxon would wonder why

such control is actually necessary, if rights of individuals are guaranteed by the courts; a French rejoinder might be that without this control the decentralised France would be a federal state without federal law (Chabanol, personal communication). The state exists as a legal institution, and if local authorities were to flout the law they would not merely infringe the rights of its citizens, but threaten its very existence.

Those who, with Thoenig (1986), argue that subsequent legislation has substantially weakened the impact of the Defferre appear to have a point. The point is reinforced by those who argue that tutelage under the old system was not by any means always the heavy hand of the state intervening in local affairs. Guichard (quoted by Nivollet, 1982b) argued that tutelage hardly existed, and the prefect might more usually be cast in the role of friend and adviser to the mayor of the small commune, rather than as the oppressor appointed by Paris. Decentralisation has deprived local authorities of this kind of support and has replaced it with a new uncertainty, that of not knowing how the prefect will interpret the law in respect of any given decision. Moreover, given the number of decisions subject to control, a prefect is bound to act selectively in pursuing infringements of the law, thus encouraging mayors to 'chance their arm' in the decision they take. The law has modified the relationships between mayors and prefects, but it has not lessened the possibilities for state interference. Thoenig also suggests that decentralisation may lead to a new form of tutelage by default, by *départements* over communes, and by larger communes over smaller communes, even though the Defferre Act specifically forbids it, as *départements* and larger communes begin to create the technical services that can be made available to communes which lack them.

The second observation that must be made about the Mitterrand reform is that, in spite of the fact that decentralisation appears so threatening to the concept of the state, it nevertheless proceeded with relatively little opposition. This is all the more surprising given that the history of local government reform in France since the

war has been fraught with failure. The explanations exist on several levels. Perhaps first of all, the momentum for reform that had built up under de Gaulle and his successors had reached a climax in the 1980s that required a solution to be found. More importantly, the Defferre Act left existing structures intact. There was no talk of amalgamating communes, and the Marcellin Act was repealed; the *départements* gained an apparently tangible autonomy and the regions had existed for long enough to make their creation as full local authorities an acceptable step forward in a way that previously it had not been. On the other hand, the ministerial field services were retained with as important a role as ever in the carrying out of technical services (see below p. 139) and even the prefect remained, albeit under a new title (though one so unwieldy that the term prefect remains in current usage). In this respect the fact that the decree of 31 July 1985 on the transfer of staff from DDEs to the general councils has caused difficulty precisely because it has upset existing structures, is highly significant (Lacroix, 1985c). Finally, the step-by-step approach to decentralisation has had the effect of giving elected representatives a taste for increased power before they felt the impact of increased responsibilities.

A final reason for the acceptability of decentralisation may have been the way in which it appealed to the desire to find community roots. The stress upon the local community Jaillardon (1983) argues is based upon a false projection of a return to a localised past, which in practice the decentralisation proposals cannot really offer, and yet which ensures a popular appeal.

The very acceptability of the Mitterrand reforms, based upon an entirely unmodified structure, suggests another reason why the autonomy will be hard to achieve. The cross-cutting pattern of regulation is in no real way affected by the changes and therefore the mutual interest of all parties is to maintain the *status quo ante*. Central government staff in the field services of the ministries as a group would inevitably tend to be against decentralisation; there would equally be occasions when mayors of communes would only too gratefully slough off responsibility for

unpopular decisions on the state services. At the same time, the Mitterrand reforms did not give most communes the means to employ their own technical staff, and so mayors are forced to rely on state provided technical advice even if the power to take decisions is devolved on them. But the arguments are more complicated than that. There is a growing consensus among commentators that the long-term effects of decentralisation will be to favour the large towns at the expense of rural and smaller suburban communes. In urban areas the will to take decisions on their own behalf is matched by a technical capacity to do so. In the rural areas, the limitations on the effective exercise of power will ensure that things remain much as they have always done (see for example Jamet, 1983; Mény, 1984; Bouzely, 1984 and Thoenig, 1986). The heterogeneity of local government in France is thus likely to increase:

*"More and more, each local situation will be in its own category
France is reinforcing its heterogeneity and local management will
become more and more diverse."
(Thoenig, 1986, p. 9)*

For critics of decentralisation this might be seen as carrying with it the implication of a threat to the unity of the system; yet it could equally be seen as perpetuating the old fragmentation which gives central government a powerful leverage over local authorities.

The third observation must relate to the effect of decentralization on the public at large. The Mitterrand reforms can be criticised in terms of an appropriate response to the country's need for local government reform whose implementation has been only partially successful. So it can be seen as an inefficient solution to a nevertheless correctly defined problem. But what of the implied intention to bolster local democracy? We have already noted Jaillardon's (1983) argument that decentralisation trades on a sentimental vision of a return to community roots. She also doubts whether public participation or increased communication are at all likely under the new structure, even if they have been regularly invoked as a justification for change. In the last analysis "local democracy is decidedly not for the people: it

remains the preserve of its customary users, the professionals, the elected representatives" (p. 23). Jamet (1983) and Thoenig (1986) take up the same theme. Representative democracy may have been enhanced, but direct participatory democracy has not, and the relationship between elected representatives and the electorate remain unaltered.

3.3.3 Conclusions

This debate that has accompanied local government reform makes it clear that any move towards decentralisation faces formidable obstacles if it is not to be devoid of meaning. There is firstly the inertia, the in-built conservatism of the system itself, where the equilibrium of forces that the relationship of the different actors in the system creates ensures that change is not readily accepted, and where the commitment to existing structures is also mutually advantageous. Reform based upon existing structures like the Defferre Act is therefore most likely to be easily accepted, but is also least likely to lead to radical change. To conclude the argument simply in terms of the naked self-interest of the participants in the system is to overlook the real conceptual difficulties that decentralisation creates for the French, however. The unity of the Republic of France remains a touchstone against which reform is measured, and decentralisation invariably threatens the concept at its very heart.

Yet to conclude that decentralisation has not worked and cannot work would be too simplistic. Major reform is likely to take many years to mature: a real evaluation of the success of decentralisation must wait until at least the mid-1990's. Then, choosing the right criteria for evaluation is equally important, and to use, consciously or unconsciously, British yardsticks, would be inappropriate: French local democracy will never look like British local democracy. Finally, there *has* been real change in the new legislation which does affect the roles of the principal actors, though perhaps not always in the way that was intended. The question of who takes

decisions and on whose behalf cannot be answered in quite the same way in 1986 as it could have been in 1980 even if the real answers in 1986 differ from the concept of the *Defferre Act*. The nature of the changes can only really be understood in relation to practice and to specific tasks to be performed. It is the nature of French town planning and to the development control system that we must now turn.

4. **THE FRENCH PLANNING SYSTEM:**
THE LEGAL FRAMEWORK, PROCESS AND PRACTICE

4.1 **French Administrative Law and Planning**

The previous chapter explored the administrative framework within which decisions on planning matters are taken, and in particular the impact of Mitterrand's decentralisation programme on existing structures. We need now to turn to the planning system itself to see how the framework is used in formulating land use policy and controlling the activities of developers. This chapter contains, therefore, a description of the system of development control that operates in France and the policy bases that are used to justify decisions in terms of legal provisions and procedures; it looks at the principal actors in the process; and it looks at the impact of decentralisation on the specific development control powers. It concludes with a preliminary evaluation of the effects of a regulatory system on the practice of planning and of the effectiveness of the measures to decentralise powers to mayors of communes. But a proper understanding of the French planning system first requires an understanding of the status and role of administrative law in French administration.

4.11 **Administrative Law and the *Code de l'Urbanisme***

Though it has long been recognised that Britain does indeed have a body of law which can be properly qualified as 'administrative' the subject has always been problematic for British writers of law. The influence of the great 19th century legal theorist, Dicey, appears to have remained strong: he dismissed the idea that Britain had, or could have, an administrative law like France's, and argued that legal relationships between citizens and the state were as between named individuals. The state had no special status or powers and was to be accountable before the common

courts (Harlow and Rawlings, 1984). However untenable such a view may be in the face of the realities of modern administration, it nevertheless indicates the fundamental shift in philosophical stance that is required in dealing with French administration where the existence of a separate body of law and system of courts is accepted as crucial to the proper government of the country.

We noted in the previous chapter how the abolition of the monarchy led to the creation of the state as a legal entity and how the unity of the republic was assured by law. This of itself implies that the state must have a general and corporate status within the law that sets it apart from the mass of individual citizens. By extension it also appears that the relationship between the state and its citizens is mediated primarily by the law. The law provides codes for action such that state and citizen know what is expected of each and it provides the guarantee against the unbridled exercise of political power. French administrative law also explicitly controls the relationship between the various parts of the administration and therefore underpins the whole of the elaborate structure examined in the previous chapter (Harlow and Rawlings, 1984). There is an essential paradox here. Administrative law has been the means of controlling absolutism yet was the mainstay of Napoleon's absolutist administrative structure; yet again it has emerged as providing one of the foremost guarantees of individual rights in Europe (Brown and Garner, 1983).

The paradox is less important for this thesis than some other features of French law. The first is the relative roles of parliament and the executive in the creation of law. There is no distinction between primary and secondary legislation as in Britain, and the acts of parliament (*lois*), decrees of the executive (*décrets*) and ministerial orders (*arrêtés*) are not at all to be compared with the relationship between British acts of parliament and the statutory instruments and orders. The French parliament's power to legislate is, for example, limited in practice by the list appended to article 34 of the constitution which confers the power. More significantly still, the acts passed by parliament are only effective once decrees have

been formulated by the executive, and these decrees which spell out in detail how the statutes shall be applied have equal legal standing with the acts of parliament and are subject to the same legal control. The same is true of orders made by prefects and even mayors.

The second point is the system of special courts that exist to adjudicate in the event of dispute. Napoleon set up the Conseil d'État (the Council of State) even before he became emperor to consider the legality of acts of the administration. Under the Third Republic the Conseil d'État became in effect the common law judge of acts of administration and was the only recourse in the event of dispute. By 1953 the volume of work made it imperative to deconcentrate the work of adjudication and 26 (later reduced to 24) *tribunaux administratifs* (administrative tribunals) were set up to deal with the body of the work. The Conseil d'État reverted to the status of longstop, a court of appeal against the decisions of the *tribunaux*. The *tribunaux* are full courts of law, and are presided over by judge, the *juge administratif*. Their mode of operation is inquisitorial and not adversarial: the judges take it upon themselves to establish the facts (Brown and Garner, 1983). Moreover the proceedings of the *tribunaux* are not a hearing in the American sense. Though there will be written submissions, they may or may not be read in court: but significantly they are used as the basis for questioning by the judge (ChabanoI, personal communication).

Weil (1965), writing from within the system, notes two weaknesses of French administrative law as it is constituted. The first is that the enforcement of administrative law depends on the willingness of the administration to execute a decision and a determined administration can in fact thwart the decision of the court if it is so minded. Weil argues that in practice this weakness should not be exaggerated, although it underlines the power of the administration. The other weakness he identifies is the emphasis that the system lays upon the judicial aspects of decision-making and the lack of interest in the process by which decisions are

taken.

This in turn suggests a third, more general, point. The distinction that is made in Britain between law and policy, however blurred the boundaries may be in practice, clearly does not obtain in France: policy can only be elaborated as law and applied through legally binding regulations. In Jowell's terms, administration is legalised, because it is only by this means that political waywardness may be checked. And the accountability to the courts ensures that decision making is also judicialised in the event of dispute. The stress is thus overwhelming upon legality as the touchstone of good decision-making. There appears to be a concern neither for process nor for appropriateness. The overwhelming desire is to establish the certainty of rights, duties and procedures.

The implications of this system for town planning are considerable. The legal basis for town planning in France is the *code de l'urbanisme* (the town planning code) which brings together all the acts of parliament and the decrees and ministerial orders into a single volume. Its complexities and ambiguities are legion, however. The cross-referencing that must be done between the statutory and larger regulatory sections make interpretation often very difficult. The first part of the order, about a third of the total, is devoted to the clauses of the various acts of parliament that have to do with land and development. Articles in this section are prefixed with the letter 'L'. The second part, more than half the total, consists of the decrees which put the statutes into effect and are thus vital (to a far greater degree than the General Development Order in Britain) to the implementation of the acts. Indeed, this part contains some of the most important legal provisions of the whole code which deal unequivocally with matters of principle and not just detail. In some cases the relationship is specific in that the articles of the statutes refer forward to regulations to be made by the Conseil d'État and contained in the second part of the code: such is the case with general provisions for land use. In other cases there is no explicit reference in the first part of the code to later regulations, and the regulations approved

by decree elaborate in a sometimes confusing fashion the intentions of the acts. In this part of the code the articles are prefixed with the letter 'R'. The third, and least significant, part of the code contains ministerial orders which elaborate aspects of procedure, including, for example, standard notation for plans. In this last part, the articles are prefixed by the letter 'A'.

The official actors within the system do not therefore have authority to plan and control development within broadly defined limits; they are charged to carry out the duties and implement the policy prescribed in the articles of the code. Any planning document they prepare must itself take on the legal character of the code to be effective. All decisions on planning matters become legal decisions. They are not decisions within the law; they are in a sense the law. Any challenge to decision-making can only be in the form of a judicially resolved conflict; judicialisation of the process ensures a conflict-oriented approach to development control and also to plan-making. Thus we shall argue that the system is strong in protecting individual rights in the event of dispute, but weak in policy formulation and discussion, which tends always to be conceived as a dispute. The civic quality of public debate and involvement whose lack worried Peyrefitte (1976) is actually inhibited by law.

4.12 French Administrative Law and Discretion

How, if at all, does a legal system of this kind confer discretionary power? Obviously there is no sense in which French administrative law can leave decisions to be taken freely within certain broad limits in the way that British acts of parliament governing the conduct of local authorities do. There can be no equivalent to the discretionary freedoms contained in S.29 of the Town & County Planning Act 1971. But an examination of the *code de l'urbanisme* reveals as would other parts of administrative law, that if there is no global discretion available there is, nevertheless, the formal possibility offered clause by clause of interpreting the law in the light of

circumstance. Typically this is expressed in the substitution of the word *peut* (may) for the word *doit* (must). The extent to which this is true in French planning law is a point the legal textbooks do not fail to comment on (e.g. Jégouzo and Pittard, 1980; Labetoulle, 1982).

That the legal textbooks *do* comment on these permissive clauses in the code is worth noting, because it indicates how far discretion stretches the intentions behind the legal system: the safeguard against the whims and vagaries of decision-making referred to in the previous chapter is weakened. It is worth noting, too, to whom that discretion is offered, because that to some extent restores the balance: the discretion is essentially a technical, not a political, one, to be exercised by the administration and not by elected representatives. Even before decentralisation, however, this gave mayors some kind of formal stake in the process in their capacity as agents of the state. The exercise of that discretion is in principle controlled in two ways: through the hierarchical chain of command from mayors to the ministerial field services and the prefect and then to the ministries in Paris; or through the courts. The *juge administratif* can, and from time to time does, rule that a particular application represents *une erreur manifeste d'appréciation* (a manifest error of assessment).

Thus there is administrative discretion offered by the law on the basis of a point-by-point consideration of how the law is to be applied. It need hardly be added that even where the law does not offer discretion, we would expect to find individual attempts to interpret the law through various forms of special pleading. Once again the protection against abuse is first and foremost through the hierarchy of the administration. The extent to which this guarantees the accountability for decisions taken must be open to question.

4.2 The French Planning System

It is within the context, then, of a system of fixing legal rules for behaviour that the French planning system must be considered, and which gives the French planning system a very different character from its British counterpart. The context is all the more important for the fact that superficially there is direct comparability between the systems. Both seek to control development; both have a two-tier hierarchy of plans which propose long-term, large-scale strategy over a wide area and detailed land-use policy which is site-specific. The similarities end there. The framework of the system is on closer examination, itself very different from that offered by the Town and Country Planning Acts and when the framework is coupled to the pattern of authority and responsibility in local government as presented in the preceding chapter, it is clear that town planning is not at all the same activity in each country. The point is reinforced by the fact that the decentralisation laws did not affect the fundamental characteristics of the system at all. What they did was to change the way in which the system of plans and control were to be used and therefore, it might be argued, the nature of the policy and the decisions taken.

4.2.1 The Control of Development

Given the subject of this thesis, it is reasonable to look first at the way in which development is controlled. The first point to make is that superficially the *permis de construire* may be compared to the planning permission in that both are necessary for development. The very title however of the *permis* - 'a permission to build' - indicates the extent to which the control is more concerned with construction than with land use and this orientation becomes clear from the key text, Article L421-1 of the *code de l'urbanisme*.

"Whoever wishes to erect or have erected a building, whether for residential use or not, whether or not it comprises foundations, must first obtain a permission to build . . . the same permission is required

for works carried out on existing buildings when the use of the building would be changed, the exterior appearance would be modified or extra floors would be created."

We may note that the clause is both more and less all-embracing than the S22 of the Town and Country Planning Acts. There is no reference to the "mining, engineering or other operations" that are thought to be suitable subjects for planning control, though in practice these are covered in France by other legislation, for example, the *code minier* (minerals code). We may also note that "material change of use" is also not specifically an issue for control except as an adjunct to physical change. At the same time, Art. L421-1 covers physical changes to buildings which in the British system are either explicitly excluded from the definition of development or at least do not require express consent. Control of development is thus fragmented, although the unity is probably maintained through the nature of the administration by the Directions départementales de l'Équipement (DDE; departmental field services of the Ministry of the Environment).

There are two other authorisations that are also important in the system. The first is the *certificat d'urbanisme* which in effect allows the developer to establish use "constructability" of a given site (Art. L410-1). The certificate is in effect a preliminary *permis de construire* because the terms of a certificate cannot be called into a question if an application for a *permis* is lodged within one year of the certificate being issued. The second is the *permis de démolir*. Demolition control is not universal in France, but is controlled in all communes with populations of more than 10,000 and in all communes within 50 km of the walls of Paris, where the motive is the protection of housing, and in defined areas of natural and architectural interest (Arts. L430-1 and L430-2; Bouyssou and Hugot, 1986).

A third form of authorisation must also be referred to at this point. The control of the subdivision of land has been an issue ever since the chaotic development of the Paris suburbs in the interwar years in which landowners sold off

inadequately serviced plots to individuals. The *lotissement* with its separate form of permission occupies a half-way position between the formulation of the plans and the control of development, because the authorisation to subdivide contains a plan and regulations that are binding on eventual purchasers and which form the conditions under which subsequent *permis de construire* may be applied for and granted (Arts. L315-1, R315-39; Tribillon, 1985). All these forms of permission are processed in rather similar ways, such that although legislative base is different in each case, the procedural characteristics and the forces that affect the decision are directly comparable.

4.22 The Policy Base for Development Control Decision-Making: the *Règlement national urbain*

The basic framework for the determination of applications for permission to build are contained in an extensive section of the regulatory part of the *code de l'urbanisme* known as the *Règlement national urbain* (RNU; national urban regulations) containing 32 separate articles grouped into five sections. They are specifically not concerned with the procedure for determining applications which are dealt with elsewhere, but with the grounds on which the decision must or may be taken. It is intended to be a finite compendium of the proper considerations for determination. The evolution of the RNU would seem to be a very good indication of the striving for administrative certainty that was referred at the opening of this chapter. The first elaboration of rules in the code appears to have been in 1955 as a means of creating a uniform base for decisions throughout the country; hitherto where there was no plan in force there could only be recourse to municipal or departmental sanitary regulations, whose scope was inevitably limited (Labetoulle, 1983). The RNU was modified by decree in 1977 which, as Bouyssou and Hugot (1986) note "reinforced yet further the discretionary power of the administrator which characterised the previous regulations" (p. 323).

With the exception of eight articles noted at the outset which apply everywhere, the RNU is designed to apply to those communes which do not have a *plan d'occupation les sols* (POS; local land-use plan) in force. In 1979 two-thirds of the country, albeit containing only one-fifth of the population, was subject only to the RNU (Labetoulle, 1983); at April 1984 the proportion increased because older style plans ceased to be valid after decentralisation (see below) and less of the country was covered by a valid document.

Various points about the RNU must be emphasised. The first is to repeat that it, and it alone, provides the grounds on which permission may be granted or refused in the communes to which it applies: the law makes no provision for reference to other material considerations, and authorities may not invent reasons for refusal that cannot be justified by reference to an article of the code. The second is the extent to which the RNU is concerned with physical layout and design. Three of the five sections of the RNU deal respectively with the siting and servicing (*localisation et desserte*); location and volume of buildings (*implantation et volume des constructions*); and aspect. The remaining sections, containing only four of the 32 articles, deal with the application of the rules in specific circumstances, the final article relating specifically to the protection and development of coastal regions. The third point is the extent to which the RNU nevertheless confers discretionary freedoms upon its users. 17 of the 32 articles grant direct exercise of discretion; ten allow the imposition of conditions; a further three imply in their wording that conditions may be imposed. The typical wording of such articles reads, "permission may be refused or granted only subject to special conditions." For the most part those on whom the discretionary power is conferred are not named, and in principle the power is accorded to whoever has the power to determine applications. Two articles, however, confer a specific discretionary freedom on the prefect. Art. R111-20, for example, gives the prefect the power to allow departures (*dérogations*) from the three preceding articles which specify the way in which buildings may be sited in relation

to others and certain volumetric limitations. Art. R111-5 similarly allows the prefect a freedom to waive limitations in the siting of buildings in relation to motorways and major roads, here qualified by the need to obtain a proposal for such a waiver from the DDE. It must, however, be clear that ensuring who within the complex web of local and central government actually exercises the discretions contained in the RNU is one key to understanding where the real power to take decisions lies.

One further global control must be referred to which does not form part of the RNU, but which is applied everywhere in the country: the *plafond légal de densité* (PLD; legal density limit). This control was essentially a legal plot ratio control whose aim was both to control density and a fiscal measure to boost taxes. As conceived in 1974, it set a blanket plot ratio of 1 for all of France apart from the city of Paris where the figure was raised to 1.5. Any developer exceeding those limits was required to pay for the value of the land which would be necessary to accommodate the extra floorspace if the limits were adhered to. Subsequently the limits were modified, and Art. 112-1 gives communes the choice of raising the ratio to up to 2, or 3 in Paris, a measure apparently designed to stimulate construction activity by reducing the tax burden (Tribillon 1985).

4.23 The Hierarchy of Plans

Though the RNU still applies to the greater part of the surface of the country, it may be understood, at least in principle since decentralisation, as a stop-gap before the total coverage of the country by planning documents. In effect this is conceived as the substitution for a set of national regulations by local regulations which can be more closely related to local needs. The plan therefore must be understood first and foremost as a legal document which has parity of status with the RNU for the area to which it applies. French commentators thus contrast the RNU with the *réglementation locale* that is represented by the system of plans (see for example

Jégouzo and Pittard, 1980; Chapuisat, 1983). In a sense it is an almost secondary consideration that the plan should be an instrument of planning policy, a fact of which Jégouzo and Pittard in their text book feel the need to remind readers. We need therefore to look closely at the nature of the system of plans and relationship to development control decisions.

The present system of plans was put in place in 1967 by the *Loi d'orientation foncière* (LOF; Outline Planning and Land Act, Wilson, 1983). Before 1967 acts passed in 1919, 1943 and 1958 had all required the preparation of plans. The procedure made possible by the earlier acts was evidently very cumbersome and their effects limited, even though it seems that plans prepared in the late 1940's were still in force in 1978. The 1958 act produced a more comprehensive and more manageable system of plans with a *plan directeur d'urbanisme* (PUD; town guidance plan) which might apply to one or several communes, and a *plan d'urbanisme de détail* (detail plan) which could apply to any defined sector within a PUD to provide greater detail. There were a number of criticisms of the system in terms of the nature of the document and the manner of its preparation, but for the first time France had a widely used system of forward planning which provided the kind of regulatory control that was being looked for. Nearly 5,000 of these PUD were produced and "several thousand" remained in force in 1978 (Jégouzo and Pittard, 1980, p. 36).

4.231 *The schéma directeur*

The LOF brought further changes both to the procedure for preparation, which will be dealt with below, and to the nature of the plans themselves. Once again there was to be a two-tier hierarchy, but whereas under the 1958 act the plans were essentially similar in their impact, the *schéma directeur d'aménagement et d'urbanisme* (SDAU; strategic plan) and the *plan d'occupation des sols* (POS; local land-use plan) were intended to be, and are, distinctly different from each other.

The code, as Tribillon (1985) notes, makes it clear that the SDAU were conceived as "administrative documents that direct and coordinate" and therefore were to be compared to economic development plans (p. 184). Prepared for a 20-year period to cover an area usually smaller than an English county, but covering several, if not many, communes. Their import was to set the major lines of development, but not to control the detail of the implementation of schemes. As Tribillon notes again, they were essentially instruments by which the state could recover control over the development of the country. They are not, therefore, a regulatory document like the PUD or the POS and have relatively little bearing on the day-to-day process of development control decision-making. With some exceptions, they are not opposable in law by third parties.

Two points must be made about the SDAU in passing, however. The first is that these plans were almost the only attempt to provide for general strategic thinking in land-use planning. But the French do not appear to have translated the success of their sectoral planning into spatial terms, and the SDAU have had no more than a checkered pattern of success in directing and controlling physical development. Wilson (183) argues that the fact that most SDAU were started in the light of inflated expectations of growth in the 1960s and the relative lack of interest that politicians show in matters at higher than communal level led to a rapid disenchantment with SDAU in the 1970s. Certainly the figures confirm the lack of popularity if not necessarily its causes; by 1984 only 187 SDAU had been approved.

The second point is the question of their status in relation to development control decisions. As Tribillon (1985) puts it "the legal effects of the SDAU have proved extremely embarrassing" (p. 194). Art. R122-20 of the code as it stood before decentralisation required that POS, and *zones d'aménagement concerté* (ZAC) had to be compatible with the SDAU (the relevant article is now R122-27 whose wording is comparable). The SDAU could not, however, in principle be directly invoked in determining an application for permission to build, although legal opinion appears to

be divided on that score. The status of the SDAU once approved looks doubtful, therefore, and there has been the tendency for them to be quietly shelved (Chapuisat, 1983).

4.232 *The plan d'occupation des sols*

Unlike the SDAU the POS has precisely the character of a regulatory document that was referred to earlier. Proposed usually for single communes, the plan is designed to place every parcel of land in an appropriate zone and to give each zone its own regulations. The code gives explicit guidance as to how the POS should be presented. Art. R123-16 establishes the need for a plan (*documents graphiques*), a set of regulations and an explanatory report. Part I of Art. R123-18 requires the identification on the plan of urban zones and natural zones. The urban zones 'U' are those which have infrastructure in existence or under construction of a capacity to take further development. The natural zones 'N' are further divided into four classes. First, there are zones 'NA' in which development is possible provided coherent proposals for servicing and developing the land are brought forward. Second, there are zones 'NB' which are partly serviced but in which future servicing, and therefore future development, is not envisaged. Third, there are zones 'NC' protected for their agricultural value. Finally, there are zones 'ND' to remain unbuilt either because of environmental dangers or because of their landscape, ecological or historical interest. The POS must also identify woodland areas to be protected or created (*espaces boisés classés*), areas for specialised activities and sectors to which specific architectural prescriptions will apply (see Table 4.1).

Table 4.1 Zoning in Plans d'occupation des sols**Urban Zones**

Zones U urban zones in which the capacity of existing public services or services in the course of being provided allow the immediate possibility of new development.

Natural Zones comprising as needs may be:

Zones NA zones destined for future urbanisation following a modification to the POS or the creation of a ZAC or the provision of infrastructure compatible with a coherent development of the zone.

Zones NB zones in which there is partial servicing which it is not intended to reinforce.

Zones NC zones to be protected for their agricultural value or the richness of the soil or sub-soil.

Zones ND zones to be protected on the one hand because of risks or harmful effects or on the other because of their attractiveness or historical or ecological value.

These zones may include:

Espaces boisés classés à conserver ou à créer

classified woodland to be conserved or created.

Zones for specialised activities

Sectors in which three-dimensional block plans impose special requirements where architectural controls are exercised.

Source: *Code de l'urbanisme*, Article R123-18.

The second part of Art. R123-18 is permissive and lists six other types of area which may be identified in the POS. These include: zones which are subject to special conditions in the interests of the provision of public services, health or safety; road and footpath lines to be protected; zones for public works and open spaces; areas

of construction or rehabilitation where floorspace ratios must be exceeded; areas where the demolition of all existing buildings is a prerequisite of winning a permission to build; and areas of architectural and historic interest.

To some of these zones special regulations either in the code or elsewhere will apply; such is the case with classified woodlands which are covered by Arts. R130-1 to 16. In general, however, the regulations are created specifically within the context of the POS, but once again central government has established a system of 15 articles which must be included for each zone even though the precise content of these articles is left to local decision-making. This system is confirmed by ministerial decree (*arrêté*) in Art. A123-1 which also indicates plan notation. It is particularly to be noted that articles of 14 and 15 of the POS regulations concern plot ratio (*coefficient d'occupation des sols*; COS) which are applicable and the conditions under which those limits may be exceeded. These are particularly significant in terms of the payment that must be made by virtue of Art. R332-1 if the limits are exceeded. As for the PLD (see above) the formula requires the payment of the value of the additional land that would be required if the COS limits were adhered to for the developments as proposed. This *participation pour dépassement de COS* is not paid in addition to payment for exceeding the PLD. Jégouzo and Pittard (1980) note that before the existence of the PLD there could have been a temptation to fix the COS at a relatively low level in order then to offer authorisation to exceed the limits and thereby increase the commune's revenue. After the introduction of the PLD the temptation would have been to fix the COS_{λ}^{at} a ratio of one in order to incite developers to exceed the PLD limits and require the payment of the excess. They offer no evidence to suggest that this has in fact happened.

4.233 *The zone d'aménagement concerté*

There is another type of forward planning document that in effect forms a third level in the hierarchy of plans: the *zone d'aménagement concerté* (ZAC; concerted development zone) which, if a point of reference is required, is very roughly equivalent to the British action area plan. The ZAC is a defined zone which, if created within the context of a published or approved POS, must be in zones U or NA and its specific purpose is to bring land forward for development of any sort (Arts. L311-1, R311-1). Though the ZAC is created by a declaration by the appropriate public authorities, the implementation of development may be entirely carried out by the public sector or by the private sector, or by some combinations of the two. A ZAC may be created on a green field site, on one that is partly developed, or in a city centre. The important point to note, however, is that where a ZAC has been declared the provisions of the POS will be expanded and replaced by a new regulatory document which only applies to the zone, the *plan d'aménagement de zone* (PAZ; zonal development plan). In all respects the PAZ regulations will resemble those for the POS except that the density is expressed not in terms of a COS but in terms of floor space in each block (Art. R311-10-3). Once a PAZ is approved there is right of pre-emption (Art. L211-6).

The ZAC, like the POS and the SDAU, was a creation of the LOF and was originally seen as a device for implementing the SDAU rather than the POS. It thereby was originally separate from the POS and a system of control through the granting of permissions to build. Such an open-endedness led to a discrediting of the device which was then brought firmly back into line in 1976 (Chapuisat, 1983). The zoning of the POS must be respected even though the regulations are supplemented by the PAZ; ZAC may not be discontinuous in zones NA, although a single ZAC may be created in several discrete locations in urban areas. And within the ZAC there is now a requirement to seek a permission to build which must be in conformity with the PAZ. The POS and the PAZ are therefore directly comparable documents.

4.24 The Relationship of Plans to Development Control Decisions

Within these types of planning document the first point to note is the extent to which the rules attempt to predicate the future of every last parcel of land, and the way in which, therefore, decisions on development control are in theory made in complete security. The actual process of determining a request for permission to build is thus primarily a checking of the legality of the application against the rules in force in the POS (or of course in the RNU where there is no POS). The relationship between the development control decision and the plan is thus very close indeed, but the plan becomes essentially a control document, with a strongly negative force.

The second point to note is that in addition to the general question of discretion accorded by the regulations, there is some possibility offered both in the RNU and in POS to depart from a regulation in specific circumstances. Originally the possibility of *dérogations* (departures) was wide (Prats et al., 1979), but in 1976 frequent abuses of the system, particularly in the creation of ZAC without regard to the zoning in the POS which was regarded as a prime example of a "maxi-dérogation" (Bouyssou and Hugot, 1976), was stemmed by new legislation. In particular, departures from the POS were limited to "minor adaptations made necessary by the nature of the soil, the configuration of the plot or the character of the adjoining buildings" (Art. L123-1). This still allows some leeway for interpretation, but has stopped the major abuses. On the other hand the possibility of modifying the POS (described in detail below) exists in two major forms; the safeguard is that a modification and revisions must be both submitted to an inquiry procedure which prevents the kind of administrative collusion described by Prats (see Booth, 1986).

The third point to note is that the POS, as well as providing the regulations by which all must abide, also, in its detailed form, sets out a programme for infrastructure development, by identifying road lines, public utilities and open

spaces, and by the zoning of land for future development (zones 'NA'). At this point reference must be made to the possibility that exists for communes to raise contributions from intending developers for the provision of services. The primary means for this is through the *taxe locale d'équipement* (TLE; local infrastructure tax) which was introduced by the LOF to replace the medley of different ways of raising money for services that had preceded it. The principle is simple, and is outlined not in the *code de l'urbanisme* but in *code général des impôts*: a hypothetical value for a proposed building is determined by applying a standard rate per square metre and the tax is determined as a percentage of the value so derived. The rates vary according to building type and the percentage is normally 1 per cent but may by declaration of the municipal council be varied to 3 per cent, and to 5 per cent where the prefect approves. The tax is levied obligatorily in communes with over 10,000 population, but elsewhere may be levied after declaration by the municipal council (Chaix and Stefanini, 1986; Chapuisat, 1983).

There is, therefore, a clear relationship between the allocation of zones NA in a plan, the determination of permissions to build and the commune's advantage in taking a decision which is added to the advantage that development brings in increasing the tax base generally. Here, then, we begin to see a point at which in principle decisions may not simply be arrived at by the application of the regulations, but where developers may be able to acquire some bargaining power with communes anxious to increase their financial independence. The constraints of the law may not be so absolute as they at first appear.

The final point to note is that, just as in the RNU, the regulations of the POS and the PAZ may contain permissive clauses. Indeed the scope to include such clauses is even greater given that the regulations apply to known local conditions. The POS like the RNU, therefore, allows the possibility of the exercise of discretion. The possibility of discretion provided by a document prepared in the light of local conditions suggests that the possibility of negotiation with applicants which again

gives the lie to the immutability of the legislation. And, once again, as with the RNU, the possibility of discretion and negotiation raise difficult questions about the exercise of power and the accountability of decision-making. Once again it becomes imperative to investigate who actually controls the process of plans preparation and the determination of applications for permission to build. To do that requires an exploration of the actors involved and the process by which decisions get taken.

4.3 Participants in the Planning Process

So far we have looked at the permission to build and the policy documents that inform the decision on the permission to build in the light of their status as documents. To understand how the system really works some account must be given of those involved in the process. In the analysis of conflict in planning decisions, Tanguy (1979) makes a useful distinction between the following groups: landowners; professionals in the construction industry, and civil servants. Helpful though this distinction is, for a British readership, and in light of the subject of this dissertation, other categories need to be included.

4.31 The Public Sector

Some account has already been given of the public sector responsibilities in local government. We need now to consider their specific roles in planning. It is essential, for example, to understand the respective contributions of the mayor, the DDE and the prefect and to understand how their general outlook affects planning and development control decisions. We need also to understand something about two other groups of technical staff, the planning agencies and the growing corps of municipal staff (i.e. staff appointed by the communes) which represent the non-traditional part of the public sector.

4.311 *The Mayor*

The mayor of the commune has always been a prime participant in the planning process even though until the decentralisation act of 1983 his or her role was in a formal sense limited; specifically, mayors were empowered to sign permissions to build in their role as state agents; they were involved in the preparation of the POS which moreover required a declaration of the municipal council in favour before being approved by prefectural order. But they were not empowered to initiate plan preparation and nor in most cases could they process applications for permission to build within their own commune. An exception to that general rule for applications to build was made in 1977 when communes with populations of more than 50,000 having an approved POS and with the technical resources to tackle the processing were empowered to do so. Yet few apparently did. In 1978, of 55 communes who fulfilled those conditions, only 16 had taken up the possibility (Jégouzo and Pittard, 1980). A year after the figures were 61 and 18 respectively (Labetoulle, 1982). One of these was Dijon who in 1978 took responsibility for granting permissions to build and entrusted the processing to the Agence d'urbanisme de l'agglomération Dijonnaise (Burdin, personal communication).

Nevertheless the informal involvement of the mayor could, even before decentralisation, be much more important than the formal powers would imply. First and foremost, there was a general advantage in becoming involved in plan preparation, because promoting development increased the commune's tax base, and brought the possibility of better services to increase electoral advantage. There was moreover the fact that practically the cooperation of the mayor was important if the plan was to go ahead or the decision on an application to be approved. A mayor could thus exert considerable leverage, a point that will become clearer in discussing the process itself. On the other hand, not all mayors were equally capable of taking planning issues on board and Wilson (1983) for example reported that the question of the personality of the mayor rather than his or her political affiliation, in spite of

differences between the parties on urban problems, was cited as being paramount.

4.312 *The DDE*

Before decentralisation, therefore, mayors were not legally empowered except in a few cases to deal with development control. Instead they were heavily dependent on the services of the state, which in practice meant the field services of the old Ministère de l'Équipement, the Directions départementales de l'Équipement (DDE; Departmental Directorates of Infrastructure) which since March 1986 have been accountable to the Ministère de l'Équipement, du Logement et de l'Aménagement du territoire et des Transports (MELATT; Ministry of Infrastructure, Housing, Development and Transport). Each of the *départements* has such a field service and the great bulk of planning work, whether the technical studies necessary for plan preparation or the processing of applications, was, and is, done by them. Before decentralisation, their role was to advise the mayor in his or her capacity as an agent of the state, and thereby exerted great influence over the outcome of decisions. Yet their power even before decentralisation was not unlimited. For one thing, they had a stake in the planning process in as much as proposals for public works in POS may mean increased income from fees for DDE officials supervising the work (Wilson, 1983). For another, a mayor in dispute with the DDE would appear to have had the possibility of lobbying against their influence either with the prefect or with the Ministry in Paris. Clearly a mayor's power to do so would depend on the degree of influence acquired from the importance of the commune and the exercise of the *cumul des mandats*.

Within the DDE, the classic organisation has been described by Wilson (1983) as consisting of four groups, the *groupe d'études et de programmation* (GEP) has a responsibility for plan preparation; *urbanisme opérationnel et construction* (UOC has responsibility for the processing of applications for all types of permission;

infrastructure, for provision of roads, sewers and water; and finally a group with a responsibility for administration. The staff within the DDE are a mixture of *fonctionnaires* (civil servants) with tenure who come through the *grandes écoles* and who are destined to occupy senior posts, and contractual posts offered to those (relatively few) staff who have a formal education in town planning or perhaps in geography or the social sciences rather than in engineering. Only in the GEP, moreover, is the staff multidisciplinary. Typically, therefore development control is handled by staff who are not professionally trained town planners, but who are well versed in the administration and will have direct access to legal skills.

4.313 *The prefect*

The role of the prefect has of course changed dramatically since decentralisation. Before 1983, the prefect can be seen as both initiator and ultimate authority for much of the planning process. POS could only be undertaken as a result of a prefectural decree; the prefect's approval was needed for decisions on applications for permissions to build if there was a dispute between the mayor and the DDE, for permission to create a *lotissement* or a ZAC (Jégouzo and Pittard, 1980). Yet the prefect's direct involvement in plan preparation was slight, if Wilson's findings hold good for the country as a whole. In issuing a prefectural decree for the start of a POS he or she would be bound to take advice on the willingness of the mayor to become involved in the process and the willingness of the DDE to undertake the work. The prefect could not avoid being susceptible to the opinions and attitudes of others, even if the ultimate authority rested with him or her.

Mayors, the DDE and the prefect form the traditional trio of actors in the planning process, but they are not the only public authorities involved. Perhaps the most important from the point of view of this thesis has been the setting up from 1960 onwards, of specialist agencies to handle planning policy for specific areas, the *agences d'urbanisme* (planning agencies). These agencies were the response to the growing complexity of planning problems in the major conurbations, and represent an interesting partnership between central and local government. In part they may perhaps be said to reflect the inadequacies of the GEP in dealing with planning problems; in part, perhaps, a desire on the part of the state not to lose the initiative in planning to the municipalities.

The earliest of these agencies to be set up was the Institut de l'Aménagement et de l'Urbanisme de la Région Île-de-France (IAURIF) whose role is strictly unlike those of the other agencies and whose work is regional rather than sub-regional and local. The first provincial agency was that of Rouen created in 1963. Most, however, date from after the passing of the LOF in 1967 and reflect the new order of plan making that the act initiated. Moreover, central government was clearly enthusiastic about the potential of these new organisations, and the VIth National Plan recommended that all conurbations of more than 150,000 should have such an agency, although this was not mandatory and smaller conurbations like Troyes, Chalons-sur-Marne and Saint-Omer also now have agencies (Danan, 1976) (see Table 4.2).

Table 4.2 **Agences d'urbanisme 1984**

	<u>Population of area served (1982)</u>	<u>date of creation</u>	<u>percentage of expenditure funded by central government</u>
Aix-en-Provence	160,000	1978	29
Angers	255,300	1970	31
Belfort	113,600	1978	27
Bordeaux	588,800	1970	26
Brest	208,600	1974	28
Chalons-sur-Marne	65,100	1974	29
Dunkerque	262,600	1968	33
Grenoble	531,800	1968	26
Le Havre	274,500	1965	33
IAURIF	7,903,000	1960	-
Lyon	1,124,000	1970	30
Mantes-la-Jolie	136,700	1978	20
Marseille	922,500	1969	20
Maubeuge	132,140	1974	24
Metz	162,400	1974	29
Nancy	262,000	1975	21
Nantes	480,700	1978	31
Orléans	113,700	1976	25
Paris	2,189,000	1967	28
Reims	270,200	1972	36
Rennes	286,000	1971	33
Rouen	447,300	1963	32
St-Étienne	444,700	1967	34
St-Omer	65,100	1974	36
Strasbourg	492,500	1967	27
Toulouse	486,000	1972	31
Tours	242,000	1967	27
Troyes	141,000	1973	32
Valence-Romans-sur-Isère	272,300	1978	24

Source: MULT, 1985a

By 1984 there were 30 such agencies in metropolitan France (MULT, 1985a) although ten of the conurbations identified by Danan still did not possess one. Their legal status according to Danan is diverse: at Rouen the agency was set up as a *société civile* under private company law; but most of the rest would appear to be *associations Loi de 1901* (associations formed under an act of 1901). But the organisation is broadly the same: some sort of controlling council exists with representatives of local authorities, the state and other interested bodies to oversee the work of the technical services which may consist of both directly employed staff and staff seconded by the state. Their expenditure is shared by the participating local authorities and the state. On average, the state's contribution is about a third, but the range varies according to the agency. In the early years of setting up an agency the state contributions could be as high as 62 per cent (in the case of Reims; Danan, 1976). In 1984 the range was between 20 per cent and 36 per cent in metropolitan France (MULT, 1985a).

Not all the expenditure is regarded as being subject to grant aid; however: on average 10 per cent is to be raised through external financing of projects for which the agency is consultant. The LOF also provided for the creation of agencies as *établissements publics* in Art. L121-3 of the *code de l'urbanisme*, such that they would acquire status within public law. But the appropriate *décret d'application* has ever been passed, perhaps because the state did not wish to preempt a decision on the form of local government during the 1970s, and because in any case the form of association possible under the act of 1901 was more responsive to local circumstances than an *établissement public* was likely to be (Danan, 1976). Art. L121-3 was in any case abrogated by the act of 7 January 1983.

A salient feature of the agencies is their multidisciplinary character. They are in that respect very different from the DDE with their heavy reliance on traditional civil servants. Architects, economists, geographers, sociologists, town planners, landscape architects and computer programmers are all to be found (see Table 4.3).

What is perhaps noteworthy is that at any rate in the early 1970s, the largest single group was architects, followed closely by economists; qualified town planners were much less well represented.

Table 4.3 **Disciplines represented among staff of Agences d'urbanisme 1974**

	<u>per cent</u>
architects	17.8
economists	16.6
technicians	14.7
engineers	9.8
sociologists	8.0
geographical	8.0
town planners	8.0
computer programmers	5.5
librarians/architects	3.7
landscape designers	0.6
lawyers	0.6
others	6.6

Source: Danan, 1976

This line-up of expertise for some will appear to be a suggestion of inadequacy, however. At Dijon, for example, contrast was made between the director of the DDE of Côte-d'Or, a product of the prestigious École polytechnique and the director of the Agence intercommunale d'Urbanisme de l'agglomération dijonnaise (AGIUD) with only two years' professional training at the Institut d'urbanisme (Briand, personal communication). Danan notes the under-representation

of lawyers among agency staff, and their complete absence in some cases.

Compared with much of the rest of French administration these agencies represent a strikingly fluid and pragmatic response to a particular need. For Danan, they were examples of the new order, and as institutions were best adapted to coping with the fragmentation of local authorities and to integrating the various actors in a coherent way; they foreshadowed decentralisation. Indeed he regarded them as the only possible solution to proper urban planning policy making, and given the nature of French administration, preferable to town planning which is directly under the control of the communes. This would appear also to be part of the self image of agencies. AGIUD expressed the desire not to be like the DDE in its handling of applications for permission to build (Burdin, personal communication), with an emphasis being placed on speed of processing, meetings with applicants and offering advice to mayors.

4.315 *Municipal staff*

Although the bulk of planning work is done by the DDE and to a lesser extent the agencies described above, it must not be forgotten that communes can, and do, hire their own staff for planning work. Inevitably it is only the large communes that are in any position to do so, and the first call for staff is not for planning work. There is also the problem that municipally appointed staff do not enjoy the same remuneration or conditions of service as state civil servants, and that it is therefore seen as an inferior form of employment. Another possibility is for communes to set up an *atelier municipal d'urbanisme* perhaps using a private consultant to do so. Such an *atelier* was the basis for the later town planning agency at Lyon. It is of course equally possible for syndicates of communes to employ staff. AGIUD, for example, is not a planning agency of the type referred to by Danan, as it is entirely a creature of the district of Dijon and receives no state funding. The importance of municipally appointed staff is bound to increase as a result of decentralisation.

Table 4.4 Planning courses in France 1985

Members of the Association pour la Promotion de l'Enseignement et de la Recherche en Aménagement et en Urbanisme (APERAU) offering Diplômes d'études supérieures spécialisées

Cycle supérieur d'Aménagement et d'Urbanisme
Institut des Études politiques de Paris-II

Institut d'Urbanisme d'Académie de Paris
Université de Paris-VIII - St. Denis

Institut d'Aménagement régional
Université d'Aix-Marseille-III

Centre d'Études supérieures d'Aménagement
Université de Tours

Institut d'Urbanisme
Université de Grenoble

Cycle d'Urbanisme
Université de Lyon-II

Institut d'Urbanisme de Paris
Université de Paris-XII- Marne-la-Vallée

Other universities offering planning subjects in specialised courses

École des Ponts-et-Chausées

Marne-la-Vallée

Université de Brest

Université de Paris VII-Jussieu

Université de Paris X-Nanterre

Institut de l'Aménagement du territoire et de l'Environnement de
l'Université de Reims

Institut d'Aménagement

Université de Bordeaux

Université de Caen

Source: Deshayes, 1985

There are two observations to be made about the public sector participants in the process. The first is the extent to which technical expertise is frequently not under direct political control at the local level. The DDE and the agencies will do work on behalf of individual communes, but they are ultimately answerable in the one case to the ministry in Paris, and in the other, to their council. Moreover a clear distinction between the (political) decision-makers and the (technical) advisers, which is in principle the basis on which British local government works, does not obtain; and just as we noted in the previous chapter the continuity of administration between central and local government, so, too, there is a continuity of technical and political inputs into the planning process.

The second observation must be on the role of professional town planners within the participant groups. On the face of it, the relatively low representation of planners even in the agencies must be surprising. But for as long as planning work remained in the domain of state, and civil servants with tenure educated through the traditional channels remained in charge of the process, the status of the professional town planner, and therefore the incentive to seek, and yet again therefore, to provide, professional education, has remained low. There has been change however, and a survey by the journal *Urbanisme* in 1985 listed seven courses offering postgraduate diplomas (*diplômes d'études supérieures spécialisées: DESS*) and seven other courses covering aspects of planning (see Table 4.4). But the degree of professional self-awareness that the existence of the Royal Town Planning Institute with its educational policy and validation of courses represents has still to come in France.

4.32 Developers

The second group of participants in the planning process of whom some mention must be made are the developers and applicants for permission to build. Manifestly they cannot be considered in any sense a homogeneous group and are as

diverse in character as their British equivalents. Three categories of developer which are not mutually exclusive are, however, sufficiently different from anything to be found in this country as to be worthy of comment.

4.321 *Aménageurs*

The first kind is the *aménageur* (site developer) whose role is not to put up buildings, but to prepare land so that others may do so. They have a key role in presenting proposals that will convert NA zoned land into fully serviced sites, either through the *lotissement* procedure or, by the declaration of a ZAC. The serviced land is then sold on either as plots to individual purchasers (typically in the case of a *lotissement*) to put up their own houses, or in larger units to house builders who will develop speculatively, on lines similar to their British counterparts. A commune that is working to promote development is almost certain to need an *aménageur* to assist in the process. There may well then be a mutuality of interest between the mayor and the site developer; moreover the site developer will acquire an important promoting and surveillance role over the activities of the eventual purchasers of the plots. Of course site developers may also be construction companies, but there is tax advantage not to be, so it would appear: whereas builders and *promoteurs* (developers) are charged VAT at 18.6 per cent, for *aménageurs* the rate is only 13.2 per cent (Brignais, personal communication).

4.322 *Sociétés d'économie mixte*

The second kind consists of that peculiarly French invention, the *société d'économie mixte* (SEM; mixed economy company) which have a large part to play in both site development and in construction. Their main characteristic is that their controlling boards consist of both private sector and local authority delegates. Thus

they remain independent organisations in which nonetheless the public sector will have a considerable stake. These companies are then available for individual communes to use for specific development projects. As Sorbets (1979) explains,

"These mixed economy companies hold great attractions for locally elected representatives as they allow them to assert their authority as counsellors (sic) and planners and force the completion of a certain number of projects."
(pp. 161-2).

4.323 *Offices publics des habitations à loyer modéré*

The third kind consists of the fully state-controlled organisations of which the most obvious is the network of offices of the *habitations à loyer modéré* (HLM; low rental housing) which is the only form of state-controlled housing provision but which is controlled centrally and not by local authorities. However, local mayors may be involved in the administration of the local offices of the HLM, and they constitute therefore yet another organisation in which local authorities have a stake and yet will also act as the authorities' agents for carrying out development proposals.

The point to make about these three kinds of developer is that just as the clear distinctions between central and local government and between politicians and technical officers that we are accustomed to make in Britain do not really obtain in France, so too the clear distinction between public and private sector developers has to be abandoned in favour of a spectrum of development agencies from the fully public to the fully private which as often as not operate in partnership with central and local government. For a given site in an urban area, therefore, the commune, the urban community or district, the DDE, an SEM and a private sector holder may all be involved. The interdependence of the organisations becomes apparent in the case studies in chapter 5; the relationships between them are often very complex. The model of cross-regulation proposed by Thoenig and Dupuy and referred^{to} in the previous chapter must be seen as involving more than simply the mayor, the prefect

and the DDE. There is a real question of who controls whom.

4.324 *Developers and the development lobby*

Although developers as a group present many features which make them appear distinctly different from their British equivalents, it is also true to say that there is in France a developers' lobby that operates in rather the same way as it does in England and which voices some at least of the same complaints. There is, for example, a big growth in organisation house builders mainly in the 1970s whose operations are comparable to British speculative developers in scale and type. The company that classed itself as "Number one developer in France" in 1985, Group Maison Familiale (GMF), had 3,879 completions in its grouped housing sector in 1984. Yet the firm, which started in Cambrai in 1949 only appears to have developed as a national rather than a regional organisation from 1974 onwards (GMF, 1985). The market has opened up in such a way as to allow foreign firms to enter the field: Wimpey now has a French offshoot which was expecting to start 400 houses in the Île-de-France in 1986 (as against 9,743 starts in Britain in 1985) (*Moniteur*, 1986e).

Not all private housing is put up on grouped estates of the kind that are familiar in Britain. Rather more appear to be built for individual clients on plots in *lotissements* or ZAC. The total starts of this kind in 1985 amounted to 186,342 dwellings or some 65 per cent of the total. The usual process is for a purchaser to select a house from a catalogue which the builder then puts up on the site. The site works have of course already been undertaken by the site developer. The largest builder of one-off houses of this kind, Phénix, had no fewer than 7,798 starts in 1984 (*Moniteur*, 1986e) while GMF had about as many completions of individual houses (3,696) as it had of houses on estates in that year (GMF, 1985).

Three major preoccupations seem to concern developers in the 1980s. The first is the lack of building land. The second is the extent to which, particularly since decentralisation, decisions on the release of land are more a creature of political will than of respect for the law. The third is the vexed question of the *participations* (contributions for service provision) through the payment of TLE and other contributions. Developers express themselves forcibly on all three subjects: they are in no doubt that they are hoist by the activities of wilful local authorities, and that in the end it is the purchasers of the houses who pay (Bouteille, 1986; Berroeta, 1986). They argue that the lack of building land makes it hard for developers to refuse the terms on which they are permitted to develop. The context for this debate, however, has been a sharp downturn in building since 1984 (Maugard, 1986; *Moniteur*, 1986c) and this no doubt lends an edge to the arguments.

4.4 The Process of Plan Preparation

Though the subject of this thesis is development control decision-making, enough has been said already to indicate that the relationship between decisions on applications for permission to build and the POS is a very close one. Indeed it can be argued that the justification for the control process rests in part on the way in which the plans themselves are prepared. We therefore need to look at the plan-making process as well as the way in which applications are dealt with.

Commentators appear to agree that not only did the LOF introduce a strategic capacity into the French plan-making system, it also made it a participatory process. Before 1967, the PUD was a creation of the technical services of the state which was handed to the commune as a *fait accompli*. The LOF in its provision both for SDAU and POS emphasised partnership, and the formal structure of the process was designed to emphasise this partnership between local authorities and the services of the state in the *groupe de travail* (working party) charged with the preparation of the

POS. The fact of partnership did not of course mean that the state was not still heavily implicated in the decision to proceed and in the technical preparation of the plan (Chapuisat, 1983; Tribillon 1985; Burdin, personal communication).

4.41 The Stages of Plan Preparation

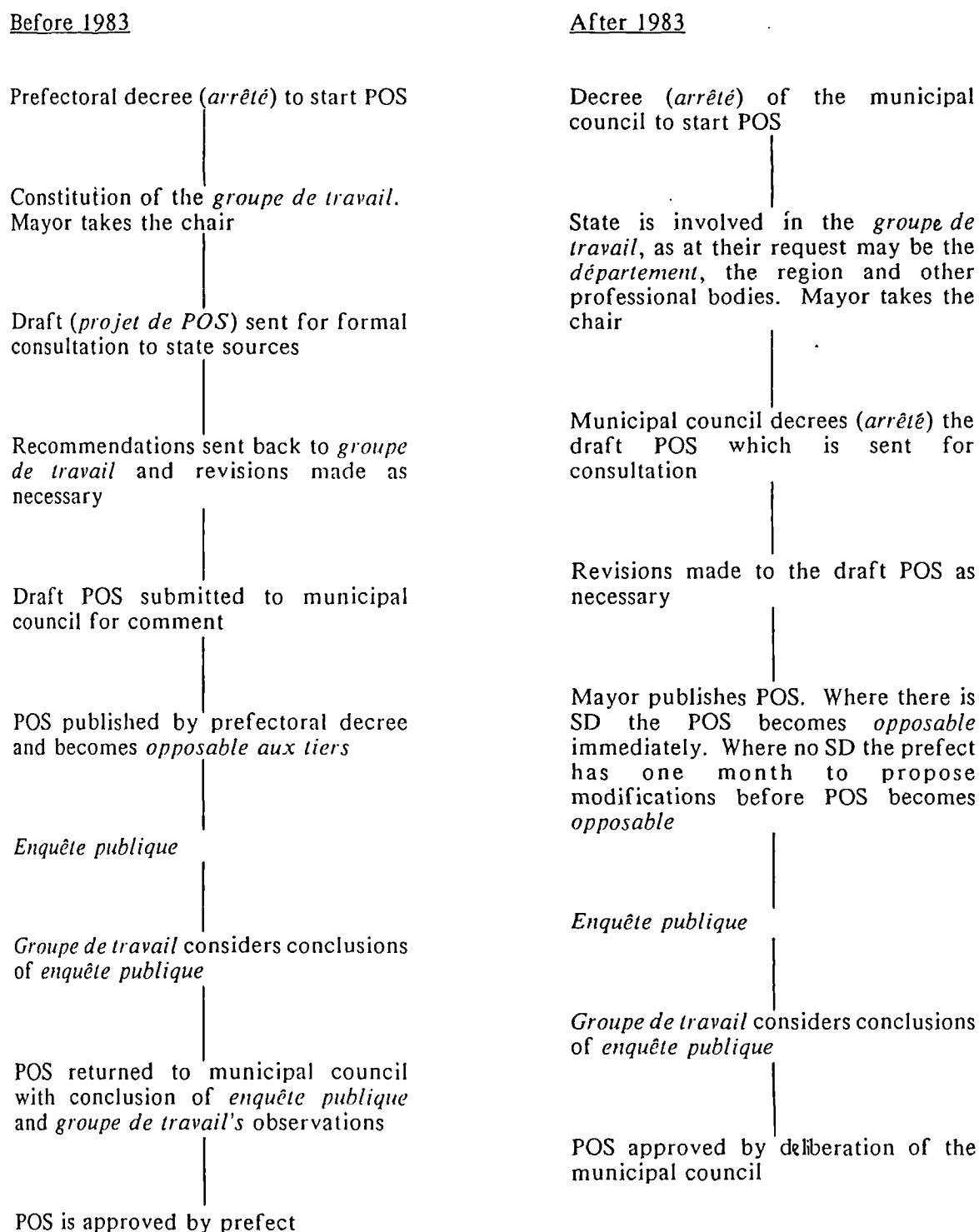
The stages of the preparation of the POS as it would have occurred until 1983 are shown in Figure 4.1. The point to emphasise is that there are within the eleven steps shown five major thresholds. The first is the prefectural decree to proceed, without which no preparatory work can be undertaken: the initiative thus remained firmly with the state. Yet we have already suggested that the prefect would not have decreed the start of a POS if the DDE and the mayor of the commune been willing to become involved: the DDE in particular would have been well placed to nullify the effect of the decree if they lacked the resources to embark on the POS.

4.411 *The groupe de travail*

If the instruction to proceed remained with the state, at the second major threshold, the setting up of the working party, the initiative was handed on to the commune for whom the POS was being prepared. The mayor took the chair of the working party and therefore in principle is charged with the coordination of the work: other members of the working party would be officials from the GEP of the DDE, representatives of the Direction départementale de l'Agriculture (DDA; the field service of the Ministry of Agriculture) and the Chambers of Commerce and of Agriculture.

The realities of the process were evidently rather different. Tribillon talks of the working parties as being as often as not a confrontation rather than a partnership,

Figure 4.1 The Process of POS Preparation before and after 1983



Sources: Wilson (1983) p. 162; Gontcharoff and Milano (1984) pp. 59-61.

with initiatives for proposals being taken by the DDE officials, except perhaps where a commune had its own planning offices. Wilson's work (1983 and 1985) in the northern region suggests that working party meetings were dominated by a dialogue between the mayor and the senior civil servant from the GEP, and that the mayor's input tended to concentrate on matters of procedure and on matters of detailed, physical planning rather than on broad policy.

4.412 *Publication of the POS*

The third significant threshold after the working party have finished their deliberations and external consultations is the decision to publish (*rendre public*) the POS formally which again was done by prefectural decree. The significance of this stage is that, although the POS was not by then formally approved, it could nonetheless be applied to decisions taken on applications for permission to build and be opposed by third parties: in Tribillon's (1985) words,

"the draft POS produced its full legal effect once it had been published by act of the administration of the State, even before the procedure for approval properly speaking had been initiated."
(p. 111)

It was also, we should note, brought into effect before any public consultation had been undertaken.

4.413 *The enquête publique*

The threshold, that of the *enquête publique* (public inquiry), does for the first time bring the public formally into the preparation process. As Macrory and Lafontaine (1982) have described it the *enquête publique* is in no way to be compared with the local plan inquiry in Britain. It is not, for example, a hearing at which

interested parties may make a case and cross-examine, and be cross-examined by, those responsible for the preparation of the POS. A *commissaire enquêteur* (inspector) is, however, appointed to lead the *enquête*, but until 1983 was appointed by the prefect from a departmental list of some 50 to 100 names. In principle this inspector is independent but he or she is very often a former civil servant, and while it is "thought preferable" to appoint someone not from the commune for which the POS is being prepared, it is also believed that he or she should live "not too far" from the place of the *enquête* (Bourny, 1986). The inspector once appointed makes his or her own investigations as well as receiving observations from anyone who cares to examine the plan. The *enquête* must last at least a month (Art. R123-11) during which period the public must be informed when they can make representations.

4.414 *Approval of the POS*

The fifth threshold is that of the formal approval of the plan by prefectural decree at which point it ceases to be a provisional document. We should perhaps note that the prefect's decision was not necessarily based upon the findings of the *enquête* alone; indeed the *enquête* is not at all to be understood as providing "a focus for argument leading to a decision" but "a method for investigating public reaction" (Macrory and Lafontaine 1982, p. 23). We should also note that the municipal council was formally consulted at two points in the process: immediately after the draft plan emerged from the working party and immediately before the final prefectural approval. Once the POS has been approved the possibility of revising or modifying it exists, as we have already noted. There are three ways in which this may be done. The least involved is the updating (*mise à jour*) of a POS by the inclusion of, for example, the boundaries of a ZAC or a *secteur sauvegardé* once they have been approved or if a project of public utility (*d'utilité publique*), all of which have their own procedures for testing public reaction (Art. R123-36). The *modification* of a POS in force is the procedure adopted for changes to zoning or regulations which do

not affect the general character (*économie*) of the plan. An *enquête publique* must, however, be organised (Art. R123-34). The *révision* procedure is for those changes which do affect the fundamental character of the plan and for those changes the working party is reconvened as for the initial preparation (Art. R123-35) and the referrals to the municipal council and to the *enquête publique* take place in the manner described for the initial preparation of the plan.

To describe the process set up by the LOF as consultative therefore appears at least in principle to be fair. Even before decentralisation, the local authority was installed as a key partner in the process and the public's reaction was being sought. The mayor, by presiding over the working party's deliberations, was potentially being given a controlling hand in the way the plan evolved. But Wilson's work and Tribillon's observations would suggest otherwise. For elected representatives, the technicalities of the process and the limited understanding of what a POS could achieve or of the issues that it should address, effectively militate against participation. For the public, the procedure allows reaction when

Table 4.5 General Development Control Statistics for France and England

FRANCE

	<u>1982</u>	<u>1983</u>
Applications lodged		
<i>permis de construire</i>	655,583	640,183
<i>certificats d'urbanisme</i> ¹	376,600	373,570
<i>permis de démolir</i>	14,404	13,953
<i>permis de lotir</i> (housing only)	9,091	8,184

[Figure are metropolitan France only]

ENGLAND

	<u>1982/83</u>	<u>1983/84</u>
Applications determined		
Planning permission	382,000	404,000

[Figures are rounded to the nearest thousand and are given for the British financial year].

Sources: France MULT, 1984, 1985a
 England DOE, 1987

¹ numbers of decisions.

proposals have already been prepared but no possibility of helping to define objectives before the plan is produced in draft. Certainly at first glance it would appear that the group with the technical expertise, the DDE, would have a controlling role in the preparation of the POS. Yet again, the structure of the system is such that for a determined participant it will be possible to by-pass the DDE by having recourse to the prefect, and in specific cases at least a knowledge of the informal networks that exist will be at least as important as a knowledge of the formal process.

4.5 Processing applications for Permission to Build

The discussion of the plan-making process in the previous section is important to the understanding of the decision making in development control for two reasons. The first is the general point that in principle the decision on the individual application is much more closely tied to the POS because of the legal standing of the zoning and regulations and their specifically comprehensive coverage. The second reason is that the system appears to assume that because the public are invited to react to the draft proposal for the POS there is no need for public participation at the development control stage. We must reiterate: processing an application is about establishing the legality of the proposal in the light of the regulations in force. The public thus have a right to challenge a decision once taken, but there is no locus for them to be involved in the process of determining the application.

The scale of the work involved is illustrated by Table 4.5: for permissions to build alone, there were more than 50 per cent more applications in France than in England in 1982 and 1983 and if all the four major forms of development control are included, the competent authorities must deal with over one million applications per year. Yet the average number of applications per commune was less than 30 in metropolitan France in each of the two years.

The process by which applications for permission to build are dealt with is presented graphically in Figure 4.2. The diagram relates specifically to the processing of applications *after* the Act of 7 January 1983 had taken effect (in April 1984) and for those communes which have a POS in force but use the DDE to process applications. Some parts of the diagram, most notably where it deals with the *contrôle de légalité* are thus specific to the period after 1983; and some responsibilities have been modified. The changes brought in by decentralisation are determined in Sections 4.63 and 4.64 below; but the general process has altered little.

4.51 The Applicant

Unlike the British development control system, it is not open for anyone to apply for permission to build in France. The applicant must either own the land outright or be in possession of a lease or be someone "with proof of title to build on the land" (Art R421-1-1). Therefore the idea of the permission as establishing a proprietary right of the owner rather than the proper use of the land is firmly enshrined in French planning law, and further highlights the contrast between the permission to build and the British planning permission. The applicant must also (since 1977) have recourse to an architect for all but minor development (Art. R421-1-2); the limits for non-agricultural building are set such as to allow individuals to build a house for themselves (Labetoulle, 1982). For the rest, however, the applicant is required, as his or her British counterpart would be, to supply location and block plans, together with details of the servicing of the buildings, and elevations. For buildings greater than 3,000 square metres in communes without an approved POS, an impact assessment must also be included (Art. R421-2). Where the development would entail work for which other kinds of permission is required, for example the demolition of buildings or the felling of trees, the application for permission to build must be accompanied by applications for the appropriate permissions which are determined concurrently.

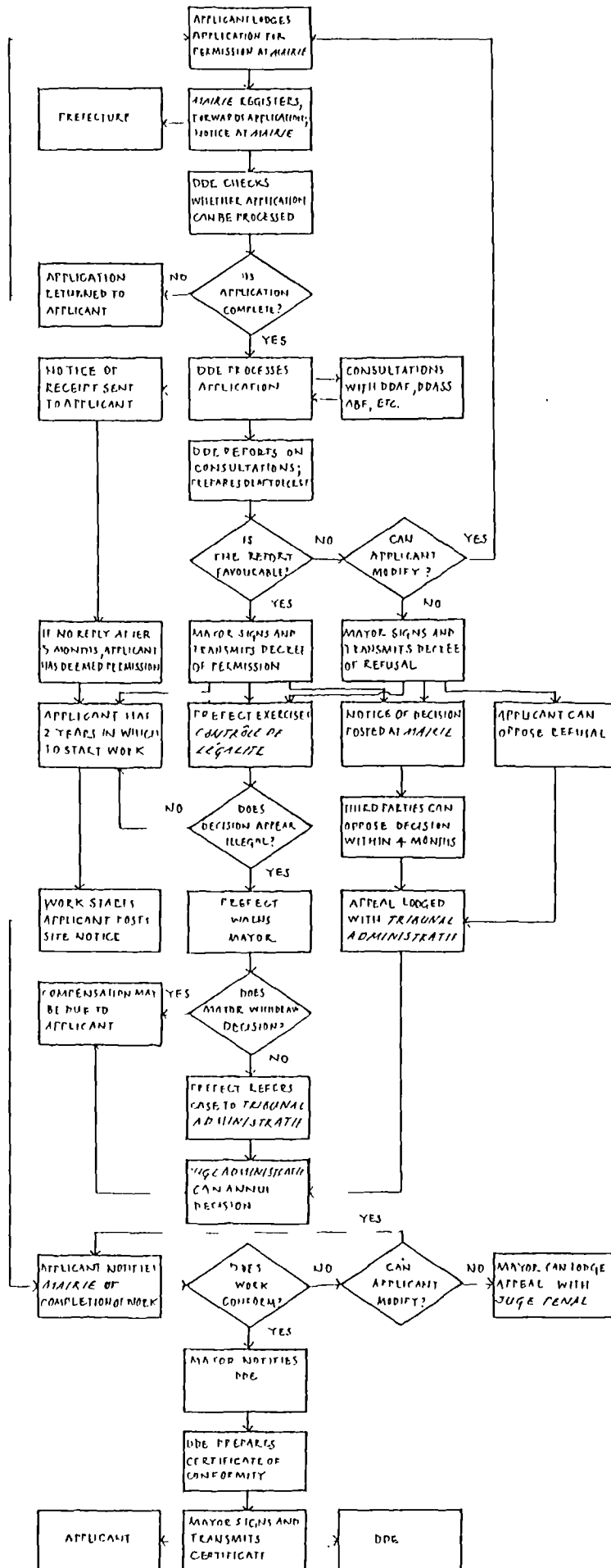


Figure 4.2 The development control process

4.52 Time Limits

Before decentralisation the application would normally have been sent to the DDE, except in those for communes which had acquired the right to do the processing of applications themselves (see above p. 03). The first task then in the process is the check that must be made of the completeness of the application, and the processing period cannot begin until the application is complete (Art. R421-13). Thereafter the 'competent authority' which in almost all cases was the DDE, except for those for communes with delegated powers, had a minimum period of two months for dealing with the application, but in practice the period could be extended to up to six months according to specific circumstances. Thus an extra month is added if there is consultation with a ministry or its field service or a public body not undertaking the processing; another may be added for applications for more than 200 dwellings or applications for communal and industrial development when over 2,000 square metres of floorspace. Yet a further month is allowed for applications which would be a departure or even a "minor adaptation" from the regulations in force. The consultation of national commissions automatically raised the period to six months, as did consultation on commercial development that had to be referred to the departmental commissioner appointed to deal with such applications (Art. R421-18). That final six month period was reduced to five months by decree in 1985.

The respect of these time limits is guaranteed by the sanction of the automatic grant in most cases of a deemed permission (*permis tacite*) if there is no formal response within the appropriate period (Labetoulle, 1982). The sanction appears to be operative insofar as less than one per cent of all permission granted in 1982 and 1983 were deemed (MULT, 1984 and 1985a). Since Labetoulle reports, presumably on the basis of statistics from the 1970's, that "only a little more than three per cent of permissions are deemed" (p.80), the effect of reducing 'administrative inertia' could be claimed to be successful. Officials also reported informally that in practice decisions were never left to go by default, and that there was usually a perfectly legal way of extending the time limits necessary for the processing of an application

Table 4.6 Time taken to process applications for permis de construire and planning permission in France and England

FRANCE	1983		1984	
	number	per cent	number	per cent
Total applications determined in February	50,224	100	46,332	100
of which applications lodged after 30th November in preceding year	38,180	76	37,301	81

[In practice these figures underestimate the percentage of applications processed in three months. MULT corrects the figures by assuming half of all applications determined in February and lodged in November were nevertheless processed in three months. This brings the percentages to 82 per cent and 85 per cent from 1983 and 1984 respectively.]

ENGLAND	1982/83		1983/84	
	number	per cent	number	per cent
Total applications determined	382,000	100	404,000	100
within 8 weeks	268,000	70	278,000	69
within 8-13 weeks	78,000	20	88,000	22
over 13 weeks	35,000	9	39,000	10

Sources: France MULT, 1984, 1985a
England DOE, 1987

(Briand, personal communication). The statistics available for 1983 and 1984 show that of the permissions granted in February of those years, 76 per cent and 81 per cent respectively had been lodged in December or later. For comparative purposes, the equivalent proportion of applications for planning permissions processed within thirteen weeks in England and Wales was 90 per cent and 91 per cent in each year (see Table 4.5). As with England and Wales, however, the French statistics vary enormously by *département*. Slightly less than a third manage to process 90 per cent

or more of all permissions granted in three months or less, in Paris in both years recorded, the figure was 10 per cent and 13 per cent, and some other *départements*' performance was apparently poor.

4.53 Consultations

Once the application has been formally acknowledged the processing commences. There are two aspects to this work. One is the checking of the application against the regulations of the POS or the RNU. The other is a round of notifications and consultations that may have to be undertaken. The striking thing to note is that all these consultations are with other official bodies except the routine seeking of the mayor's opinion. Thus departmental field services of health, fire and safety, employment and agriculture may all be consulted (Booth, 1985). Perhaps the most significant contribution is with the departmental Architecte des Bâtiments de France (ABF; historic buildings officer: his or her service is now known as the Direction départementale de l'Architecture) who has a right to direct a decision on all permissions to build within the field of visibility of a historic monument (*monument classé*) or building entered on the supplementary list of historic buildings (*immeuble inscrit*) (Art. R421-38-3/4). Since the ABF is yet another arm of central government, the extent of central government control over large areas of older towns whose fabric may be continuously within the field of visibility of historic buildings can be imagined.

There are other forms of consultation which are of a different order from the referral to other arms of government. Until 1984 most *départements* had two consultative bodies, the Commission départementale d'urbanisme (CDU; Departmental Town Planning Committee) and the Conférence permanente des permis de construire (CPPC; Standing Conference on Permissions to Build). These two bodies exist by virtue of Arts. R611 and R612 of the code and combined both members of the administration and elected representatives. Before decentralisation they ensured a measure of consultation with elected representatives on permission to build. The

Table 4.7 Applications processed in 1982 and 1983 for permis de construire, certificats d'urbanisme and planning permission in France and England

FRANCE

<u>Permis de construire</u>	1982		1983	
	number	per cent	number	per cent
Total applications processed	631,594	100	617,086	100
Total permissions granted	598,421	95	584,826	95
of which tacit permissions	3,730	0.6	2,709	0.5
Total applications refused	31,673	5	31,111	5
Total <i>sursis à statuer</i>	1,500	0.2	1,149	0.2

<u>Certificats d'urbanisme</u>	1982		1983	
	number	per cent	number	per cent
Total applications processed	367,126	100	352,723	100
Total <i>certificats</i> granted	276,043	75	259,844	74
Total <i>certificats</i> refused	91,083	25	92,879	26

[Figures are for metropolitan France only. The figures for *certificats d'urbanisme* omit the *départements* of Yvelines and Seine-St.-Denis which provided no breakdown of permissions and refusals in these years.]

ENGLAND

	1982-83		1983-84	
	number	per cent	number	per cent
Total applications processed	382,000	100	404,000	100
Total permissions granted	334,000	87	353,000	87
Total applications refused	48,000	13	51,000	13

[Figures are rounded to the nearest thousand and are given for the British financial year.]

Sources France MULT, 1984, 1985a
 England DOE, 1987

decree that gave them statutory existence was not, however, renewed after decentralisation, to simplify administration and because it was thought that they would adversely affect the exercise of the new powers granted to mayors in the Act of 7 January 1983 (*Moniteur*, 1985).

Another consultative body, the Conseil d'architecture, d'urbanisme et de l'environnement (CAUE; Council for Architecture Planning and the Environment) has had its existence reconfirmed. They were set up by an act of 3 January 1977 and by 1986 were in existence in 87 *départements*, although they are not obligatory. Their role is advisory, to the decision-makers, and educational, for the public at large (*Moniteur* 1986d). A final consultation will be with *architectes-conseil* (consultant architects) who have been employed to advise the DDE in their work since 1950 (Arts. A614 - 1 to 4).

Consultations are thus very largely technical with some emphasis being placed on the quality of architecture design. But there is no consultation with the public, and the public need not be made aware of the contents of the application until after the decision has been taken; although since the Act of 18 July 1985, the public have been informed of the lodging of an application.

4.54 The Decision

The decision taken on the application can be either a refusal, an outright approval, or an approval subject to conditions, which as we have already noted, may be applied by virtue of specific clauses in the POS or the RNU. Table 4.7 shows the number of permissions to build granted and refused in 1982 and 1983. The refusal rate was constant in each year at just under 5 per cent. This may be compared with the refusal rate for applications for planning permission in England and Wales in the same years of 13 per cent. The total number of applications for permission to build is of course some 50 per cent greater in France than the numbers of planning applications in England and Wales.

There is a further possible outcome, that the competent authority may ask for a stay of decision (*sursis à statuer*). There are five possible cases when such a stay is possible. Two concern land which has been defined for an operation declared to be of public interest (Art. L111-9) or public works project (Art. L110-10). The other

three concern areas covered by POS, ZAC or *secteurs sauvegardés* whose plans are in the course of being prepared (Arts. L123-5, Art. 123-7 and Art. L313-2). These stays of decision represent a very small proportion of the total decisions taken.

Before decentralisation the decision was in principle taken by the mayor acting in the name of the state. There were, however, exceptions to the general rule set out in the then Art. R421-32, which required the authorisation to be given by the prefect. These included large buildings, the granting of departures or approval of minor adaptations used in areas where the mayor and the DDE were in dispute (Labetoulle, 1982). On the other hand, it appears that in routine cases that devolve on the prefect, the prefect may delegate his authority to the director of the DDE (Booth, 1985).

4.55 Implementing the permission

The process does not end with the grant or refusal of permission. The applicant is bound to post a site notice giving details of the permission granted which must remain in place until the work is completed on the development. At the same time a notice of the permission must be displayed at the *mairie* for two months (Art. R421-39). At this point there is a legal right of third parties to consult the permission file (Art. A421-9) and to oppose the decision that has been taken. From the point at which the permission is granted the applicant has a two-year period in which to undertake the development before the permission becomes invalid. The permission also becomes invalid if work is stopped for more than a year (Art. R421-32). The work, however, must be properly started, unlike the token start that the law requires in Britain, to accept that a planning permission has been taken up (Bouyssou and Hugot, 1986). Before starting work, the beneficiary of the permission must give a declaration of the start of work to the *mairie* (Art. R421-40) and within 30 days of its completion, a further declaration must be made (Art. R460-1). This declaration, if made by an architect, will include a statement that the building conforms in its location, use, character, appearance, size and the treatment of its surroundings, to the

permission granted. Where this statement is not included it is for the DDE or the agency which carried out the determination of the application to make its own check (Art. R460-3). Providing the work does conform to the permission granted, a *certificat de conformité* is issued by the prefect to the developer.

4.56 Opposing and Enforcing the Decision

The final part of the process that must be examined is the right to oppose and enforce the decision once taken. As we have noted, for the public at large, the only formal involvement in the process is the right to oppose the decision on the grounds that the competent authority had acted outside its legal powers (*l'excès de pouvoir*). Such a case is conducted before the *juge administratif* and can only be introduced by someone who can demonstrate a direct personal interest in the decision. This gives the same status to a third party opposing the grant of permission and the applicant appealing against a refusal. It is, however, possible for the judge to rule on the basis of an *erreur manifeste d'appréciation* (manifest error of judgement) of the authority in reaching the decision, a fact which may be particularly important wherever the regulations allow a measure of discretion (Jégouzo and Pittard, 1980). Third parties may also have recourse to civil law if a completed building has in some way infringed the law and causes direct personal prejudice to the plaintiff (Labetoulle, 1983). For the enforcement of planning law by the administration there is recourse to criminal action; the code does not contain its own sanctions for infringements.

The lodging of a appeal to the *tribunal administratif* does not suspend to the permission to build, in the same way that an enforcement notice does not of itself stop the illicit activity or building in Britain. The judge may, however, upon request, order a stay of execution of the permission (*sursis à exécution du permis*) if it is thought that a permission would be difficult to undo once acted upon; if a state representative has asked for the stay of execution a judge may issue it within 48

hours, although the prefect must in principle demonstrate that the permission would infringe public liberties if implemented. For the public at large the period of delay within which the stay of execution may be ordered is one month, and there are no sanctions for exceeding that period (Art. L421-9; *Moniteur* 1985a).

4.6 Decentralisation of Planning Process

The previous chapter presented the general principles on which the decentralisation of planning powers was based, and some observations about its acceptability and its implementation were made. Such observations need to be supplemented by a rather more detailed presentation of what actually happened as a result of the Acts of 7 January and 22 July 1983, if a proper evaluation of the impact of decentralisation on planning is to be attempted. The first point to make is that decentralisation has done little to modify the system of plans or the method of control, with one or two important exceptions. The major thrust was the transfer of responsibility for processes that were already well established. The major changes are then as follows:

- the preparation of the *schéma directeur* is undertaken at the initiative of the group of communes to which it will apply, who share "a community of social and economic interests" (Art. L122-1-1).
- the preparation of the POS is undertaken at the initiative of the commune concerned (Art. L123-1).
- in communes that have an approved POS in force for more than six months the mayor of the commune is empowered to sign permissions to build in the name of the commune (Art. L421-2).

In addition to each of these, some consideration must be given to two further factors that are vital to understanding the impact of decentralisation on the French

planning system: the provision of technical and professional support for the decision-makers and the accountability for the decisions taken, specifically through the *contrôle de légalité*.

4.61 The Schéma Directeur

The changes in the preparation of the *schéma directeur* (SD) do not bear directly on the subject of this thesis, yet do shed some light on the equivocal nature of decentralisation. The first point to note, however, is that the 1983 Act in effect relaunched the by then discredited SDAU by emphasising its role as a document linking economic development strategy (*aménagement du territoire*) with local land use regulations, and the modified title is a reflection of its new direction (Tribillon, 1985). The freedom of communes to take the initiative in the preparation of their documents is by no means unfettered. Though the decision to proceed is at the initiative of the group of communes the boundary of the SD is still set by prefectural decree and agreement among the communes does not have to be unanimous. The prefect must only obtain consent from two-thirds of the commune representing at least half the population of the area, or half the communes representing two-thirds of the population (Art. L122-1-1).

The preparation of the SD is then carried out by an existing *établissement public de coopération intercommunale* (EPCI) which would mean either a district or a *communauté urbaine*, or by a syndicate set up especially to prepare the plan (Art. L122-1-1). But the state has been given considerable right to interfere in the work of preparation. The prefect must be allowed to fix with the president of the EPCI the ways in which the state will be associated in the preparation of the plan, and the DDE is cast in the role of information gathering and of assuring that the state's interests are properly represented (Art. R122-5). Finally the prefect has the right to request the preparation of an SD where national policy directives (*prescriptions*) or

projets d'intérêt généraux (PIG: project in the public interest) make it necessary to do so (Art. L122-1-4). As Tribillon (1985) remarks, this is autonomy but not independence and the reserve sanction of Art. L122-1-4, which allows the prefect to take matters into his or her own hands where the request is not complied with, is positively authoritarian.

4.62 The Plan d'Occupation des Sols and the Zone d'Aménagement Concerté

If the principle of decentralisation looks somewhat strained in the provisions for state interventions in the preparation of the SD, the arrangements for the POS are freer. The decision to proceed with a POS is now left entirely to the municipal council, and the preparation is "at the initiative and under the responsibility of the commune" (Art. L123-3). There is no longer the statutory requirement for communes with populations greater than 50,000 to prepare a POS (Jégouzo and Pittard, 1980). The POS is started by municipal decree and its final approval is by municipal decree (Art. L123-3-1) (see Table 3.2). The same applies to the modification or revision of a POS already in force (Arts. L123-4, R123-34 *et. seq.*). Even with the POS, however, the state has a reserve power to demand the modification of the POS to make it compatible with an SD or a PIG (Art. L123-4-1). Embarking on plan preparation therefore entails a long-term commitment to maintaining local land-use regulations for the commune's area.

The decentralisation of the ZAC procedure was not introduced until 1985 in the Development Act (*Loi d'aménagement*) of that year, and applied from 1st April 1986 by the decree of 14 March (Sitruk, 1986), where a POS has been approved the creation of a ZAC becomes the responsibility of the mayor in most instances. But the prefect retains control of the process where there is no POS or where the ZAC is being proposed by the state or covers several communes (Art. L311-1).

The commune may delegate its responsibility to an EPCI in both the preparation of the POS, the ZAC and the PAZ.

One other novelty introduced by the act of 7 January 1983 has been the *commission de conciliation* (conciliation board) which may be appealed to in the event of conflict between the participants preparing the SD, POS or ZAC. The board is appointed by the prefect and consists of six elected representatives and six others, who may be professionals, but who will have a knowledge of planning (Arts. R121-3 to R121-12; *Moniteur* 1984b). As Bouyssou and Hugot (1986) note, however, the board is not an arbitration panel because it cannot impose a solution.

4.63 The *Permis de Construire* and Other Authorisations

Decentralisation of powers of plan preparation to the commune is directly linked to the decentralisation of the control of development. The principle is that in those communes with an approved POS the mayor was empowered from 1st April 1984 to process and sign permissions to build in the name of the commune (Arts. L411-2, L421-2-1). In other communes, the processing remains the prerogative of the state (Art. R421-25) and as before, the mayor signs, but in the name of the state. Moreover, in these communes where a POS is approved the mayor is obliged to take this responsibility: as Art. L421-2-1 puts it, "the transfer of competence to the mayor acting in the name of the commune is definitive". Starting a POS, therefore, is not merely a commitment to producing land-use regulations for the commune, but the first step towards taking full responsibility for local action. There is a further incitement to taking the step. In those communes which do not have a POS, the 7 January 1983 act specifically precludes development outside the existing built-up areas of the commune, except for extensions and modifications of existing buildings, agricultural buildings and buildings necessary for public services; and buildings incompatible with residential areas (Art. L111-1-2).

This apparently draconian measure is much less far reaching than it first seems. In addition to the exceptions noted above, the prefect may make exceptional cases of other small development if it does not appear to be contrary to the general objectives of the code and the municipal council has specifically requested that an exception be made. As Bouyssou and Hugot (1986) note this is hardly a total embargo on development, but the rule of *constructibilité limitée* (contained development) imposes another bureaucratic hurdle for communes and developers and another source of conflict for communes. The rule was applied from 1 October 1984.

It must also be noted that the effects of the rule of *constructibilité limitée* could be deferred for two years where a commune had initiated a POS and for three years from 1 October 1984 where the POS had been decreed before that date. The same applied where communes had interim planning documents in force; the *carte communale* and the *zone d'environnement protégé* (ZEP; environmental protection zone). For a discussion of the former see below, p.148; ZEP had been created for a relatively small number of rural communes, to protect them from development pressure (Bouyssou and Hugot, 1986).

Of considerable interest is the provision that the Act of 7 January 1983 made for the processing of applications for permission to build. Realising that small communes would find it difficult to afford to pay the staff required to do the processing, Art. L421-2-6 offers communes with an approved POS the possibility of using the services of the state (i.e. the DDE) free of charge. This use of the DDE was dependent upon a formal agreement between the mayor and the DDE and, jurisprudence has determined that the use of the state services once agreed applied to the whole of a commune and to all forms of permission. In making this provision the government was honouring its intention to provide communes with the resources to take up their new responsibilities. The practical effect of this provision is to leave the DDE with an assured future, and although the clause requires the DDE to act in

permanent consultation with the mayor, there were many French commentators who believed, with Bouyssou and Hugot (1986), that it would nullify the will to decentralise (see Gontcharoff and Milano, 1984).

There is little that needs to be said about other authorisations except to note that they have been brought into line with the permission to build. Thus for *lotissements* Art. L319-1-1 makes the same distinction between communes with or without a POS, and again, in the former the mayor of the commune takes the decision in the name of the commune; in the latter the decision rests with the prefect (Art. R315-25-9).

We must note finally that as with the POS and the ZAC the municipal council is free to delegate its responsibility to an EPCI of which it forms part. In this case, the president of the EPCI signs the permissions (Art. 421-2-1).

4.64 The Contrôle de Légalité

The mayors of communes have been given freedom to take initiatives in plan making and responsibility for decisions in the control of development. They are, however, required to be accountable for the actions they take, and in planning just as much as in other spheres of municipal activity the *contrôle de légalité* has been introduced to ensure that autonomy does not lead to anarchy and a disregard for the law. A joint circular from the Ministries of Town Planning and the Interior addressed to the prefect, makes the intentions clear:

"Two particular preoccupations must guide you in the exercise of legal control for planning documents:

- *to assure that supra-communal interests of all kinds are taken into account*
- *to preserve the interests of the commune itself by avoiding irregularities which might lead to authorisations for development being showed by illegality.*

You will exercise this important prerogative with the concern to apply the law but the whole law." (MULT/Intérieur, 1984).

Legal control is seen as specifically necessary to ensure the survival of the national interest, but also to protect mayors from themselves: in the case of plans to ensure that subsequent decision-making does not become illegal by virtue of the illegality of the regulations that are used as the basis for permission. We have already noted that the prefect has a period of a month to comment on a POS which has been published in the those communes for which no SD has been prepared.

This legal checking of decisions taken applies equally to the permission to build. The decision must now be referred to the prefect (Art. L421-2-4) who is now given a two-month period in which to challenge the decision by referring it to the *tribunal administratif* unless the mayor agrees to withdraw the decision. There is then a further two-month period in which third parties may challenge the decision if the prefect has chosen not to. It perhaps should also be noted that a decision on a permission to build does not become enforceable until the decision notice is received by the prefect; the prefect thus retains a double power in relation to the decisions of the mayor.

A circular from the Ministry of Town Planning (MULT,1985b) addressed to the prefects spells out in detail how the exercise of legal control should be carried out, and the directions given are a clear guide to the intentions and the likely impact of this new form of state surveillance. First of all, the circular emphasises that *contrôle de légalité* remains a control *a posteriori* and in no sense "must it lead to a double processing of the application". Nor must it consist of a "finicky formal examination of the documents which would quickly appear to be the re-establishment of the tutelage that was overturned by the Act of 2 January 1982." The prefect is urged to take into account two major considerations. First of all, he or she must ensure the respect of the regulations of the POS, bearing in mind the competences of the state and of state services, where such a service like the ABF is empowered to

give a direction (*avis conforme*) on the outcome of the application; to public safety and the protection of open spaces; and to buildings of 'particular importance'. Secondly, the prefect is required to exercise control impartially such that communes that do not use the services of the DDE are not penalised by the control. An appendix to the circular lists in detail the factors to be considered, under four headings: external legality relating to the competence of the decision-maker; the respect of procedural rules and the reasons for the decisions; the internal legality in relation to the POS and the RNU; the control of the inspiration for the decision, such that it must be seen to be based on the objectives that the procedure was designed to guarantee; and the control of reasons for the decision in terms of the interpretation of the legal base and the application of the regulations to the specific circumstances.

There is a further point to be made about the *contrôle de légalité*. The concept of 'protecting the commune from itself' which is suggested by the circular has a very practical relevance insofar as the mayor may become liable for compensation. The developer of a building put up with the benefit of a permission to build which later is annulled by the *tribunal administratif* may claim compensation if the building has to be demolished. Although insurance is available to cover the eventuality, no mayor is likely to be anxious for this to happen too frequently.

4.7 The Impact of a Regulatory System on Planning Practice

A full evaluation of the effects of a legalised system of policy and the decentralisation of powers on development control practice must await the analysis of the case studies. Nevertheless the system as presented raises some general issues which require examination. The first of these concerns the impact of the regulatory system on both the content and the process of decision-making. The second concerns the way in which decentralisation has worked in practice.

4.71 Positive Impact

It is reasonable at the outset to consider the evidence on the positive impact of the regulations in creating an efficient, and accountable system. If we equate efficiency with speed of processing, various points stand out. First, the maximum processing period of five months is clearly less than that to be found in the worst cases in Britain, and the time limits are evidently respected (Labetoulle, 1983). Less than one per cent of all permissions granted in 1983 and 1984 were tacit (see Table 4.7). The sanction of the deemed permission is clearly effective. On the other hand we must note that the median processing times appear to be longer than in Britain: a smaller proportion of applications is determined within three calendar months in France than in thirteen weeks in this country. On the face of it, a regulatory system does not appear to offer such advantage in terms of speed.

The cause of the relatively lengthy processing may not be with the regulations, however. There is some slender evidence to suggest that where since decentralisation processing has been handled by agencies other than the DDE, there is a marked drop in processing time. In the rural syndicate in the *département* of Hérault cited below, processing time is down to two weeks on average (see below p. 149); at Lorient in Finistère, with the communal services in charge, processing is on average 45 days (*Moniteur*, 1985b); at Dijon, AGIUD claim an average processing time of six weeks (Burdin, personal communication).

On the question of certainty, we have already noted a tension between the desire of the legislature to achieve clarity and precision by specifying the conditions under which decisions may be taken, and the essentially unpredictable quality of the planning task. The statistics for permission to build, however, suggest that in practice the French planning system does offer a measure of certainty. The five per cent refusal rate shows that once an application is lodged French developers have a greater

degree of success than the British counterparts (Table 4.7). Yet this conclusion ignores two points. First, the refusal rate for *certificats d'urbanisme* is far higher, at 25 per cent or more. If the statistics for both forms of permission are taken together the overall refusal rate is just below 13 per cent, or very nearly that of the refusal rate in England in both years. That suggests either a measure of doubt about how the regulations would actually apply, or the desire of applicants to test the system in the knowledge that discretion might be exercised in their favour.

The second point relates to the phrase "once an application is lodged". There must be a question of whether unacceptable development is diverted before the application stage, or whether developers seek a modification of a POS in order to promote a development that would otherwise have to be refused. Such questions once again turn the discussion away from the formal stage of processing to the informal stage.

The right of redress within the system is founded principally on the accountability of the decision-maker before the law. The rights of third parties are greater than those in the British development control system, which offers little to the public at large if a local authority is minded to approve an application. In France, by contrast, a third party can ask for a decision to be annulled. By comparison with the British appeals system, appeals to the *tribunaux administratifs* are rarer: in 1983 there were 3,681 appeals to the *tribunaux* and the *Conseil d'État* (MULT, 1985a). Cases now appear to take a long time to be decided upon. The average time for all cases at the *tribunal* at Lyon is apparently two-and-a-half years, although urgent cases may be dealt with in six months, and town planning cases are mostly classed as urgent (Chabanol, personal communication). Commentators agree that getting a building demolished that has not been built in conformity with the regulations is extremely difficult (Fabre-Luce, 1986).

This form of accountability and redress has the consequence we have already noted of turning objectors to a proposal into litigants and thus ensuring that they are seen as individuals with a property interest in the decision rather than citizens with a wider civic interest in the planning of their areas. Debate on public policy becomes hard to achieve in such circumstances, because the system places a premium on the visibility of legal and administrative propriety, but only after the decision has been taken (Booth, 1985).

4.72 The Negative Impact

It is clear that Tribillon's view about the negative impact of a rigid regulatory system is widely shared by professionals in planning. Tanguy (1979) in a study of DDE staff in four *départements*, found that civil servants habitually considered regulations to be "badly written", "sometimes impossible to apply", and to introduce "rigidity and heaviness" and that they systematically tried to circumvent the negative effects (p. 50). The attitudes of Tanguy's respondents was matched by attitudes of staff in the present survey for whom the legality, though not necessarily the detailed nature of, the POS, was presented as a constant problem. The view is hardly surprisingly also shared by developers.

The problems, both legal and technical, with the regulation is nowhere better illustrated than the problem of the *espaces boisés classés* (classified woodland; often, incorrectly, referred to as *terrains classés boisés*) in the several POS prepared for the conurbation of Lyon. The code allows for the identification of woodland in a POS to which then stringent regulations in Arts. R130-1 to R130-14 apply. Once defined, classified woodland can only be changed following a full revision of the POS (Art. R123-34). The problem stems both from the nature of the survey of the woodland and of the rules that then apply. At Lyon, the classified woodlands were identified by aerial survey which has led to the inclusion and protection of land which is

sometimes of doubtful quality. At the same time there has been a desire to protect the green character of open spaces, particularly in zones U, where it is not necessarily the intention to forbid all building. The regulations were seen as inflexible and inappropriate to at least some of the land so designated. An attempt to solve the problem had been made by distinguishing in one POS between classified woodland that was and was not subject to the special regulations of the code; an ingenious device perhaps, but of doubtful legality. An unpublished legal report, commissioned by the planning agency to shed light on the problem, suggested that, while no judge would wear the suppression of all classified woodland, the distinction between classified woodland subject to the regulations of the code and "green spaces" (*espaces verts*) with their own, more permissive regulations had a valid legal precedent (Barrau and Jamet, 1985).

Similar ingenuity is to be seen in the treatment of the contained development rule. It needs little perception to see that what constitutes the built-up parts of the commune is likely to provide meat for much legal dispute. Even before the law was approved, the minister had had to elaborate by saying that "built-up parts" would be taken to mean outlying hamlets and land immediately adjacent to the main settlement or outlying hamlets (Bouyssou and Hugot, 1986). Further refinements to the law have been made locally, no doubt with the aim of keeping mayors of small rural communities without a POS happy. In the *département* of Puy-de-Dôme for example, the test of what consists of a part of the commune's current built-up area is taken to be any radius of 50 metres within which there are four or more buildings and that any site within a 30 metre radius of these buildings becomes potentially buildable (Lacroix, 1985b).

Such contortions exemplify the way in which a legalised system of policy develops ever more detailed sets of rules to make good the deficiencies of the original formulation, a process that is also exemplified in the increasing complexity of the RNU and regulations for the POS in the code itself. As Bouyssou (1986) puts it,

"Normative perfectionism carrying with it the proliferation of constantly changing legal causes (under the fallacious pretext of tying them to contemporary reality) when a text only comes into force after some delay, is in reality a return to byzantium."
(p. 10)

The opposite argument is posed with equal force: there are those who fear with some justice that the flexibility of response leads to abuses which are hard to contain. The discretion on the possibility of discussion and the use of *dérogations* is highly revealing of the inside understanding of how the French system of planning should operate. *Dérogations* were largely outlawed in 1976, because although they offered the possibility of precisely the kind of pragmatic response Tribillon and Chapuisat see as lacking, the exercise of the freedom was effectively beyond the scope of control. The point is expressed by Prats et al. (1979) quoting Braibant et al.:

"The current unease of the French administrative judge arises from the question of the very laxity of the 'legality' over which he can exercise control: 'If the text authorised a departure in an exceptional case, he exercises in that exceptional case, only a minimum of control; he is practically disarmed if the administration is purely and simply without other constraint, authorised to depart from a rule'" (pp. 43-44).

The essential dilemma is this: the system's accountability before the courts is lost as soon as the possibility of departures or more limited discretion to act is sought. The formal response is to articulate the policy contained in the code or in the POS to ever increasing levels of detail so that the range of possible outcomes may be anticipated, but this merely serves to hamstring the system yet further.

4.73 Deregulation

Under such circumstances and given the new spirit of economic liberalization which has become the vogue in France as in Britain, it is hardly surprising that

various voices should continue to clamour for the deregulation of planning. Commentators like Bouyssou argue primarily from the stance that they doubt the effectiveness of the proliferation of texts and that by making control more selective little would be lost. The real thrust of the deregulation has come with the Chirac government's desire to promote construction and thus, as the Thatcher administrations have done in Britain with industry, remove as much bureaucratic control as possible. In March 1986, Pierre Méhaignerie the minister of the newly created MELATT announced his intention to extend the terms of reference of the existing Danon commission to consider the scope for the deregulation of construction and town planning in their entirety (*Moniteur*, 1986f). The Danon commission had, however, already proposed a round of detailed changes to the code, of which perhaps the most significant was reducing the processing time of applications for permission to build to two months or three months where there was a need for consultation (*Moniteur*, 1986b).

There has been one deregulatory change to the code which predates the Danon proposals. An act of January 1986 applied by a decree in March in the same year has excluded certain categories of development including certain kinds of minor work from the need for a permission to build. In place of seeing a permission, intending developers need only make a preliminary declaration (Arts. R422-2 and R422-3) which can then be opposed by the competent authority if needs be. It is hard to see what benefits this brings to the applicant, since the declaration must be accompanied by a plan and elevations and there is little saving in the time of processing. On the other hand, it adds to the legal complexity of making an application by introducing new distinctions. A comment in *le Moniteur* (1986a) makes it clear, however, that the change arises as much from legal doubts about what constituted a "construction" in Art. L421-1, and the January 1986 Act therefore succumbed to the temptation of increasing the complexity of the law in the attempt to simplify and clarify it.

4.8 Decentralisation and the Exercise of Development Control Powers

We have already noted on two occasions, a troubling distance between the intentions of decentralisation and the provisions of the acts and decrees that put decentralisation into effect. A statement of powers and provision leaves us far from clear what the impact of decentralisation might actually be in practice. Inevitably three years of experience is too short to produce a definitive evaluation of the effects of decentralisation but sufficient information is available to answer two important questions:

- How far has the transfer of powers been achieved?
- How far if at all has decentralisation led to processing of applications by other than the DDE?

4.81 The Transfer of Powers

At 1st April 1984, 6,321 communes had an approved POS in force for the six months required by the legislation and were thus able to process and determine applications as they thought fit (*Moniteur*, 1984a). Thus only 17 per cent of the base units of local government in metropolitan France benefitted immediately from the transfer of planning powers. As *le Moniteur* noted, however, those communes accounted for more than half the country's population and 40 per cent of the permissions granted. Decentralisation has clearly led to an upsurge in interest in preparing POS. Ministry statistics show that more POS were initiated (*prescrit*) between 1st January 1983 and 1st October 1984 than in the four years previously which suggests an enthusiasm for acquiring the new powers. By that date some 12,126 POS has been formally started (MULT, 1985a; see Table 4.8). By 1st April 1985, the number of communes with an approved POS had risen to 7,373 (20 per cent of the total) and the total number of communes which had started work on a POS had

risen to 15,099 by the same date (*Diagonal*, 1985a).

There are grounds for taking a more pessimistic view, however. Wilson (1985) argues that the slowness of POS preparation (on average six years) and the relatively small numbers of DDE staff will mean that even if large numbers of plans are prescribed, it will be many years before the plans are approved. Again official statistics would support such a view. If there was a marked upsurge in starts on POS after 1 January 1983, the numbers of POS published and approved tell a different story. Though the marked decrease in the ten months of 1984 may perhaps be ascribed to under reporting and the problems of transition, it is clear that output has not yet matched starts (Table 4.8). It is also significant that Art. L124-4 allows a commune to defer the application of the contained development rule until 1 October 1987 if a POS had been initiated by 1 October 1984. The upsurge in starts could also be seen as an attempt to buy time as much as a real desire to start plan making.

TABLE 4.8 POS started, published and approved 1976-1984

Date	STARTED			PUBLISHED			APPROVED		
	Cumulative total	Change	Percentage change	Cumulative total	Change	Percentage change	Cumulative total	Change	Percentage change
1.1.76	6,938	-	-	962	-	-	300	-	-
1.1.77	7,580	642	9.3	1,752	790	82.1	603	303	101.0
1.1.78	8,521	941	12.4	2,501	749	42.8	981	378	62.7
1.1.79	9,371	850	10.0	3,229	728	29.1	1,538	557	56.8
1.1.80	9,636	265	2.8	3,998	769	23.8	2,278	740	48.1
1.1.81	10,059	423	4.4	4,960	962	24.1	3,176	898	39.4
1.1.82	10,223	164	1.6	5,672	715	14.4	3,847	671	21.1
1.1.83	10,405	182	1.8	6,443	768	13.5	4,695	848	22.0
1.1.84	11,111	706	6.8	7,228	785	12.2	5,710	1,015	21.6
1.10.84	12,126	1,015	9.1	7,395	167	2.3	5,945	235	4.1

Source: MULT, 1985a

There is a much more difficult question as to whether all mayors were equally interested in acquiring the new powers even if the capacity to prepare POS was forthcoming. Wilson's work (1983 and 1985) indicates that they were not. First of all, for many communes planning is hardly a major issue. In the *département* of Rhône, for example, the average number of applications for permission to build received in 1983 in each commune was only 25; the national average was only just over 16 (MULT, 1985a). 5,000 communes without a POS received no applications at all; 15,000 only between one and five per year: the Ministry could take the view that many communes did not need a POS (Lacroix, 1985a), which suggests a subtle shift from an argument about local responsibility expressed in the Defferre Act to a purely technical debate on the need for forward planning policy. Further, there appears to be little move towards intercommunal cooperation (Wilson, 1983; Lacroix, 1985a) except where it already existed in the districts and urban communities.

Nonetheless not all the evidence points in the direction of inertia. The Fédération nationale des maires ruraux (National Federation of Rural Mayors) evidently took fright at the contained development rule and encouraged mayors to establish an interim planning document for their communes, the *carte communale* (Moniteur, 1984c). These plans have had a short history, and result from agreements reached between the DDE and communes in some *départements* after the new decree on the extended RNU was approved in 1977. They thus have no statutory basis but were incorporated into the decentralisation bill promoted by Giscard d'Estaing in 1979 (Jégouzo and Pittard, 1980). The Senate apparently hoped to be able to extend their useful life after the decentralisation acts had taken effect (Bouyssou and Hugot, 1986). Though this was not to be, Art. L111-1-3 waives the contained development rule for those communes which had "jointly with the representative of the State agreed the ways in which the rules made by virtue of the Article L111-1 [the RNU] are applied to the commune's territory" providing a POS had been started and for a

period of two years. This agreement on the application of the RNU is effectively what the *carte communale* amounted to and by 1st October 1983, 6,720 communes had such a *carte* (*Moniteur* 1984c). Of these, some 1,500 communes thus retained a measure of control over their destiny even if they do not enjoy full autonomy, by agreeing how the RNU should be applied, and are committed to proceeding to the preparation of a POS (*Diagonal*, 1985b).

The second sign of change is reported by Lacroix (1985a) which suggests that intercommunal cooperation which is both possible and beneficial to the participants has taken place in the *département* of Hérault where two existing syndicates have joined together to deal with the processing of applications and studies for POS. The charge to the communes is low and the processing of applications has been reduced to two weeks. Lacroix also reports that one *département* (Bas-Rhin) has established a technical agency for processing applications and three others (Dordogne, Landes, Pyrénées-Atlantiques) have established technical agencies for forward planning which presumably could also develop a control function in the fullness of time.

The establishment of these technical services at the level of the *département* suggests both the development of local accountability and the reestablishment of hierarchical control that the Defferre Act was supposed to abolish. The *départements* of course gain real control over their local services, but for the communes such a technical agency differs from the DDE only insofar as it is not staffed by traditional civil servants. It is to the wider question of who is providing technical support for those communes which have acquired new powers that we must now turn.

Table 4.9 Agencies used for processing applications for permis de construire

Processing Agency	Number of communes	Percentage of communes	Population	Number of permissions processed in 1984
The Commune	204	4.1	8,307,551	38,454
The DDE	6,029	94.5	23,151,240	231,729
Using another technical agency (e.g. SIVOM)	88	1.4	562,194	4,195
All communes with transferred responsibility	6,381	100	32,021,005	274,358

Source: Ministère de l'Urbanisme du Logement et des Transports, 20 April 1984, reproduced by *Moniteur*, 1985b.

4.82 The Availability of Technical Support

Given that the services of the DDE were placed at the disposal of communes free of charge, it is hardly surprising to discover the extent to which newly enfranchised communes returned to their old sources of help. At 1st April 1984, 95 per cent of all communes able to process their own applications used the DDE to do so and a mere four per cent did so themselves (see Table 4.9). The recourse to other agencies was minimal. The surveys carried out by the Association des maires de France suggests that the pattern is not uniform. Communes with populations under 10,000 only very rarely processed their own applications (two per cent), but 25 per cent of those with populations over 10,000 were doing so. The same holds good for the preparation of POS in communes with populations under 6,000. The DDE was invariably responsible for POS preparation; for those communes with populations between 5,000 and 10,000 the DDE apparently never works alone and above 15,000 the DDE is only involved at all in 25 per cent of communes (Lacroix, 1985a). The

point is further reinforced by the existence of technical staff in the communes. Only seven per cent of communes with populations between 5,000 and 10,000 had at least two qualified staff working on planning preparation or processing applications, whereas 57 per cent of communes over 30,000 and all communes over 50,000 population had such staff (Lacroix, 1985a).

There are various observations to be made about these statistics. The first is the extent to which they represent a massive affirmation of the existing order: as Lacroix (1985a) puts it,

"In this renewed confidence, the DDE, are gathering the fruits of decentralisation practised over many years".
(p. 43).

But there is more to be said. The distinction between large communes with visions of independence and the resources to field their own services and rural communes with neither is striking. Decentralisation appears to be a far more viable proposition for urban than for rural areas, and to some extent may be said to be no more than a confirmation of what was already happening before 1983. Equally, for the DDE, there is some suggestion of residualisation as they became increasingly the guardians of the rural areas. In the *département* of Côte d'Or, for example, the one large urban area has entrusted its processing of applications to its distinct technical services, leaving the DDE to deal with the rural hinterland (Booth, 1985).

The second observation concerns the reasons for choosing the DDE. Popesco and Zalma (1986) reporting on attitudes to decentralisation in the *département* of Alpes-Maritimes suggest that the choice has not merely to do with the service being free. Partly, they argue, it is because mayors can envisage no other working arrangement; and partly, too, they see it as an insurance policy for mayors against falling foul of the *contrôle de légalité* at the end of the procedure.

The third observation has to do with the nature of the technical support that is given. Popesco and Zalma again offer a useful critique by suggesting that the system is not neutral. Firstly, the freedom of which is in principle given to mayors is removed at least in part if the DDE retains its old role. They also suggest that if a mayor fails to follow the advice given, the DDE will offer no support in the event of a subsequent legal conflict. At the same time it must not be forgotten that the system holds positive advantages for the mayor. The responsibility for an unpopular decision may be ascribed to the services of the state thus diverting the brunt of a local population's wrath. Booth (1985) reported on the apparently pointless opposition to a development proposal of the mayor in a commune in Côte-d'Or, albeit one which did not have responsibility for processing applications, which was nevertheless an attempt to dissociate himself from a decision which was politically unpopular. The DDE's relationship with the commune under decentralisation is essentially unlike a chief planning officer and his council in Britain, because the former clearly regards itself as an autonomous organisation "at the disposal", but not yet under the command, of the commune.

4.83 The Contrôle de Légalité

The last point that must be investigated is the effect of the *contrôle de légalité*. We have already noted that in principle it imposes a heavy constraint on the actions of communes and some information is now forthcoming about how the control is actually exercised. A government report published in 1985 restricts the scope of control and the number of cases referred to the *tribunaux administratifs*. Various points emerge from the report. Of a total of 3,300,000 acts subject to control some 13.5 per cent or approximately 440,000 were on planning matters. Very few were actually referred (*déférés*) to the *tribunaux administratifs*, however. The average was 20 cases per *département* referred in the first year; but in four *départements* there had been no cases and the maximum number was only 94. The report also noted that

cases were frequently withdrawn which the authors suggested was "a sign of successful consultation between the representative of the State and the author of the act". The conclusion drawn was that the "*contrôle de légalité* had given rise neither to government by judges or to the replacement of one tutelage by another" (*Moniteur*, 1985a, p. 63).

The figures suggest wide variation in practice between prefects, and Périnet-Marquet's (1986) study points to some of the difficulties in the *département* of Vienne. In the first year there were 8,544 acts of town planning subject to control with only two people employed to do the checking. He rightly concludes that under such circumstances the control can scarcely be a general one and many decisions will hardly be looked at. Moreover, Périnet-Marquet takes the view that prefects have been found to be too lenient in their approach: "for many prefects, better an illegality than a fight" (p. 270). The *contrôle de légalité* is thus clearly a discretionary power. The intentions of government set out in the circular do not appear to be realised in practice.

There is another effect of the *contrôle de légalité*. Until 1983 the *juge administratif* existed to adjudicate between administrators and *administrés*. The new control effectively requires the judge to decide between the different wills of two different administrations. Whereas in the past it would have been the prefect who decided in the event of a conflict between the DDE and the mayor of a commune, now the prefect must refer the case to the courts:

"In the presence of cases which express two different visions of policy, that of the representative of the State and that of the decentralised local authority, the juge administratif can only take a policy decision. This will be difficult for him, for it is not his task."
(Chabanol, 1986, p. 284).

Chabanol's view, as vice-president of a *tribunal administratif* is thus directly opposed to the government's and it suggests yet again that if decentralisation

has not resulted in a major change it has brought important but subtle shifts to the way in which existing participants engage in the process.

4.9 Conclusions

This examination of the development control process in France both as it existed before 1983 and as it has been modified after the decentralisation acts makes plain how different it is from the processing and determination of planning applications in Britain. The *instruction* of a permission to build is, it would appear, primarily about checking property rights and the extent to which a proposal complies with regulations enforceable by courts of law. Such a concept does not easily compare either public involvement or discretionary action, nor does it appear to relate directly to the formulation and maintenance of policy. A regulatory system appears to emphasise the legality of a decision taken at the expense of its content. Accountability is achieved either through the administrative hierarchy or through the possibility of judgement in the *tribunal administratif*.

The justification for the lack of public involvement can no doubt be seen in the process of POS preparation where the *enquête publique* offers an extended chance to the public to comment on the plan proposals. The obligation to fix a site notice with details of permission once its implementation has started thus allows the public at large to see that the law as expressed in the POS has been complied with. The effect of this is to cast the objector in the role of the *partie lésée* (the injured party) and thus all objections may be seen as no more than an expression of private, pecuniary interest (Tanguy, 1979): this hardly facilitates the concept of legitimate public interest in participation.

Though it may be true that discretion sits uneasily with a regulatory system, we have noted that the formal possibilities for discretionary action exist both in the

RNU and the POS, though a general description of the system gives little clue as to who takes the action and how the discretionary power is actually used. The scope for new informal exercise of discretionary power, through the interpretation of regulations or through negotiation appear thus to be part and parcel of the French control system, and the fact that principle and practice are in a state of tension is something to which Tanguy's work attests.

What, then, is the impact of decentralisation on this control process which depends so heavily for its justification on its legality? Certainly it has given mayors the possibility of more executive responsibility but they are as bound as ever to ensuring that the decisions they take are legally permissible. Whether the simple transfer of executive responsibility can be equated with the according of discretionary power is at least open to debate. Do not the regulations bind mayors as much in their new role as ever they did before 1983?

It is perhaps easier to begin to draw conclusions about decentralisation in the context of the administrative framework. On the one hand, the inclusion of the rule of contained development in the Act of 7 January 1983 seems to underline the genuine desire of Mitterrand and Defferre both to encourage plan-making and to transfer powers to the local level. On the other, all the old actors remain in place, and the old units of authority persist. We have drawn attention to two factors in particular which suggest inertia: the availability to communes free of charge of the technical services of the DDE and the prefects' *contrôle de légalité*. Both of these suggest that the commune's ability to administer themselves freely as proposed by the decentralisation acts is in fact severely circumscribed.

The evidence of the texts and the opinions of French and secondary sources seem to concur that decentralisation has been no revolution: neither figuratively nor literally have the administrative boundaries been redrawn. Yet at the same time, there is also evidence that at least in town planning all is not quite as it was before.

There are little pointers that suggest if certainly not a revolution, then perhaps an evolution; the numbers of POS *prescrit*, the enthusiasm of some of the commentaries, the suggestion of some of the interviewees for this research that all is not as it was before.

There is no question but that to get to the heart of the matter, we must leave the legal texts and the commentaries and begin an investigation on the ground. Only by adopting a close focus that we can begin to see how the various actors in practice resolve the dilemmas that their role within the hierarchy of administration and their duties as prescribed by a body of law pose for them. The study of development control in the Lyon conurbation that follows was undertaken in that spirit, as an attempt to understand the informal networks that customary practice rather than the law provide.

5. PLANNING CONTROL IN THE LYON CONURBATION

5.1 Introduction

We noted at the outset of this thesis that Lyon could hardly be said to be typical of France and therefore presented considerable difficulties if the aim was to make generalised statements about the impact of a regulatory system of planning or development control decisions, and the changes sought by decentralisation of powers to mayors of communes. Indeed one of the things that distinguishes Lyon is the fact of its strongly developed desire to control its own destiny and the relative sophistication of its forward planning. There are those who would argue that decentralisation did no more than consolidate the progress that had already been made towards self determination and that the inflexibility of the legal framework is substantially overcome in the latest planning documents. These assertions need to be explored in more detail, however; and to be able to do so requires an understanding of the nature of the Lyon conurbation as a place and of the administration that has grown up to deal with it. This chapter then turns to the planning policy for the area, and looks at the control of development and the participants in that process.

5.11 The Growth of Lyon

To try and characterise a city as ancient and complex as Lyon in a few words is clearly an impossible task. There is a whole mass of perceptions and physical characteristics which are more or less relevant to the subject in hand; there is the question of self-image and the image of the city to outsiders; there is the series of transformations that have made Lyon in 1986 a city which is totally different from the Lyon of, say 1852 or 1789, physically, economically, politically and socially.

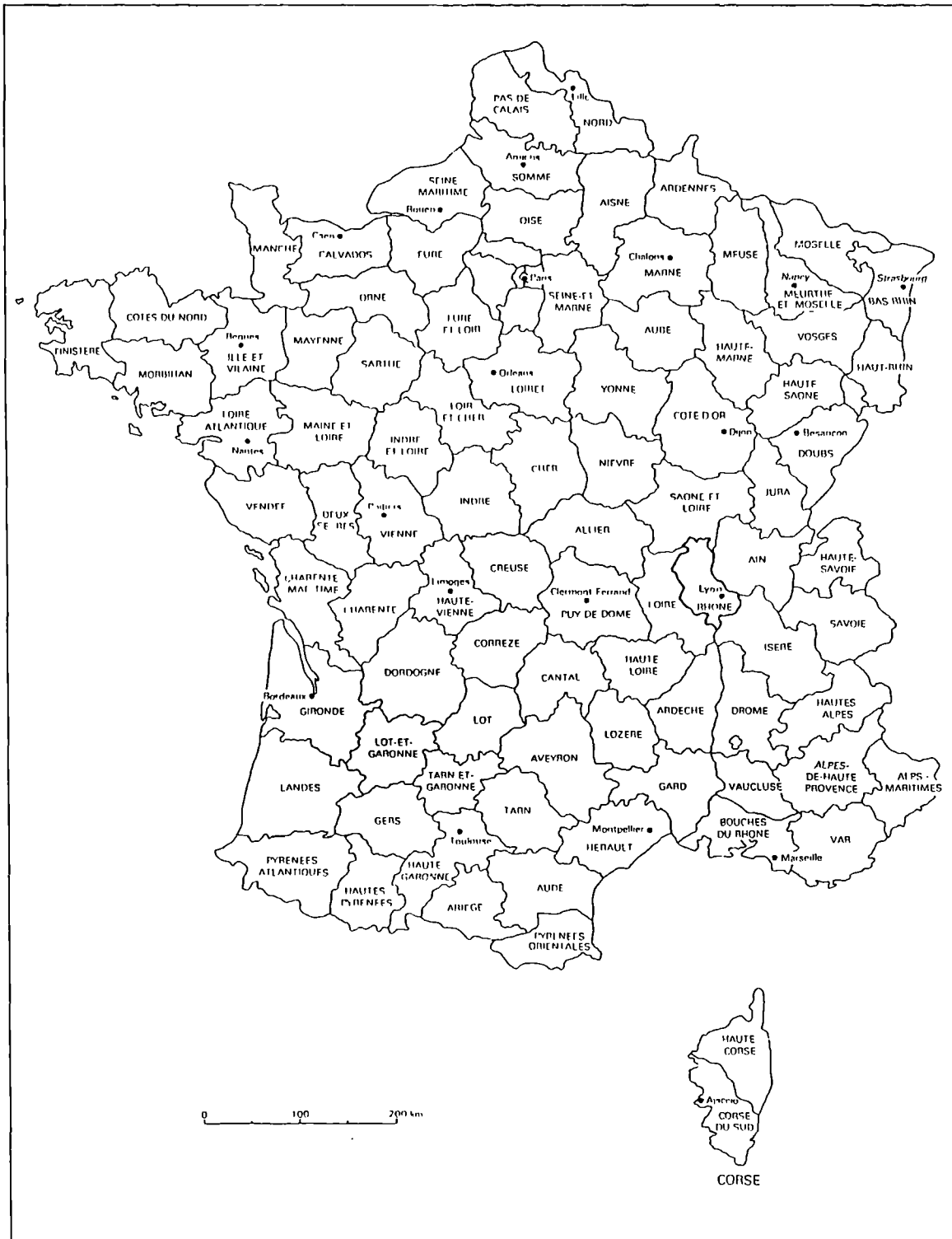


Figure 5.1 The départements of France

Physically, the city is distinctive for its location at the confluence of the Rhône and the Saône with the city centre located in the long thin peninsular, the *presqu'île*, no more than 750 metres wide that stretches from the slopes of Croix-Rousse to Perrache, and the hills to the west and north that create abrupt changes of level. Economically, Lyon is famous by turns as a *entrepôt*, as a centre of silk weaving and in the 20th century for the manufacturing industry, not least of heavy goods vehicles at Vénissieux. Politically, the city appears as much characterised by its bourgeois conservatism as by the revolts of the silk-weavers and their unionisation in the 19th century, and the radical socialism of its city council, under Augagneur and Herriot. Socially, it is distinguished by a certain *douceur de vie*, by its cultural prominence, musically and artistically and at table where, in a country dedicated to eating well, its specialities are renowned. Yet at the same time Lyon has had a reputation for dirt, disease and social unrest, which has persisted with the racial tension which erupted in the Minguettes estate in 1981 (Deriol, 1971; Latreille, 1975; Nau, 1986).

The population of the city and its suburbs also grew fast during the 19th century, and although the population estimates were apparently somewhat inflated in the early years of the 20th century because as Latreille (1975) puts it, "of the fascination with the figure of half-a-million" (p. 389), the population the commune of Lyon attained in 1896, and thereafter maintained, a figure of some 460,000. If the city's population did not grow much after 1900 that of its suburbs did, and the commune of Lyon came to represent a smaller and smaller proportion of the conurbation's population, until by 1975 more people lived in the suburbs than in the city itself (See Table 5.1). Perhaps if there is one theme that dominates the history of Lyon, however, it is that of the city's status within France and Europe, and that has considerable significance for the way in which the conurbation governs itself and for the attitudes of the powers that be to development.

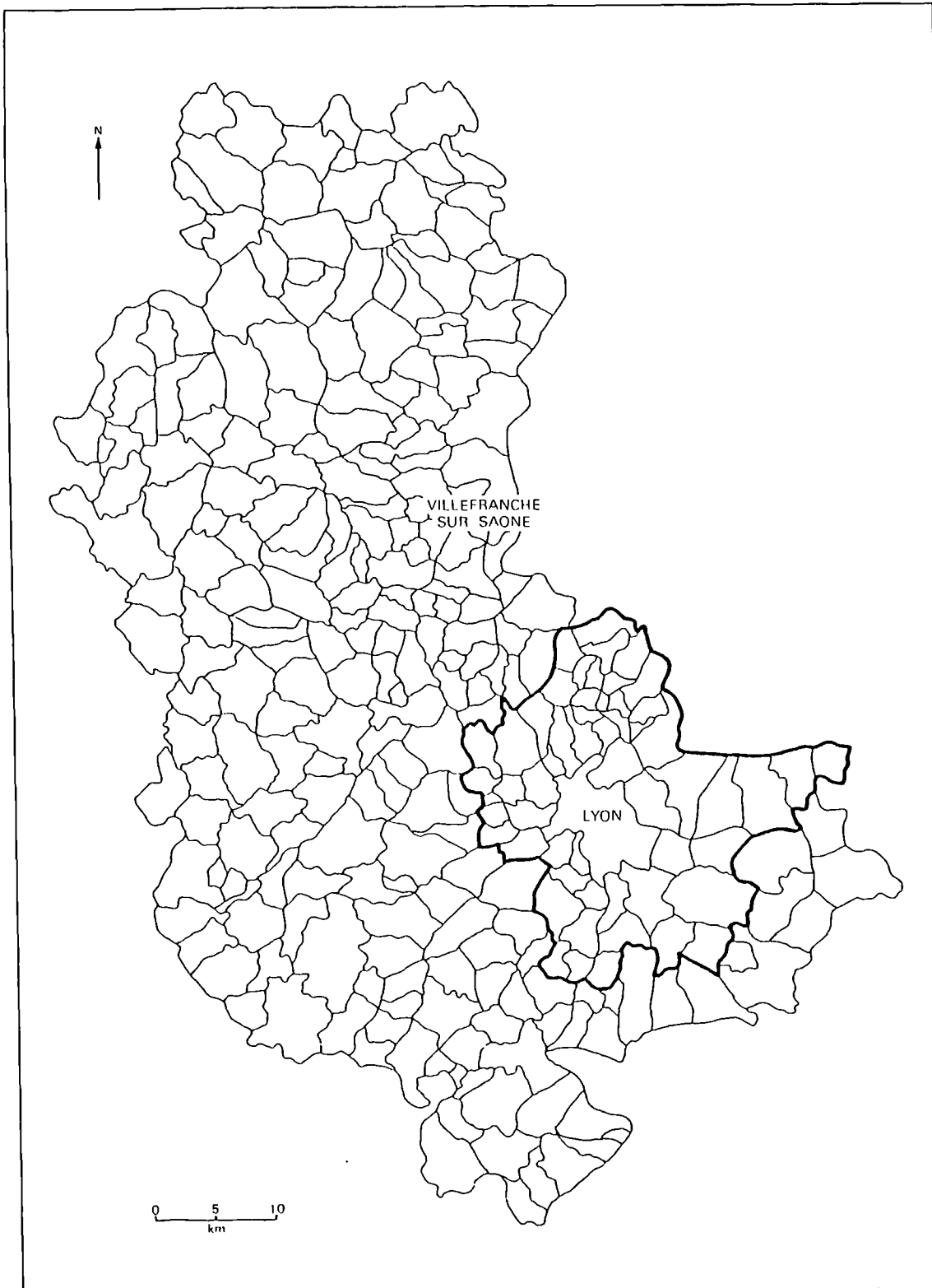


Figure 5.2

The *département* of Rhône showing the boundary of COURLY

Lyon's origins are as Lugdunum, an important outpost of the Roman empire founded by the Roman general Planeus in 43 b.c. The Roman settlement on the west bank of the river Saône quickly attracted a Gallic settlement on the hills on the east bank and on the river front a commercial centre based on river trade. Indeed it is as a centre for commerce that Lyon attained its prosperity and for a brief period in the 15th and 16th century a status as a European metropolis, with trading links from England to the Middle East, and North Africa to the Low Countries, but the period of prominence was brief. The growing centralisation of the French monarchy and the corresponding reduction of regional power in the 17th century, though not to be compared with centralisation after the Revolution, nevertheless, brought the steady eclipse of Lyon by Paris (Latreille, 1975).

The transformation of Lyon from European capital to provincial centre was accelerated in the 19th century. Lyon did not lose its position as the second city of France although rivalry with Marseille was evidently a feature of the period, but it ceased to be at the hub of a European network of trade routes as the railways linking France to Italy and Eastern Europe by-passed it. On the other hand, it developed as a manufacturing centre, and if silk weaving declined in importance, the eastern suburbs developed a strong industrial base of chemicals and metallurgy, the former at least deriving from the industrialisation of the textile industry. Banking also rose to eminence. Before 1860 the banks of Lyon were primarily geared to the needs of textile manufacturers. The founding of *Crédit Lyonnais* in 1863 was evidently a turning point in channelling the city's wealth, but one which worked to Lyon's detriment in the end: *Crédit Lyonnaise* transferred its headquarters to Paris as early as 1870 and it invested its money anywhere than in Lyon (Latreille, 1975).

The desire of the city fathers to recapture Lyon's greatness as a European city has been expressed by the series of grand projects with which from the second Empire onwards they have endowed the town. Napoleon III's prefect Vaisse set in train the first major revitalisation of the town with the creation of the *rues Impériale*

and de l'Impératrice (now rue de la République and rue Édouard-Herriot) in 1853 and 1858 respectively. These had the double function of cutting swathes through the slums between Place Bellecour and Place des Terreaux and providing a triumphal axis for the new gare de Perrache to the Town Hall (Leonard, 1961). This was followed by the abortive attempt in the early 20th century to create a new centre on the east bank of the Rhône at Les Brotteaux centred on a new station which never fulfilled its ambition of, becoming a major international junction, and has since been closed in favour of the new gare de la Part-Dieu.

The rhythm, though uneven, has continued since the First World War. The commissions given to the revolutionary architect Tony Garnier by Herriot fall partly into the same mold, even if the motivation was as much to create domestic comfort. The hospital at Grange-Blanche and the abattoir at Gerland both put Lyon in the forefront of the modern movement in architecture, as would perhaps the housing in the Quartier des États-Unis had its interpretation of Garnier's proposals in the *Cité industrielle* not been so arid (Garde, 1983). The suburb of Villeurbanne also made efforts to improve its status and image in the 1930's, with the completion of the Gratte-ciel (skyscraper: the term is now used to define Villeurbanne's central area), a paradigm of modern city centre development, with stepped blocks in gleaming white concrete to the designs of Chambon and Leroux (Lagier, 1984).

The concern to find an international status for Lyon was taken up with renewed vigour after the war, and more particularly on the accession of Louis Pradel as mayor in 1957. In a special feature in *Le Monde*, Ambroise-Rendu aptly summarised a feeling that prevails in the 1980s:

"The most ambitious Lyonnais dream of giving back to their city the status of a metropolis on a European scale. They wish to rival Barcelona, Milan, Frankfurt or Manchester." (1986).

Indeed, this concern for the status of Lyon looks from without like something of a collective neurosis. Books and articles seem to abound with titles like *Lyon - ville mondiale* (Deriol, 1971) or the more questioning *Lyon, Métropole?* (Labasse, 1982) and there is much discussion of what the appropriate indices of metropolitan status might be. Yet Lyon has worked hard to achieve that status. In 1961 Leonard could conclude that nothing had been achieved in Lyon to rival Vaisse's projects; by 1986 the contribution of the 20th century looked far more significant.

First there were the five great estates which were designed to end the housing crisis of the 1950s, the ZUP (*zones à urbanisées en priorité*; priority development zones, predecessors of the ZACs), at Rillieux and Montessuy-Caluire in the north, la Duchère to the north-west, Vaulx-en-Velin to the north-east and Vénissieux - les Minguettes to the south (Gade, 1983). Though the vision of these and of other major housing developments has turned swiftly sour since the late 1970's, they nevertheless form part of the accelerating rhythm of project development. Much more successful but quite as controversial has been the development of a new commercial centre on the east bank of the Rhône at La Part-Dieu, which was consolidated by the decision in 1971 of the SNCF (French Railways) to locate a new station on its *ligne à grande vitesse*, (LGV; high speed rail link) opposite the centre (Pelletier, 1985), thus achieving what the development of les Brotteaux just to the north had failed to do in the early 1900's. The metro of which the first line has been open since 1978, has similarly been a cause for civic pride and has resulted in the important gain of the pedestrianisation of de la République and its southward continuation to Perrache, the rue Victor-Hugo (Barré, 1980). To that must now be added the projects for an international congress building at quai Achille-Lignon and a cultural and sporting centre at Gerland where a new building for the prestigious Ecole Normale Supérieure is also nearing completion. Finally, Lyon has had since 1978 an international airport at Satolas which is to be linked by a diversion of the existing LGV (Perren, 1987).

5.12 The Development of An Administrative Structure for the Conurbation

If Lyon has striven to become a European capital in the past 100 years, it is true to say that the management of its domestic affairs and its relationships to its immediate hinterland has been something of a problem. For Lyon did not traditionally dominate a region. In Roman times, for example, it found itself at the limits of three Gallic groupings, whose limits were defined by the Rhône and the Saône, and these boundaries were to prove extraordinarily resistant to change (Latreille, 1975). In the early Middle Ages the Saône marked the boundary between the Holy Roman Empire to the east and the kingdom of France to the west; Dauphiné to the south and east of the Rhône was not part of France until the 14th century and Burgundy controlled what is now the *département* of Ain (Bonnet, 1982). The provinces of Lyonnais, Forez and Beaujolais which were eventually linked as the *généralité* of Lyon in the 17th century did not focus on "geographical and social unity" (Latreille, 1975, p. 206) and were not wholly dependent on Lyon. Lyon was a frontier town without its own region properly speaking and no doubt this had been the very source of its trading strength.

The Revolution perpetuated the old boundaries. The *généralité* of the *ancien régime* was at first kept more or less intact as one of the new *départements*. Subsequently the desire to limit the power of Lyon led to the subdivision of that *département* into two to form the *départements* of Loire with St. Étienne and the *département* of Rhône dependent on Lyon. What had originally been one of the largest *départements* thus became the smallest after the (now defunct) *département* of Seine. The eastern boundary, however, remained unchanged and followed the line of the rivers Saône and Rhone, except in the immediate vicinity of Lyon (Latreille, 1985). The commune of Lyon included the area of Les Brotteaux on the east bank of the Saône, and the suburban communes of Croix-Rousse, Caluire and La Guillotière were also in the *département* of Rhône, but Vaulx-en-Velin, Villeurbanne, Bron and Vénissieux all remained in Isère, and Rillieux in Ain. The future suburban

territory of Lyon was thus administratively divided. Under the Second Empire there was some attempt at tidying up these boundaries. Bron, Villeurbanne, Vénissieux and Vaulx were all transferred to Rhône and the commune of Lyon absorbed the suburbs of Vaise to the west bank of the Saône, Croix-Rousse immediately to the north of the *presqu'île* and La Guillotière to the south of Les Brotteaux on the east bank of the Rhone. But Lyon declined to absorb other communes in 1874, not wishing to become responsible for the poorly serviced suburbs of St.-Clair, Caluire and Villeurbanne, and by 1906, Villeurbanne had sufficient civic identity and political will to resist annexation (Bonnet, 1982; Bonneville, 1978).

The old divisions persisted until the 1960s. The urban area was already deemed to consist of 10 communes in 1939 (although in this it was not different from other conurbations in France) (Dumolard, 1981), and it already straddled departmental boundaries. This had its comic consequences, as for example that while Lyon taxis were able to set down clients at the entrance of the old airport at Bron in Rhône, they were not able to pick up passengers at the exit which by mischance was in Isère. But it also meant that the burgeoning eastern suburbs attracted relatively little interest. They were peripheral to the concerns of the prefects and general councils of Ain at Bourg-en-Bresse and Isère at Grenoble, and because they were not in Rhône were ignored by the prefect for Rhône in Lyon. Uncontrolled development thus took place, particularly along the main RN6 road beyond St. Priest, and the then mayor of Lyon, Pradel, "took no interest" in the new town of L'Isle-d'Abeau, even though it was seen as an essential part of the conurbation's strategy for growth, because it was in Isère (Bonnet, 1982). Lojkine (1974) goes further and declares Pradel to have been in outright opposition.

The 1960s were to see important boundary changes and administrative reform. The transfer of sixteen communes from Isère to Rhône meant that at last all the eastern suburbs and areas in which expansion might take place were in one *département*. To the north-east Rillieux was also transferred from the *département*

of Ain. On the other hand the suburban extensions on the north bank of the Rhône as far as Montluel remain in Ain. The census definition of the conurbation still cuts across three departmental boundaries (Bonnet, 1982), yet presumably for administrative convenience, the area under study for the new SD only incorporates communes in Rhône.

5.13 The Creation of the Urban Community

More significant for the administration of planning control was the creation of the urban community in 1969, one of the four whose creation was imposed upon the constituent communes after the act of 1966. The rationale for the creation of the community was the same at Lyon as for the other three: to give a coherent administration to the conurbation, which, even if departmental boundaries had been rationalised, was still divided amongst a great number of communes. 55 communes were linked in the community which then delegated members to the new council of the Communauté urbaine de Lyon known by its acronym COURLY and for the first time, a great range of services were provided centrally. The range of services that COURLY provided are those established by decree in 1968 together with the provision of school sports facilities. Since the beginning of 1983 the council of COURLY has comprised 140 members with at least one delegate from each of the 55 communes. The allocation of seats is proportional to the population of the communes such that Lyon itself has 46 delegates and Villeurbanne 14, but 42 of the communes have a single representative. The council elects a president and 12 vice presidents, each of whom has a specific responsibility. Of these members of COURLY's 'cabinet' six were mayors (including Collomb, mayor of Lyon and president of the council as well as senator) and four were deputy mayors of Lyon. The council has fifteen special committees which are charged with advising the president of the council on matters referred to them. These committees have 24 members each and their membership reflects the general composition of the council,

with therefore the majority of seats being taken by the centre-right Groupe d'Action communautaire (COURLY 1986).

To carry out the statutory duties assigned to it, COURLY also has an extensive administration with some 6,400 employees housed in the imposing premises, purpose-built in 1978, as part of the Part-Dieu complex (COURLY, 1986). In its scale, and in the range of services offered, COURLY's administration appears to be the nearest equivalent to a very large urban local authority in Britain, even though as we have noted, it is not properly speaking a territorial authority to compare with a British district.

If COURLY makes the major contribution to the conduct of the conurbation's affairs, its constituent communes are nevertheless members of other intercommunal syndicates of one kind or another. In 1986 there were evidently nine such syndicates, all of which included communes outside as well as inside COURLY, with responsibilities for water supply, sewage and waste disposal and general maintenance work. Of these the most significant is the Syndicat intercommunal pour l'enlèvement et le traitement des ordures ménagères des communes de l'Ouest Lyonnais, which handles domestic waste disposal in nine western communes of COURLY (COURLY, 1986).

Administrative divisions, the legacy from a very distant past, thus remain a problem, but the Lyon conurbation has acquired an administrative framework that is able to consider much of the urban area as a whole and to respond to its particular needs. The question of the extent of the accountability of COURLY to the electorate is much more doubtful. At best it is at one remove from the people it serves, given that the council consists of delegated, not directly elected, members. For this reason, it cannot be understood as a local authority and does not therefore usurp the role of the communes. This places administrative staff in what to British eyes is a curiously ambiguous role. The technical services are accountable both to the council of

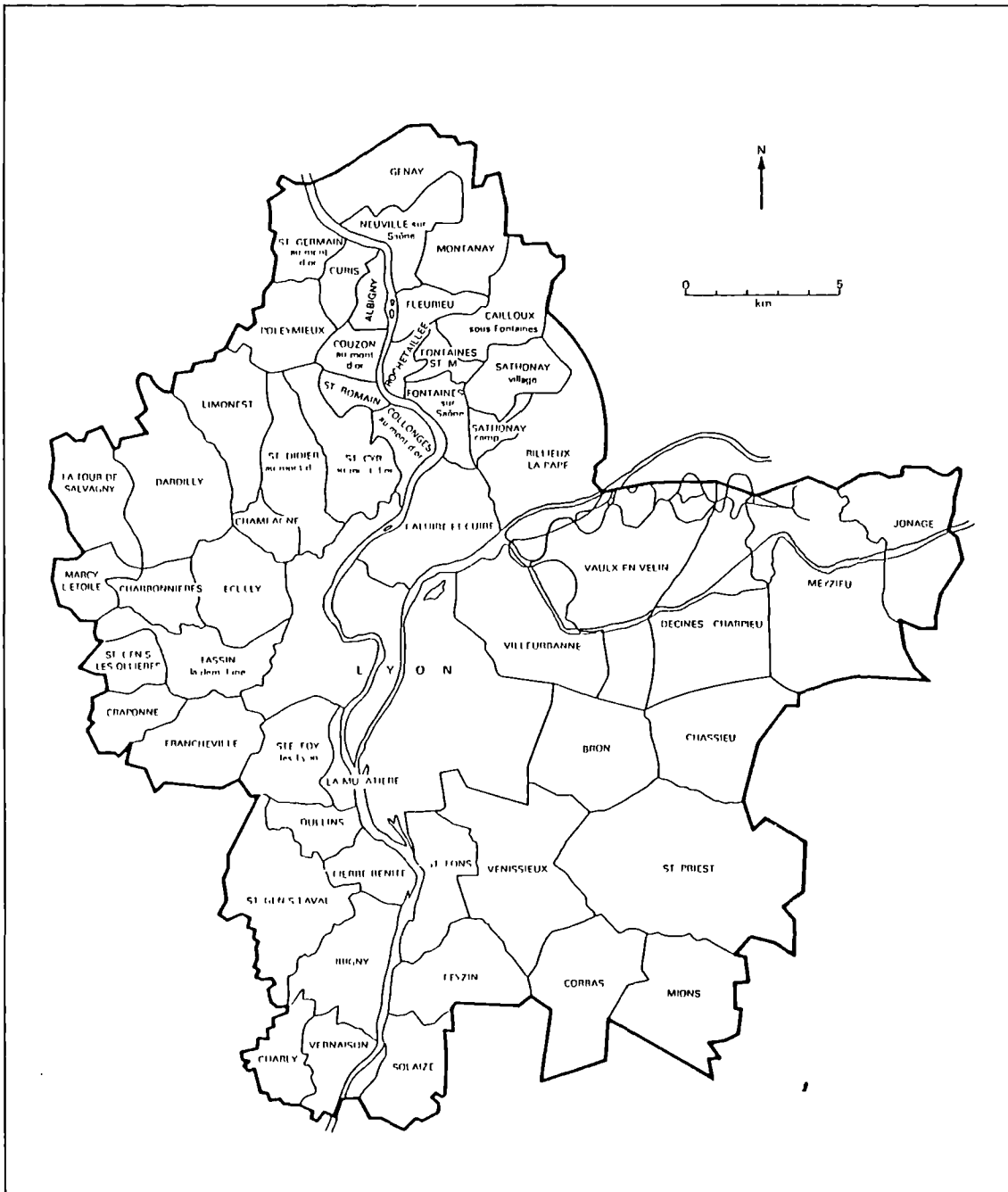


Figure 5.3

COURLY and its constituent communes

COURLY and also from time to time, to the communes on whose behalf they may be working, whether small or large, whether left- or right-wing.

The second point to observe about the acquisition of this new administrative framework is the fact that it has not replaced any of the existing structures. If the communes remain the only real local authorities in COURLY, the DDE remains an important force in the government of Lyon and its suburbs, particularly in the field of planning. Since 1969, we may argue, local government has become more complex and not more directly accountable; it has probably made local government more difficult for the consumer to approach.

Yet the creation of COURLY has increased power for at least some of the actors at the local level. Mény (1984) notes that with much of local government opposed to de Gaulle, the State proceeded "with circumspection" in requiring the formation of urban communities at the Bordeaux, Lille, Lyon and Strasbourg conurbations (p. 203). Certainly at the outset the creation of COURLY provoked vigorous opposition from most of the mayors of the *département* of Rhône, but Herriot's successor, Pradel, after briefly opposing the bill on principle, "did nothing to stem an act that considerably increased his political power in the region" (Lojkine, 1974, p. 18). As Lojkine points out, the arithmetic was simple. Whereas in the general council of the *département* Lyon held 37 per cent of the seats and therefore relied on a political alliance with Villeurbanne and the rural communes, in COURLY at the outset Lyon had no fewer than 56 of the 90 seats. Thus Pradel, who since his election in 1957 had, in Machin's words, become "virtual dictator of Lyon" (1980, p. 136), inevitably became first president of the urban community which he was also to dominate until his death. Unusually, he acted under a self-denying ordinance not to seek other office in order the better to concentrate on local affairs. Moreover though Herriot had been his patron his politics shifted well to the right: "He showed himself more concerned with practical projects than with empty ideological conflict" (Latreille, 1975, p. 466) and after the relative inertia of Herriot's closing years,

embarked on a vigorous policy of equipping Lyon with facilities. If Latreille can portray Pradel as a neutral technocrat Lojkine presents the effect of his policies as benefitting certain social strata and significantly advancing the cause of large-scale capitalistic enterprise. But whatever the interpretation that is placed on Pradel's policies and their implementation, they can scarcely be described as radical-socialism; and they emphatically suggest a powerful operator with a well-developed power-base.

The third point to consider is how far COURLY is dominated by its biggest partner. In the composition of its presidential cabinet, it is clear that Lyon is still the major political force in COURLY, and that smaller communes and communes of the left must feel to some extent excluded from the power structure. As far as political balance is concerned, the fact that Villeurbanne, the second largest commune of COURLY, is socialist and has a former government minister (Hernu) as its mayor must be an important counterweight to the ongoing right wing on the council. As far as the small communes are concerned, the changes introduced in 1982 which allowed delegates from each of the communes and not simply from an electoral college in each of the five sectors has been important, as has the fact that the president's first deputy, Jean Rigaud, is mayor of the relatively small commune of Écully and thus maybe helps to ensure that the interests of the smaller suburban communes are represented at the heart of the presidential cabinet. Yet it must also be said the Lojkine's strictures in 1974 about the representativeness of the cabinet of COURLY apply with equal force in 1986. Of the 12 vice presidents none is from the industrial working class suburbs of the inner ring; of the six who do not represent Lyon all come from urbanised, formerly rural communes dominated by the new bourgeoisie. This represents a step back from 1971 when at least the mayor of St.-Priest was present in the cabinet (Lojkine 1974, p. 22).

The further point is whether decentralisation has made any appreciable impact on the attitudes and organisation of COURLY and its members. The view of actors

within the system is that the impact has been slight (Dellus, Idé, personal communication). Leaving aside the general question of whether the regulations do in fact permit the proper exercise of power, the belief that the setting up of COURLY was more important than decentralisation in transferring relationships between central and local government is generally shared. As Jean Frébault, director of the Agence d'urbanisme put it in debate at a conference held in 1983:

"They (the large towns) were already in a position to negotiate with State authorities, and their relationships were as between partners and not as between controller and controlled."
(Caudal-Sizaret, 1983, pp. 89-90)

The truth of these assertions can only be explored through the detailed examination of the detailed arrangements for development control and the case studies presented in the next chapter. Before looking at planning control in the Lyon conurbation, however, we need to consider the nature of COURLY and its constituent communes in a little more detail.

5.14 The Constituent Communes of COURLY

The 55 communes that were brought together in 1969 are physically, economically, socially and politically diverse. If Lyon ranks among one of the five communes that have more than 300,000 inhabitants (see Table 3.1), COURLY also contains nine communes with populations of less than 1,500 (see Appendix 1). It follows that if the centre of the conurbation is densely urban, the outer suburbs remain in part agricultural and their communes traditional in character and outlook. The area of COURLY covers moreover significant expanses of open country of which the Mont-d'Or is the most important and forms the best of the conurbation's green lungs. There are equally significant differences in the distribution of industry, in the social and ethnic mix of the population and in political representation: thirteen of the communes have socialist or communist regimes for example, in spite of the very

strong support for the right both in COURLY and in the *département* of Rhône as a whole. To some extent there is an east-west divide and it is possible to make a crude distinction between the hilly and attractive and affluent west, with the flat, industrialised, working-class east.

Table 5.1 **Population of COURLY by sector.**

		<u>1968</u>	<u>1976</u>	<u>1982</u>
Central Sector:	Lyon	527,800	456,716	413,095
	Villeurbanne	119,879	116,535	115,960
Eastern Sector		186,873	273,022	288,953
South-Western Sector		96,502	121,137	126,109
North-Western Sector		40,392	53,340	58,743
Northern Sector		<u>77,434</u>	<u>98,263</u>	<u>103,195</u>
Total COURLY		1,048,880	1,119,013	1,106,055

Source: INSEE

5.141 *The central sector: Lyon*

Lyon, by virtue of its expansions in the 19th century, is by far the largest commune both in population and area. It is also distinctive in being, like Paris and Marseille, divided into nine *arrondissements*, which since decentralisation have acquired a new significance. A statute of 31st December 1982, known as the PLM Act (an allusion to the old railway company that built and ran the railway line from Paris to Lyon and Marseille) has given each of these *arrondissements* its own council. This consists of municipal councillors and councillors directly elected by the inhabitants of the *arrondissement*, and a mayor, who may not be the mayor of the

commune (*Moniteur*, 1983). For planning, these councils have a statutory right to be consulted, principally on plan-making (Arts. R141.8). According to Hanley, Kerr and Waites (1984) the intention was to create a socialist enclaves in right wing cities, a move which backfired badly when the right made sweeping gains in the 1983 local elections.

Since 1871, the commune of Lyon has always had strong local government, in the early years of a radical-socialist complexion, dominated by powerful figures who were pragmatists rather than ideologues like Gailleton, Augagneur and most of all Herriot and Pradel (Latreille, 1975). The sheer longevity of Herriot's rule ensured stability in municipal government and a command of local affairs, which the dictatorial Pradel could develop from 1957 as he promoted the first phase of post-war development. Significantly, it was under Pradel that Lyon set up its *Atelier municipal d'urbanisme* (municipal planning office) with the local architect-planner, Charles Delfante, in charge. Significantly too, Thoenig (1979) suggests that it was activities such as Lyon's that led the government to establish the new *Ministère de l'Équipement* in 1966 in order to recover some of the initiative in land-use planning, a sure indication of the real development of power at the local level.

5.142 *The central sector: Villeurbanne*

Villeurbanne's character is that of working-class suburb that has striven hard for parity with its larger neighbour. Before 1880, Villeurbanne still had an old village centre some distance from the boundary with Lyon at Cusset, and some sporadic development where it abutted the 3rd and 6th *arrondissements* and along the road from Lyon to Meyzieu, but it was still predominantly rural. Between 1880 and 1894 it underwent a "brutal transformation" (Bonneville 1978, p. 14) to become an industrial and working-class suburb and the efforts of the commune between the wars were directed towards the amelioration of living and working conditions, a sort of municipal socialism which Bonneville (1978, p. 72) ascribes to local influences, but

appears to compare with its British counterpart of the same period. It is in this period, too, that the desire to establish itself as a municipality in its own right and not just a suburban adjunct of Lyons, expressed itself in the creation of a new city centre with its distinctive Gratte-ciel (see above). Since 1945, there has been a further transformation as Villeurbanne saw the closure of traditional industries or their dispersal to new industrial areas on the edge of the conurbation, and the increase in residential development pressure along the main axes of the commune. Moreover its population which increased rapidly until 1968 when it totalled 120,000, more than twice the figure in 1936 (Latreille, 1975) thereafter began to decline, although not as rapidly as that of Lyon (see Table 5.1). Coupled with the decline of the population has come a profound shift. What was once a working class suburb, by 1968 had a working population more than half of whom were managerial or professional. In 1977 a socialist council was once again elected with Hernu as mayor and with planning as a major part of their political platform, based on a political belief in making Villeurbanne fit for Villeurbannais. The point is made clear by Hernu in his introduction to the revised POS for the commune:

"Until 1977, the previous council did not even choose. It deliberately adopted the policy of laisser-faire: scores of companies bankrupted, vacant land subject to speculative pressure, low-cost housing practically non-existent. Our project contains a different conception of the citizen in the town: he must of course be able to house himself, but also to work and to enjoy his leisure. Our project is to give Villeurbanne a scale compatible with its inhabitants." (Hernu, 1983).

The phrases may be charged with political rhetoric, but they convey the commitment to planning which now characterises the elected representatives of Villeurbanne. Specifically, the policy of Hernu and his deputy with responsibility for planning, Bernard Rivalta, finds expression in the way that the POS is presented, a point to which we shall return.

5.143 *The inner ring suburbs*

The inner ring suburbs which encircle Lyon and Villeurbanne are more diverse. They share in common their concentration of heavy industry and their larger scale post-war social housing development. Their councils are in the main controlled by socialists or communists. Of the eight communes that are considered part of the inner ring, the best known, and the third largest in COURLY is Vénissieux. Vénissieux, served originally as a centre for market gardening geared to the needs of Lyon. The creation of the Berliet factory in 1919 on the eastern edge of the commune which was to become the major producer of heavy goods vehicles in France (and is now part of the Renault group) was decisive in turning Vénissieux into an industrial suburb. The development of the ZUP at Les Minguettes to the west with 9,000 dwellings between 1967 and 1975 set the seal on ambitions for growth that had taken the commune from a population of 5,000 in 1911 to 75,000 in 1975; with the view that it would ultimately reach 100,000. But the racial tensions and the massive unpopularity of Les Minguettes, together with a declining population in the conurbation as a whole that has declined, has led to an absolute reduction in numbers in the commune. Moreover the outer suburbs which provide more attractive conditions for both living and working that put Vénissieux at a severe disadvantage (*Urbanisme*, 1986).

Vénissieux council, communist controlled since 1935, has had to place considerable importance on planning because of the problems that it now faces. Significantly, for example, since 1984 the commune has had its sixth Directorate with responsibilities for both physical planning and economic development to ensure that employment growth and land-use planning can be properly coordinated, which represents a desire to come to terms with and to control its own destiny (Fischer, personal communication). The commune's energies are directed very much towards economic development and projects of which the rehabilitation of Les Minguettes and the redevelopment of the old town centre (see below p. 266) are critical.

Other inner ring suburbs share Vénissieux's problems although for none are as acute as at Vénissieux. At Bron, for example, there is also a desire on the part of elected representatives to take charge of the commune after a period of very rapid growth in the mid-1970's (Deschamps, personal communication) which has expressed itself in taking over the processing of applications for permission to build (see below).

5.144 *The outer suburbs*

The outer suburban communes are a more diverse group, and divide between those on the east, which are industrial, working class and more likely to be controlled by socialists and those on the west whose mayors are more likely to be members of the controlling Groupe d'action communautaire representing a wealthier electorate. The communes vary widely in size too. In the north-west are the small communes of the residential villages in the massif of the Mont d'Or; to the far southwest the communes are still agricultural and again small in population and poor in resources. On the east, the communes of the outer suburban ring are larger in population and can wield more authority. Such is the case at St.-Priest, the largest of the outer ring suburbs, or to a lesser extent at Décines-Charpieu where the mayor personally takes responsibility for planning matters (Moutin, personal communication).

There can be nothing surprising about the diversity of the constituent parts of the Lyon conurbation given its size. What may be observed however is the way in which these local differences are accentuated by the administrative structure, which one might well suppose would create a degree of parochialism that would work against coherent policy and decision-making. There is a clear balance of forces between the centralising tendency of COURLY with its ability to act strategically and the centrifugal tendency of the 55 communes each able to reflect the very different conditions in parts of the conurbation.

5.2 The Evolution of Planning Policy

The successive attempts to plan for and control growth in the conurbation since the war have mirrored the evolution of planning policy at national level. The cycle has moved from trying to create a coherent planning document using the system of plans in the 1958 Act, to the grand regional strategies of the late 1960s and early 1970s, to a return to a detailed scrutiny of the urban fabric. It can be no part of this thesis to attempt a full evaluation of planning policy in the Lyon conurbation over the past twenty-five years, but it is relevant to present the thinking that forms the cultural background to the participants in the control process and the documents that now form the policy base for development control decisions.

5.21 Strategic Planning

The earliest strategic document for the conurbation was a PUD published in 1962 but never finally approved. It proposed a restructuring of the town around a tertiary centre in Les Brotteaux and a series of secondary suburban centres (Bonneville 1982, p. 93) and encouraged expansion to the east, south-east and south-west. The plan was never approved, however, and communal plans of the 1960s only ever had a "tenuous relationship" with it. In 1962 following the model provided by the Paris region, the Ministry in conjunction with the prefecture of the *département* of Rhône embarked upon a *plan d'aménagement et d'organisation générale* (PADOG; regional development plan) for an area which covered the whole of the *département* and extended northwards to Bourg-en-Bresse and southward to Vienne and La Tour-du-Pin (Isère), and which was extended to include St. Étienne in 1964. The main provisions of that plan were to control the population of the conurbation to between 1.5 and 1.7 million by concentrating development on specific areas and imposing a

green belt, and by diverting overspill to a series of new towns.

The PADOG proposals were never formally approved but were to form the basis of the next planning exercise undertaken by the study group created for the Lyon and St.- Étienne region in 1966 as one of the six set up by DATAR for the *métropoles d'équilibre* (d'Arcy and Jobert, 1975; see also above p. 64). The region was extended in 1968 to include Grenoble. The *schéma directeur d'aménagement de l'aire métropolitaine* (SDAAM; metropolitan area structure plan) incorporated some of the principles of the PADOG: the insulation of the population, the axes of growth, the imposition of a green belt and the creation of two new towns. But it also proposed the development of Lyon as a genuine regional capital through the creation of a new centre at La Part-Dieu and major infrastructure projects: a new airport, a metro and motorways. The SDAAM was approved in 1970.

Before the SDAAM was approved work had already started in a SDAU for the Lyon conurbation itself, covering the whole of the future area of COURLY and sixteen other communes, but omitting notably the communes in the *département* of Ain forming the Cotière de Dombes, the commune of Vaugneray to the west and the urban area of Givors-Grigny to the south. The major principles of SDAU were outlined in the *Livre Blanc* produced in 1969 which remained close to the principles of the previous planning documents (although given that the PADOG and the SDAU were both realised by the DDE in conjunction with Charles Delfante, this is perhaps hardly surprising). Now the concept of axes of development was linked to the creation of a public transport system, green wedges penetrating the built-up areas were added to the concept of a green belt, and the whole conurbation was to be stitched together with a system of urban motorways (Bonneville, 1982).

The formulation of the SDAU proceeded slowly during the early 1970s, perhaps because it was the first strategic plan in which the state had had to act in partnership with locally elected representatives. It was published in 1976 and not

formally approved until 1978. By that time, however, the realities of development in Lyon were moving ever further from the concepts of the *Livre Blanc* and the detailed policy of the POS was beginning to reflect the divergence. In part this was due to the expectations of growth of the 1960's being overtaken by events; in part due to expedient response to development pressure. If, as Bonneville suggests, the DDE sought the approval of the SDAU even when it had already been overtaken by events, in order to control the POS for the conurbation in advance of their revision, the attempt can hardly be said to have worked. On the one hand, the POS for the central sector of COURLY (Lyon and Villeurbanne) was approved in the same year as the SDAU. On the other, numerous inroads were made into the principles contained in the SDAU. None of the major axes of development achieved their expected potential. In the Feyzin-Corbas, corridor, for example, the land reserves were reclassified as green belt. In the Décines-Meyzieu corridor, which was programmed to start first, the development took the form of low density detached housing (the ZAC de Bonneveau being a prime example, see below p.237). Then the green belt and wedges were eroded, particularly between Bron and St.-Priest and along the A43 motorway. The creation of ZAC at the Fort-de-Bron and Sans-Souci in Limonest on the east of COURLY also raised the principle of how precise the boundaries for future development should actually be (Bonneville, 1982).

By 1982, Bonneville suggests that a combination of changed economic and demographic circumstance and non-respect for the provision of SDAU had led to an undermining of the type of planning that the SDAU stood for. But there is another factor that is important in the change. The 1977 local elections brought considerable change to the representation at communal level and in the council of COURLY. Hernu was elected in that year as mayor of Villeurbanne; Pradel had died in 1976 and had been replaced by Collomb; and such new leaders brought with them "new teams who did not feel themselves bound by previous agreements" (Bonneville, 1982, p. 102). Moreover by 1978 elected representatives were thoroughly accustomed to participating in the planning process (Prud'hon, 1985).

5.22 The New Planning Documents: The POS for Lyon and Villeurbanne

It was not merely the inadequacy of the existing documents that led to the POS for Lyon and Villeurbanne being revised from the moment they had been approved in 1978; it was also political will. In Lyon, Frébault (1985) and Prud'hon (1985) make it clear that the politicians wanted a simpler plan, a plan that was more attuned to the "realities of the city" (Frébault 1985, p. 42). The idea, too, of the mix of activities, where the SDAU had looked for a segregation (Bonneville, 1982) is common to both communes. It was particularly significant at Villeurbanne, where the POS approved in 1976 had applied "a macro zoning covering some tens of street blocks" which "denied the values of the urban fabric". The new POS produced a micro-zoning with the intention of respecting the character of each district both in terms of form and of use (Villeurbanne, 1983).

The POS for Lyon laid particular stress upon the regulation of the form of development and the preparation of regulations which did not simply prescribe norms but took account of the specificities of the urban form to which they would apply. The traditional model of zoning "with a dominant activity tied to a particular urban form at a particular density applied systematically and in two-dimensions" is replaced by block-by-block zoning applying selectively "ad hoc regulations" (Sozzi, 1985; p. 45). Prud'hon (1985) identifies major innovations in the POS.

First, the application of plot ratios (COS) has been limited to the northern parts of the city where there was a need to contain development. Elsewhere development would be controlled by maximum height on street frontages and building envelopes for each block.

Second, the definitions of mixed urban zones (URM) in which there would be an option for development according to circumstances, as the POS report puts it:

"These are zones in which residential and commercial and industrial uses are tangled together in the greater diversity of architectural form: economic activity at the heart of street-blocks, areas of detached housing, multi-storey blocks following street lines or set back."
(Agence d'urbanisme, 1985; p. 114).

A large swathe of the city immediately adjacent to the centre to the east in the third, sixth, seventh and eighth *arrondissements* are covered by this zoning.

Third, the classified woodland zoning was replaced by a zoning for green spaces to be protected (*espaces verts à protéger*) to which less stringent regulations than those contained in the code would apply. We have already noted the discussion on classified woodland in COURLY as a whole (see above p.142). In Lyon the problem was one of protecting the fairly extensive developed areas which contain fruit trees in the fifth and ninth *arrondissements*, rather than preventing development in woodland and Paris had already provided a model (Barrau and Jamet, 1985) which had the sanction of ministerial approval (Agence d'urbanisme, 1985).

Fourth, the POS abandoned the concept of the block plan for areas undergoing redevelopment in favour of creating a UZD zoning in which applications for development would need to be accompanied by a plan showing how they would relate to future development in the immediate vicinity.

These four points do indeed suggest the evolution of the POS from the kind of negative regulatory document deplored by Labetoulle (1983) and Tribillon (1985). Nevertheless, there are two comments that must be made about the POS for Lyon and Villeurbanne. The first is that permissive regulations have been introduced in order to reflect the complexities of the conurbation and to provide a planning instrument that can be more responsive to change, and architects appear to welcome the freedom offered by, for example the URM zoning (Ballandras and Manhès, personal communications). But it is important to recognise that they give power to the authors

and users of the POS, too. As authors of the POS, the Agence d'urbanisme, we may argue, has enhanced its ability to influence the outcome of decision-making in individual applications for development, because interpretation of the zoning depends on the particular kinds of expertise the Agence offers.

The second comment is that, perhaps particularly in the case of Villeurbanne, the effect has been to make the revised POS a more elaborate document than its predecessor. Certainly the number of regulations has decreased, and to that extent the pattern has been simplified. The complication has been at the cost of a painstaking study of the city, almost street block by street block, and it is perhaps remarkable that the two POS were prepared in only five and six years for Villeurbanne and Lyon respectively. Such a labour of love may give unprecedented control over the future physical form of the city, but it is arguable that it has lost the flexibility that the planners sought.

The final chapter in the evolution of planning in Lyon has been the start of work on a revised SD, to cover the same 71 communes as the original SDAU, which will reflect the changed economic circumstances of the 1980s and the realities of development that has taken place. The impetus for the revision was reportedly created by the ZAC de Sans-Souci at Limonest, which was defined in an area that the SDAU had allocated as green belt. Because of opposition to the proposal it was eventually approved by decree of the Conseil d'État and therefore could not be opposed again, but the first grant of a permission to build was attacked on the grounds that it did not conform to the SDAU (Dellus, personal communication). The doubtful relationship between the SDAU and the permission to build that we noted in the previous chapter, appears at least in this case to have been resolved in favour of upholding strategic policy in the accumulation of individual decisions.

We may infer also that there is a renewed desire to have a strategic plan now that mayors of communes are free to propose modifications to their POS. The

requirement that POS must conform to the SD is thus an important means of securing long-term policy objectives. The revision of the SD was launched by a conference "The Lyon Conurbation Tomorrow" held in December 1984 (Agence d'urbanisme n.d.) and work was underway in 1986.

5.3 The Principal Actors on the Planning System

So far, we have considered the nature of Lyon as a place, the struggle to find an appropriate administration for what is France's second city, and then the evolution of its planning policy and policy instruments. We need now turn to the question of the control of development within the conurbation but to do that requires a detailed consideration of the principal actors in the system.

5.3.1 The Direction Départementale de d'Équipement

First of all the state is represented by the DDE of the *département* of Rhône which has still an important role in the processing of applications for development. Organisationally it differs somewhat from the classic model of the DDE described by Wilson (1983) and consists of two major sections. Infrastructure, Urbanisme et Construction deals with both implementation and forward planning while the Service de l'application du droit des sols is charged with the development control function. At the headquarters in Lyon there are seven units within this latter section, of which two deal with the area of COURLY, one has an overall supervisory function and the remaining four deal with the rest of the *département*. Outside COURLY there are then ten subdivisions each with its own divisional engineer and staff from the Service de l'application du droit des sols. The total number of civil servants in the section was 65 in 1985.

The role of the section is inevitably rather different outside COURLY than it is inside. Of the 257 communes in the *département* outside COURLY only one, Villefranche-sur-Saône, had taken up the power available under the act of January 1983 and was processing its own applications for permission to build. For the rest, the DDE retained its traditional role in processing their applications. Since in 1986 the majority of the communes did not possess a POS, most mayors in Rhône did not even have the option to process their own applications, even if they had been able to exercise it (Hugon, personal communication). In COURLY, however, the DDE has had to modify its role. The DDE has had to recognise the importance of the Agence d'urbanisme as the provider of a particular professional expertise even before decentralisation: as the authors of COURLY's POS, it had a locus willy nilly in making observations on applications. By October 1983 all the constituent communes of COURLY had an approved POS in force all were empowered to take the responsibility for processing and signing permissions to build from 1 April 1984. 54 of the communes elected not to process applications themselves, and though the formal instruction of applications was left to the DDE, the administration of COURLY came to acquire a far larger part in the development control process than it had occupied hitherto (Idé, personal communication). The DDE has been forced to share its technical power even if the formal parts of the processing are still its responsibility. Only Bron has cut itself free from the DDE by employing staff at the town hall to process applications, and though Vénissieux has made a formal declaration that it intends in the fullness of time to process its own applications, and Villeurbanne and St.-Priest have considered the possibility, no other commune has yet done so (Fischer; personal communication). Lyon, which had conferred the processing to COURLY, nevertheless still had its paperwork performed by the DDE (Idé, personal communication). Staff at the DDE attest, perhaps to their surprise, that the new arrangements work well, and that it finds a continued role for itself in providing a legal expertise that the Agence d'urbanisme and COURLY lack.

5.32 COURLY

COURLY's role in the control of development has changed considerably since 1983 and its administrative structure has been modified to reflect the change. A series of smaller service units have now been grouped together into four major departments. Of these the Département Développement has the major role in coordinating town planning and development; Équipement builds and manages the community's infrastructure including roads, sewers and water supply, and refuse collection and street cleansing; while Planification deals with the management of land and buildings but also, confusingly, provides some administrative follow-through of planning documents in its unit, the Service de l'Observatoire urbain. The fourth department handles COURLY's administration. The Département Développement can best be understood as an implementation unit as the departmental brief suggests:

"The decision [to create the Département Développement] is based on the need for COURLY to control urban development in the conurbation in a vigorous manner. This need has been translated by the creation of Département Développement which constitutes the means by which decisions concerning the major decisions at the level of the conurbation may be carried out, after the preliminary studies produced by the Agence d'urbanisme and before the work is put in hand by the Département Équipement"
(COURLY n.d.).

Within the Département Développement the Service de l'Aménagement urbain has the responsibility for "the management of day-to-day problems" that includes a coordinating role for permissions to build. In particular, it gathers together observations on applications from within COURLY and from the Agence d'urbanisme and acts as a link between the mayors of the communes and the other services. Its pivotal role has been increased since July 1986 in that applications from all the communes (except Bron), are sent to the DDE and the Service de l'Aménagement urbain simultaneously and not as hitherto first to the DDE who then dealt with onward transmission to COURLY. Important though the role of the Service de l'Aménagement urbain is in the process, it does not itself carry out the formal

processing (*instruction*) of the applications that it receives: the vetting of the development proposal in relation to the regulations, the calculation of TLE and the preparation of the decision notices is carried out by the DDE. Most confusingly of all, a special unit within the service *does* perform these functions for the commune of Lyon which exercised its right to process applications granted before 1983 to towns with populations of over 50,000, and confided the task to COURLY. Yet even for Lyon the DDE is involved in preparing the paperwork.

A final point to note about the Service de l'Aménagement urbain is that in order to counter the oft quoted objection that only the DDE have the appropriate expertise to deal with applications, COURLY appointed a civil servant from the DDE of Ain, Michel Idé, to head the service (Idé, personal communication).

5.33 The Agence d'Urbanisme

The third of the three principal agencies in the system is the Agence d'urbanisme which must be understood as an organisation a little apart from the main body of administration in COURLY. Its origins are in the Atelier municipal d'urbanisme (municipal planning office) set up in 1961. When Pradel came to power as a mayor of Lyon, he undertook a review of the major deficiencies in infrastructure, whose maintenance had been allowed to slide during the closing years of Herriot's incumbency. By 1960 a programme of infrastructure development had been drawn up. At this point, the then director of the DDE suggested to Pradel that to coordinate this programme of infrastructure development he needed to have a plan, which in turn would require an office run by a town-planner. Of the potential candidates for the post, Delfante was the only native of Lyon, which made him an attractive choice for Pradel (Delfante, personal communication) but although he was young, he had already had a distinguished career and was familiar with what was happening abroad, and this perhaps assisted Lyon's European aspirations (Roux,

personal communication).

The Atelier municipal which Delfante was invited to head, remained a private organisation whose work was paid for by the commune. It was responsible for preparing the PUD and also for major development projects, most notably the plan for La Part-Dieu which was inaugurated in 1967. In 1969 the Atelier was transferred to COURLY at which point it consisted of the private company of architect-planners to which was joined a group of professionals who were paid for directly by COURLY. The work of the Atelier was overseen by a committee of representatives from COURLY, the DDE and financial organisations which "undertook to ensure the successful execution of the work and vetted the accounts" (Danan, 1976, pp 92-93). The professional staff now included sociologists and geographers as well as architect-planners (Roux, personal communication).

Delfante maintains he had argued for some time that the Atelier needed to become an Agence d'urbanisme of the type described in the previous chapters (see p.106) but Pradel, who remained closely involved with the work of the Atelier, resisted the suggestion on the grounds that things worked quite well as they were. With the death of Pradel in 1976, the moment to change at last did seem propitious and Delfante conducted the necessary negotiations with the Ministry and was involved in drawing up the contract. The Atelier was thus reconstituted in 1978 as the Agence d'urbanisme of the type directly comparable with those elsewhere in France and is now funded by COURLY (57 per cent), the state (33 per cent) and the *département* of Rhône (10 per cent) (MULT 1985a). Delfante refused to become the director of the new Agence, however. The new mayor, Francisque Collomb, unlike his predecessor, has taken little interest in town planning, and the new team of younger elected representatives were not all favourable to Delfante. There were three candidates for the post; Lambert, a local architect-planner; Michel Rivoire, who was eventually appointed to direct COURLY's Département Développement; and Jean Frébault, the current director, who was appointed to the post having served in

Toulouse. Delfante was, however, retained as *conseiller technique* (technical adviser) and in this capacity attends the monthly preliminary consultations (see below p.207) (Delfante, personal communication). The agency now has its own council with 20 representatives of COURLY, three representatives from the general council of the *département* and four *ex officio* representatives of the State. The president, Jean Rigaud, is mayor of Écully and first vice-president of COURLY, who has an inner cabinet (*bureau*) of seven members of the council, six of whom are members of COURLY who have, inevitably, responsibilities for town planning in their own communes (Agence d'urbanisme n.d.).

The professional team headed by Frébault describes its responsibilities as sixfold: strategic planning for the whole conurbation, most importantly the preparation of new SD; preparation and after-care of POS, including the giving of advice on permissions to build; thematic studies of aspects of the conurbation's social and economic development and of specific land use; re-development and rehabilitation projects; research and statistical information and communication with professionals in the development industry and the public at large. Organisationally this results in three major groups: the thematic studies teams; the project teams; and the sector teams with responsibilities for the POS. There are five of these sector teams, corresponding to each of the five POS, which have been responsible for POS revisions and development control advice, and each consists of a group leader and a technical assistant. POS revision however, will entail the drawing in of staff from the other specialist teams. Most of the work of the Agence is for and within the confines of COURLY, but most notably in the preparation of the SD, it acts as an agent for other organisations: the SD for example is being undertaken for a new *syndicat intercommunal* for the 71 communes which the SD will cover (Agence d'urbanisme n.d.). The final point to note is that, unlike the staff of COURLY who have tenure, the professionals of the Agence are all contractual. Though there is not the slightest suggestion that they wish to do so, the council of COURLY could vote to end their support of the Agence at any time (Prud'hon, personal communication).

5.34 Other Participants in the Process

If the DDE, the Service d'Aménagement urbain and the Agence d'urbanisme form the major partners in the development control process in COURLY, other actors who have a stake, too. The consultant architect of the *département* of Rhône is much involved, and untypically comes to the offices of COURLY rather than waiting to be consulted at the DDE. About half his time is spent in COURLY (Idé, personal communication). The *Directeur départemental de l'Architecture* has an important role, by virtue of the large numbers of historic monuments in the city of Lyon which confer on him the statutory right to advise on or direct decisions (see above, p.127). His influence appears to be resented, not least because the present incumbent was relatively recently appointed and therefore knows Lyon less well than the other agencies (Buisson, Manhès, personal communications). The potential role of the Conseil d'Architecture d'Urbanisme et de l'Environnement (CAUE, see above, p.127) on the other hand, is mainly taken by the Agence d'urbanisme within COURLY, though it is reportedly helpful to some of the outlying communes (Testut, personal communication).

5.35 Relationships between Participants

There are a number of comments to be made about this administrative and professional structure for processing applications which are significant for the way in which decisions are taken. The first is that none of the three principal actors can act independently of the others and that each sees itself as indispensable to the process. The organisational structure has indeed been set up to ensure that the pattern of dependency is maintained and the conclusion that we must draw is that there is a strong mutual advantage in the arrangement. The DDE can maintain that

they provide the legal input that is not matched by the other partners (Hugon, personal communication). The Agence d'urbanisme presents itself up as provider of technical expertise to a high standard which is able to keep its distance from the pressures of administration or politics, a stance which is perhaps reinforced symbolically by being located in an office apart from the main administrative building of COURLY. The Service de l'Aménagement urbain exists to coordinate advice and implement decisions. All participants insist that working relationships are harmonious, even if they agree that the structure is cumbersome.

At its best, then, there is a complementarity in the activities of these three organisations. But it has its negative aspects. There can be little doubt that the system is cumbersome, and must be difficult for those unused to dealing with it to approach. The Agence d'urbanisme, for example, in spite of its educational mission, does not appear particularly to welcome the public and provided no reception area. The Service de l'Aménagement urbain does provide a reception area but cannot provide the totality of advice an applicant might require. There must be the potential danger at least of these organisations retreating into areas of specialism, and of a reluctance of any one of them to take responsibility for the process in its entirety.

The other point to reflect upon is the question of the responsibilities and accountability of each of these three organisations. Here the pattern is confusing and complex. The DDE as we have noted in general terms is a largely autonomous body accountable, but in a fairly attenuated fashion, both to the prefect and the minister in Paris. The services of COURLY are accountable to the president of the council. The Agence d'urbanisme is accountable to its president. None of these organisations is thus accountable to representatives who are directly responsible to the electorate for services the organisations provide. The pattern is complicated by the fact that these organisations do not serve the people to whom they are directly accountable. We noted that the Agence d'urbanisme acted as agent for the syndicate that is responsible for the preparations of the SD, but in practice all its work is as an agent

whether within or without COURLY. The work is undertaken for the communes whose needs and political background vary considerably, and the same is true of the DDE and the services of COURLY. The relationship that each has with the communes is more or less a paternalistic 'on behalf of' not a directly controlled 'for'. Not only may the three agencies retire into areas of specialism therefore, they may also distance themselves from decisions taken, because their involvement is at a remove. The actors would possibly regard this retreat into specialism and the distance they maintain from the communes they rule as positive rather than negative. The general mistrust of political power that we noted in the chapter on French local government, manifests itself in a desire on the part of administrators, both local and central to retain independence. To be remote from those you serve creates tensions certainly, but may be interpreted as central to the nature of relationships in French local planning.

Yet again this is not the whole story. We should note how elected representatives try to retain control over organisations which could so easily escape it, by membership of the appropriate councils and governing bodies. Rigaud is president of the Agence d'urbanisme, vice-president of COURLY and mayor of Écully, and the council of the Agence includes Rivalta (deputy mayor of Villeurbanne), Moulinier (deputy mayor of Lyon with responsibility for planning, and secretary of the COURLY planning committee), Deschamps (deputy mayor of Bron with responsibility for planning and delegate to COURLY) and Fischer (deputy mayor of Vénissieux with responsibility for planning and delegate to COURLY). Such involvement does not overcome the potential conflict of responsibility but must help to minimise the problems it creates. Once again, however, the pattern appears to be self-reinforcing. Organisations are established to provide independent technical advice and surmount political factionalism; locally elected representatives seek to control the activities of these organisations by securing places on their councils; the organisations attempt to reinforce further their status as independent providers of advice.

5.4 Developing Agencies

Some brief account of the main developing institutions in COURLY must also be given. Of these it is perhaps most significant to note the public and semi-public developers which are responsible for much building activity. Perhaps foremost among these agencies is the Société d'Équipement de la Région de Lyon (SERL) which is a classic example of the mixed economy company. Founded in the 1960's it was a direct response to the lack of resources that individual communes could build to develop their area: it was a potent way of creating the means to develop while at the same time retaining a measure of local control. SERL's remit is to an area wider than COURLY and its representation is therefore wider, but its board contains some of the elected representatives who have been mentioned elsewhere. Its president is Roger Fenech, mayor of Lyon's ninth arrondissement, while Moulinier, Hernu, Rigaud and Charles Béraudier, another vice-president of COURLY, a deputy mayor of Lyon and president of the regional, and member of the general, councils, are all represented. Certainly in the 25 years of existence SERL has built up a formidable portfolio of completed projects. It was responsible for the ZUP at Caluire-Montessuy, Vaulx-en-Velin, La Duchère and Vénissieux-les-Minguettes in the 1960s, for the commercial centre at La Part-Dieu and for the new station complex; and for various urban renewal and rehabilitation projects (SERL, publicity material). Other SEM also operate in Lyon. In 1986 the Société d'économie mixte du Métropolitain de l'agglomération lyonnaise (SEMALY; the company responsible for promoting and building Lyon's metro) was making the most obvious impact with the construction line D from Gorge-de-Loup to Vénissieux .

Another significant group of developers are the Offices publics des Habitations à loyer modéré OPHLM; (Low-cost housing offices) in the urban community in Lyon , Villeurbanne and St.-Priest which provide housing for rent and

for sale. Once again the important point to note is that in organisations which are in principle outside local authority control, elected representatives nevertheless manage to obtain some influence by acquiring the presidency. Thus the mayors of Villeurbanne and St.-Priest, Hernu and Bruno Polga respectively, are presidents of the two offices of HLM in the communes, and a COURLY delegate, Louis Rígal, is president of the Lyon office. The activities of these units is not confined to the communes in which they are located: thus the HLM office at St.-Priest was involved in the ZAC de Bonneveau at the neighbouring commune of Décines-Charpieu (see below p.237). Yet another public organisation, the Office public d'Aménagement et de Construction du département du Rhône (OPAC du Rhône; the public development and construction company of the *département* of Rhône) also provides a housing service as well as undertaking other construction work in 130 communes (OPAC du Rhône, publicity material).

The continuity that we noted in Chapter 4 between public and private sectors, and the blurring of the traditional opposition between local authorities and developers which is common to much British development control analysis, is thus exemplified by the pattern of development activities. Particularly for the smaller commune in COURLY, there is little practical difference in kind between COURLY itself, SERL, the OPHLM and the Agence d'urbanisme or even the DDE: they are all outside bodies, access to whose decision-making may be through indirect and informal means, which are presumably more or less effective according to circumstance and the political affiliation of the actors. It is little wonder that some communes feel weighted upon heavily by such organisations (Fischer, personal communication). It is perhaps worth noting, too, that where locally elected representatives are in control of the developing agencies they may thereby be directly involved in development in communes other than their own, and the opportunities for political horse-trading on development are legion. Again this must work in the end to the advantage of the big communes using the political will and the breadth of representation and create at least the danger of an implicit tutelage of smaller communes by the larger.

Table 5.2 Applications processed for permis de construire, certificats d'urbanisme, permis de démolir and permis de lotir in France, the département of Rhône and COURLY

<u>Area</u>	<u>Year</u>	<u>Total applications received</u>	<u>Total applications processed</u>	<u>Total permissions granted</u>	<u>Permissions granted as a percentage of total applications processed</u>
<u>Permis de construire</u>					
France	1982	655,583	631,594	598,421	94.7
	1983	640,183	671,086	584,826	94.8
Rhône	1982	7,788	7,856	7,176	91.3
	1983	7,291	7,090	6,527	92.1
COURLY	1986	-	4,185	3,710	88.6
<u>Certificats d'urbanisme</u>					
France	1982	-	376,600	276,043	73.3
	1983	-	373,570	259,844	69.6
Rhône	1982	-	9,671	7,331	75.8
	1983	-	9,188	6,966	75.8
<u>Permis de démolir</u>					
France	1982	14,404	13,571	13,260	97.7
	1983	13,953	13,044	12,870	98.7
Rhône	1982	371	364	362	99.5
	1983	440	440	431	98.0
<u>Permis de lotir (housing only)</u>					
France	1982	9,091	8,562	8,129	94.9
	1983	8,184	7,383	7,016	95.0
Rhône	1982	158	162	149	92.0
	1983	190	154	147	95.5

Sources: France, Rhône: MULT, 1984; 1985a [Figures are for metropolitan France only].
COURLY: Région Rhône-Alpes, Direction régionale de l'Équipement

5.5 The Control of Development

Some indication of the scale of work that the administration described in the previous section handles are to be understood from the official statistics. Published statistics were available in 1986 only until 1983 and only for the *département* of Rhône as a whole. The information covers all kinds of authorisations for development, and includes refusal rates and the processing time for applications for permission to build and *certificats d'urbanisme*. Unpublished statistics for permissions to build were obtained for 1986 for each of the communes of COURLY. The comparisons then that can be drawn between COURLY, Rhône and France as a whole, must therefore be treated with caution.

5.51 The Scale of the Task

*Figures for 1982 and 1983 show that the département of Rhône 7,856 and 7,090 applications for permission to build were processed and more or less equate with the number on applications received (see Table 5.2). To that must be added the processing of *certificats d'urbanisme* which totalled 9,671 and 9,188 in the same years. Other permissions sought are much less numerically significant. Decisions of applications for permission to demolish totalled 364 and 440 respectively and *lotissements* destined for housing 162 and 154. Though this form does not exhaust the total number of decisions taken in those years (there are no details given for other kinds of *lotissement* and there will be a small number of authorisations for erecting walls and for camp sites, for which there were under 3,000 applications in the whole of France in 1983), some 17,000 decisions on development appear to be taken annually in Rhône. Of interest is the fact that the proportion of *certificats d'urbanisme* processed was considerably greater than for France as a whole. This may perhaps be interpreted as both evidence of development pressure and of the*

complications of land use patterns in the *département's* urban areas.

From the statistics available for 1986, it is clear that the Lyon conurbation accounts for the lion's share of the applications processed in Rhône. Assuming that the numbers of applications processed have varied little since 1983, the 4,185 applications processed in the 55 communes of COURLY account for just under two-thirds of the total. Assuming also that the ratio of *certificats d'urbanisme* to applications for provisions to build was the same in COURLY in 1986 as it had been in the *département* as a whole, the total number of applications handled in COURLY would be in the order of 10,000. If the hypothesis that the high proportion of *certificats d'urbanisme* in the *département* is due to development pressure and the

Table 5.3 **Decisions on applications for permis de construire in COURLY, 1986,**
by sector

	<u>Decisions taken</u>	<u>Percentage of total</u>	<u>Area of sector, in hectares</u>	<u>Percentage of total</u>
Central Sector:				
Lyon	478	11.4	4,575	9.5
Villeurbanne	187	4.5	1,537	3.2
Eastern Sector	1,425	34.1	18,919	39.1
South-western Sector	847	20.2	6,972	14.4
North-western Sector	653	15.6	9,308	19.2
Northern Sector	595	14.2	7,108	14.7
COURLY Total	4,185	100	48,419	100

Source: Région Rhône-Alpes, Direction régionale de l'Équipement

complexity of urban land uses, then we might expect to find an even higher proportion in the Lyon conurbation.

Within COURLY, the distribution of applications processed by sector is roughly proportional to each sector's area, with the exception of the south-west which had 20 per cent of the total applications processed in 1986 but accounts for only 14 per cent of COURLY's area, and might suggest that the sector is an area of development pressure (see Table 5.3). The relative under-representation of the north-west sector may reflect the large area of protected land in the Mont d'Or; but the under representation of the eastern sector is hard to explain, except insofar as it offers a conspicuously less attractive environment than the west. Maybe, however, it is unwise to read too much into a single year's statistics. Looking at the breakdown of figures by commune presents a rather different picture. Lyon inevitably has far more applications than any other commune, and more than two-and-a-half times that of the commune next in rank order, Villeurbanne. Of the ten communes apart from Lyon and Villeurbanne in which more than 100 applications were processed in 1986, seven were in the eastern sector, and only one, St.-Genis-Laval, in the south-west. In 25 communes less than one application was processed per week (see Table 5.4). The administrative pressure therefore for the majority communes taken individually is not great, even if the total administrative burden for COURLY, the DDE and the Agence d'urbanisme is considerable. The administrative wisdom of centralising the processing within COURLY is self-evident.

Table 5.4 Communes of COURLY by rank order of numbers of *permis de construire* processed in 1986

<u>Rank order</u>	<u>Sector</u>	<u>Commune</u>	<u>Applications for permis de construire processed in 1986</u>
1	central	Lyon	478
2	central	Villeurbanne	187
3	eastern	Meyzieu	182
4	south-western	St.-Genis-Laval	175
5	eastern	St.-Priest	156
6	eastern	Rillieux-La-Pape	147
7	eastern	Chassieu	146
8	eastern	Vaulx-en-Velin	140
9	northern	Caluire-et-Cuire	134
10	eastern	Vénissieux	127
11	eastern	Décines-Charpieu	123
12	eastern	Jonage	103
13	eastern	Feyzin	98
14	eastern	Bron	96
15	north-western	Dardilly	93
16	eastern	Corbas	88
17	eastern	Mions	86
18	south-western	Francheville	79
19	south-western	Tassin-La-Demi-Lune	79
20	south-western	Vernaison	78
21	north-western	St.-Didier-Au-Mont-D'Or	77
22	south-western	Craponne	77
23	south-western	St.-Foy-Lès-Lyon	76
24	south-western	St.-Genis-Les-Ollières	75
25	north-western	Écully	69
26	north-western	Collonges-Au-Mont-D'Or	65
27	north-western	St.-Cyr-Au-Mont-D'Or	60
28	south-western	Irigny	58
29	northern	Montanay	55
30	south-western	Pierre-Bénite	52
31	north-western	Charbonnières-Les-Bains	49
32	northern	Fontaines-St-Martin	48
33	south-western	Charly	46
34	south-western	Oullins	45
35	north-western	La-Tour-De-Salvagny	45
36	north-western	Marcy-l'Étoile	42
37	northern	Sathonay Village	42
38	eastern	St.-Fons	41
39	northern	Genay	40
40	eastern	Solaize	39
41	northern	Neuville-Sur-Saône	37
42	north-western	St.-Germain-Au-Mont-D'Or	30
43	north-western	Limonest	29
44	northern	Cailloux-Sur-Fontaines	29
45	northern	Albigny-Sur-Saône	27
46	northern	Fontaines-Sur-Saône	24
47	north-western	St.-Romain-Au-Mont-D'Or	20
48	north-western	Champagne-Au-Mont D'Or	19
49	northern	Fleurieu-Sur-Saône	17
50	north-western	Couzon-Au-Mont-D'Or	12
51	northern	Sathonay-Camp	12
52	north-western	Poleymieux-Au-Mont-D'Or	11
53	northern	Rochetaillée-Sur-Saône	10
54	south-western	La Mulatière	7
55	north-western	Curis-Au-Mont-D'Or	5

Source: Région-Rhône-Alpes, Direction régionale de l'Équipement

Table 5.5 Permis de construire to build by category in France, the département of Rhône, COURLY and Lyon

		permis granted with creation of new floorspace	percentage	permis granted without creation of new floorspace	percentage	total permis ¹ granted
France	1982	388,846	78.1	140,382	26.5	529,228
	1983	371,610	72.2	143,097	27.8	514,707
Rhône	1982	4,746	66.1	2,430	33.9	7,176
	1983	4,446	68.1	2,081	31.9	6,527
COURLY	1986	2,788	75.1	922	24.9	3,710
Lyon	1986	289	64.5	159	35.5	448

¹ Totals for France in 1982 and 1983 relate only to those *départements* that recorded the breakdown given in this table.

Sources: France, Rhône: MULT, 1984, 1985a
COURLY, Lyon: Région Rhône-Alpes, Direction régionale de l'Équipement

Permissions to build are also divided into major and minor categories. In France as a whole, a little more than one quarter of all permissions granted did not lead to the creation of new floor space. In Rhône, the figure was higher at about a third of all permissions granted in the densely developed communes of Lyon and Villeurbanne, the proportion in 1986 was, hardly surprisingly, even higher, at 37 per cent (see Table 5.5). If permissions not creating floorspace are added to other minor permissions just over a half of all applications are of minor significance. We may note in passing that *déclarations préalables* identified for the first time as part of minor permissions accounted for no more than six per cent of permissions granted. The bureaucratic hurdle is lifted for a very small proportion of applicants (if indeed the *déclaration préalable* really does represent a lifting of the hurdle) and the administrative burden for the authorities only slightly lightened (see Appendix 4).

Table 5.6 Approval rate for *permis de construire* in COURLY, 1986, by sector

	<u>total decisions</u>	<u>total permissions granted</u>	<u>permissions as a percentage of all decisions</u>
Central sector: Lyon	478	448	93.7
Villeurbanne	187	176	94.1
Eastern Sector	1,425	1,228	86.2
South-western Sector	847	757	89.4
North-western Sector	653	575	88.1
Northern Sector	595	526	88.4
Total COURLY	4,185	3,710	88.6

Source: Région Rhône-Alpes, Direction régionale de l'Équipement

Table 5.7 Time taken to process applications for *permis de construire* and *certificats d'urbanisme* in France and the *département* of Rhône

		<u>Total applications determined in February</u>		<u>of which applications lodged after 30 November in the preceding year</u>		<u>corrected percentage of applications determined in 3 months¹</u>
		<u>number</u>	<u>number</u>	<u>number</u>	<u>percentage</u>	
FRANCE <i>permis de construire</i>	1983	50,224	38,180	76	82	
	1984	46,332	37,301	81	85	
RHÔNE <i>permis de construire</i>	1983	578	346	60	72	
	1984	1,030	522	51	60	
FRANCE <i>certificats d'urbanisme</i>	1983	31,433	23,957	76	83	
	1984	29,676	23,900	81	86	
RHÔNE <i>certificats d'urbanisme</i>	1983	2,510	1,596	64	80	
	1984	N.A.	N.A.	N.A.	N.A.	

¹ This percentage is calculated on the basis that half the applications lodged in November and determined in February would nevertheless be determined in three months or less.

[Figures for France are for metropolitan France only].
Source: MULT, 1984, 1985a

We noted in the previous chapter that 95 per cent of all applications for permissions to build were granted in 1982 and 1983 in France as a whole. In the same years, the approval rate in the *département* of Rhône was rather lower at 91 per cent and nearly 93 per cent respectively. In COURLY in 1986 the approval rate was even lower at 89 per cent of all decisions taken. Yet the spread is not even. In Lyon and Villeurbanne the approval rate is little lower than the national figure in the earlier years, but in the other four sectors, the average rate is under 58 per cent (Tables 5.2 and 5.6). It is not easy to know how to interpret these results. There appears to be some correlation between the type of application and the decision, in that the higher proportion of minor applications might be said to lead to a lower refusal rate in the centre. The figures for 1982 and 1983 both for the *département* of Rhône and France as a whole do not in any way give credence to such an interpretation; the refusal rates are identical for both applications creating and not creating floorspace. The newly prepared and, so their authors would claim, more flexible POS for Lyon and Villeurbanne may have increased the certainty of decision-making. Again the consultation arrangements in Lyon may account for the higher rate of permissions granted. But none of these interpretations is wholly satisfactory.

The final observations must relate to the question of delay. Here, the only available statistics are those published by the Ministry for the *départements*. The figures for Rhône are well below the national average, but even if allowance is made for under-estimation, then only 72 per cent of applications determined in February 1983 and 60 per cent of applications determined in February 1984 were determined in three months or less. The national figures were 82 per cent and 85 per cent respectively (Table 5.7). On the other hand, there were *départements* that performed significantly worse than Rhône, like Paris, or the neighbouring *département* of Ain, and where delays were not obviously a function of the numbers of applications processed or of the character of the *département*.

The pattern is repeated for *certificats d'urbanisme*, although statistics are only available for 1983. The percentage of applications determined in February that had been lodged after November is only a little higher than that for permissions to build. The fact, however, that the corrected percentage for applications processed in three months approaches more closely the national figure (80 per cent and 83 per cent) suggests that with the *certificats* at least the delays are only slightly longer than the national average. On the other hand, the maximum delay fixed by the *code de l'urbanisme* is two months without possibility of extension (Art. R410-9) although there is no sanction of the deemed permission as with the permission to build. In principal therefore, the *certificat* is thought^{of} as an easier type of application to handle, although this is not at all borne out by practice as expressed by statistics.

Searching for explanations for the relatively poor performance in Rhône must at best be tentative, and for COURLY remarks can only be based on the supposition that what happens in Rhône will be in large measure due to what happens in the Lyon conurbation. One explanation might be that the proportion of 'difficult' cases - meaning those for which decision-making is not clear-cut - will be higher in a major city, although we have already noted that the proportion of minor applications is *higher* than the average for France in Lyon and Villeurbanne where the applications might be expected to be most complex. Another possible explanation is that the involvement of three organisations in the development control process adds a time penalty which is reflected in the statistics. And it is pertinent to note that throughout COURLY the time limit for permissions to build is raised to three months by virtue of Art. R421-19 which allows for consultations with other public bodies.

Within COURLY, then, there is an administrative burden in the number of individual decisions that must be taken that exceeds that of any English planning authority. The processing rate appears to be slower, and the refusal rate higher, than the average for France as a whole. We must now turn to the process that unites the actors in the system in the administrative task we have just identified.

5.52 The General Procedure

In Chapter 4 the process by which applications for a provision to build are determined was described in general terms and the changes brought about by decentralisation noted. Figure 5.4 on p.204 translates the general process into the specific flow diagram for 53 of the 55 communes of COURLY as it obtained after 1 July 1986. The two communes to whom the diagram does not fully apply are Bron, which as was noted above, undertakes all its own processing of applications and has no recourse to the DDE, and Lyon, the processing of whose applications is undertaken by COURLY, with the DDE involved only in producing the paperwork.

For applicants the process is relatively straightforward. All applications are now lodged at the *mairie* (town hall) whether in person or by post, and at least in the larger town halls applicants will find technical help in filling out an application form if needs be. If the application is complete, the applicants will receive a formal acknowledgment within three weeks and the three month processing period begins, the period being automatically extended by one month because of the need for consultations with COURLY. And in principle the applicant may receive a tacit permission if no further news is received from the authorities in the three month period, even if in practice few if any applications are allowed to go by default.

The *mairie* exists primarily as a sorting office in the process, forwarding three copies of the application to the DDE, two copies to the administration of COURLY and one to the prefecture for the eventual *contrôle de légalité*. One copy is retained by the mayor. Thus all mayors now receive an early warning of development in their communes, though some are better placed to act upon the information than others. In the larger communes, even though they do not themselves process the applications,

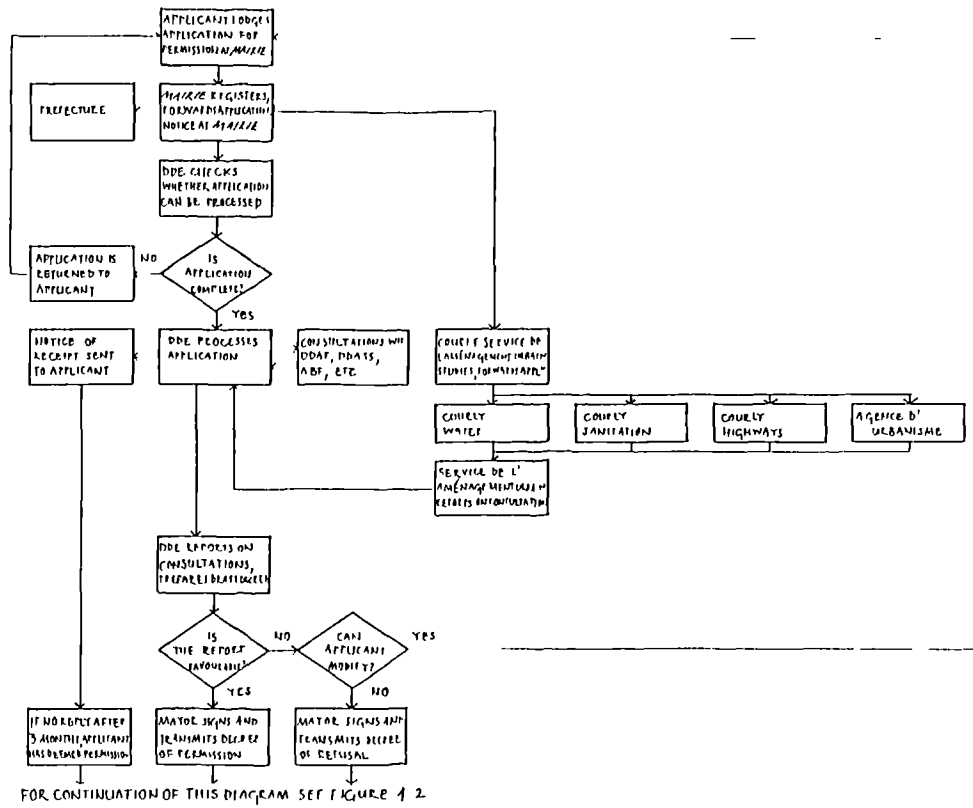


Figure 5.4 The development control process in COURLY

there will be the staff to consider the implications of an application for local policy and advise the elected representatives accordingly. Such is the case at Villeurbanne, or at Vénissieux, whose sixth Directorate, as we have noted, combines economic development and physical planning functions. Yet the numbers of staff handling applications even in larger communes may be quite small: four at Vénissieux; three at Bron. Paradoxically, there may be a greater degree of local autonomy in development control in a commune such as Vénissieux where the development control staff are backed by policy makers than in Bron where there is heavy reliance on COURLY for policy back-up, even though Bron has complete control over processing and Vénissieux does not.

Until 1 July 1986, five of the seven copies of the application were sent to the DDE who were then responsible for onward transmission to COURLY. The procedure whereby COURLY and the DDE now receive copies of applications simultaneously, was introduced in the interests of efficiency, to allow the consultation process to be initiated earlier and to reduce the number of occasions on which an application is transferred between offices. There is also perhaps a symbolic aspect to the change in that it suggests that there is a parity of status between the DDE and COURLY as co-partners in the process of control, or that ultimately COURLY will take over the DDE's role in its entirety, as it would appear well placed to do. The question of mutual convenience in the status quo has already been raised, however. The fact that the DDE is there to undertake the paperwork, to ensure that the niceties of the formal procedure are observed, and to guarantee the legal probity of decisions taken, leaves COURLY free to coordinate its service departments and the Agence d'urbanisme. The DDE is also available to fulfil its traditional role as scapegoat or as the convenient protection from the consequences of an unpopular decision.

The DDE, in undertaking the formal aspects of the processing also consults as the case may be, with other ministries' field sources including the Architecte des Bâtiments de France, and issues the formal acknowledgement of receipt of the

application or returns the application to the applicant if, for whatever reason, it is incomplete. COURLY simultaneously consults its own services and the Agence d'urbanisme, and the results of the consultations are brought together on a summary sheet, which is transmitted to the DDE. On the basis of the consultations, which may be translated into conditions to be imposed on the permission if it is to be granted, the DDE then prepares a draft *arrêté* for the permission which is then returned with the application form to the *mairie* for the mayor's signature.

When described in these terms, decentralised development control in COURLY still appears to be a process undertaken well away from the commune to which the control function has nominally been transferred. In the formal process, the mayor receives and transmits an application and ratifies the decision that has been prepared for him or her to sign, but is not significantly involved in the stages in between. At the same time, the Agence d'urbanisme described earlier (see p.199) as one of the three major partners in the development control process appears in the diagram to be relegated to the role of consultee on a par with a number of internal services whose advice is sought. In the case of the Agence, the problem is in part related to the nature of the advice sought and given which is evidently a rather different order from that on roads, water or sewerage. Yet for both the diagram obscures the presence of the informal networks that exist. Mayors do not wait passively for an *arrêté* to be presented to them, if a development proposal impinges on local policy, and by virtue of being the first to see the application when it is received are well placed to make representations in advance of any other consultations. The Agence's role is also in practice more important than its position within the diagram would suggest for perhaps three reasons. First, as author of the planning documents in force or in preparation in COURLY it has a privileged position in interpreting those documents in relation to any specific development proposal. Second, its long history, albeit in somewhat different guises, have given it standing and a position of trust in the eyes of elected representatives. Third, its independence of the DDE and of COURLY are an additional attraction, for a commune wishing to circumvent other

parts of the power structure.

Thus within the formal process there will be a network of informal contacts which is likely to affect most of the actors at some time or other. So much is scarcely surprising; the necessary oiling of the machinery of any system. What becomes abundantly clear from the case studies in the following chapter (see below, p.243) is that the informal contacts may begin well before an application is lodged and that the informal negotiations are of paramount importance in the processing of development proposals. Applicants of larger schemes at least routinely attempt to mitigate problems, whether political, by talking to the mayor, or technical, by talking to COURLY or the Agence d'urbanisme. The pre-application meeting with representatives of as many different services as may be appropriate to the case thus occupies a significant place within the process, even though it has no formal status, and the presence of the mayor or his appropriate deputy is habitual. After such meetings, assuming that problems identified can be resolved easily, the formal processing of an application may be relatively rapid.

5.53 The Consultation Préalable

In the commune of Lyon the informal, that is to say non-statutory, process of consultation is taken a stage further in the use of the *consultation préalable* (preliminary consultation) procedure in which development proposals are discussed by the *architecte-conseil* of the *département* of Rhône and the deputy mayor with responsibility for planning, Moulinier. These consultations take place once a month and were devised as a way of simplifying the giving of advice to applicants and ensuring there is proper feedback on the advice given. Since 1978, however, these consultations have attracted the interest of elected representatives and the regular presence of Moulinier ensures that there is a political input in the process. The preliminary consultations have thus come to acquire considerable significance in the

determination of planning permissions, and are particularly revealing of the power structure of the control process and COURLY.

Cases for discussion at these meetings, which are held monthly, are selected by COURLY in consultation with the Agence d'urbanisme or may be included on the agenda at the specific request of the applicant. Not all the cases have necessarily been lodged as applications, and some agenda items will be projects that have been modified in the light of comments made at earlier meetings. A typical agenda both in length and content is shown in Figure 5.5. The sessions are chaired by the *architecte-conseil* with deputy mayor at his side. Members of the three partners in the control process, COURLY, the Agence d'urbanisme and the DDE are all present and will from time to time offer observations. The group within the Service de l'Aménagement urbain responsible for processing applications in Lyon is responsible for presenting schemes to the *architecte-conseil* and the DDE's representative acts as secretary by drafting the comments of the *architecte-conseil* in a form that can be incorporated on file and transmitted to the applicant, even though the DDE now has no locus in the processing of Lyon's applications, except in the preparation of the paperwork. Delfante also regularly attends the meetings even though he no longer has a formal appointment.

Unlike a British planning committee meeting with which indeed no direct comparison can be made, these meetings do not rely upon a mediation of schemes by the technical officers. For their prime purpose is to give applicants and their architects direct access to the decision-makers by allowing them to describe their schemes and to receive direct feedback. Their character is much more that of a royal audience than of a round-table discussion: if the technical officers can and do circulate with a degree of *informality alien to British committees* the better to see what is being proposed, the applicants are kept firmly on the opposite side of the

DIRECTION DEPARTEMENTALE
de l'EQUIPEMENT

SERVICE APPLICATION DU
DROIT DES SOLS

ZONE 1 - VILLE DE LYON

ORDRE DU JOUR

DE LA SEANCE DE CONSULTATION DE
L'ARCHITECTE-CONSEIL DE L'EQUIPEMENT
du 5 JUIN 1986

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Lieu de réunion : HOTEL de la COUR.LY. - NIVEAU 01.

9h00 - DEMICHEL/DORDILLY - Rhonalp-Construction - Ilot 24 - Mercière-Jacobins CP 86-06
+ PC

9h30 - DE LAGARDE - SCI 34 avenue F. Lumière LYON 8ème PC 86-151

10h00 - BALLANDRAS - SOGERIM - 4 rue Bonnaud, Place de la Reconnaissance LYON 3e CP

10h30 - AUCLERC - S.C.I. CLAPAGIRAUD - rue de l'Université - LYON 7ème PC 85 192

10h45 - LAGOUTTE - Conserves LENZBOURG - Av. Général Frère LYON 8ème PC 86 136

11h15 - MANHES - 27-29 Bd de la Croix-Rousse - Association des Oeuvres Pro-
testantes - Maison de cure médicale CP

11h30 - BATON - RIC - Masse 14bis rues Sully/Montgolfier/Tête d'Or LYON 6e ... CP

12h00 - PEULIEN - Masse 70 - angle rue Garibaldi/Cours Lafayette LYON 6e CP

Figure 5.5

An agenda for the *consultation préalable*

table from the two principals. The discussions that take place are almost entirely about the architectural aspects of the schemes proposed, although at one meeting an applicant was criticised for providing two-roomed flats in an area that was already said to have too many small units. For the rest, massing, location, silhouette, treatment of elevations, detailing, use of materials, planting and car parking are the major topics of concern.

There is a real question about how these meetings should be interpreted. For applicants, they are a both welcome means of being able to enter into a dialogue with the system and, at least for one respondent, a source of resentment as an expression of a growing and sometimes arbitrary power (Manhès, personal communication). They do at least however, provide a degree of openness in a procedure which often seems to lack it, and the same respondent regretted that a proposal for a major psychiatric hospital in the commune of Bron had not be subjected to the same procedure.

The presence of the *architecte-conseil* is at first sight harder to explain, given the range of expertise available in the three participating agencies. Firstly, this must be a matter of history (and of current practice in many parts of France). The *architectes-conseil* were appointed to provide independent advice to the DDEs who did not have architects on their own staff, in considering applications for permissions to build. That role did not cease to be important even in areas which did have specialised planning agencies because the agencies' main activity was in forward planning not in development control. But part of the explanation must be to do with the balance of power between elected representatives and technical officers. Moulinier does not take a leading role in the consultation process, but by virtue of being co-signatory of the advice notes, he thereby allies himself with the authority of an independent expert and ensures that he is not wholly reliant upon the other agencies none of which is under the direct control of the mayor of Lyon. We can

argue that this is an important expression of local political power and gives the *consultations préalables* a symbolic as much as a practical function.

5.6 Conclusions

The picture of the Lyon conurbation that emerges then is one in which some at least of the problems of administration and a regulatory planning system which were identified in Chapters 3 and 4 have been overcome. After unpromising beginnings as a town which had lost its status as a European capital (albeit trying hard to recapture that past glory) and had never had a dependent hinterland of its own, it now has an effective administration to cope with at least the greater part of the built-up area and much at least of the service needs of its population. It has moreover acquired a team of experts of high standing for physical planning whose ability to use statutory powers for plan-making and control creatively is demonstrated in the quality of the planning documents it produces and the confidence that it appears to inspire in the people it serves; one might perhaps add, in the quality of the new development taking place in the city. There is, too, the political will to take command of local development at least in the larger communes, that confirms the view that the Defferre Act and the Act of 7 January 1983 did no more than give statutory force to what was already an established fact.

What, however, of the negative balance? A heavy administrative structure must surely be one criticism of the system for controlling development. As new ones have been created to cope with newly identified needs, there has been no atrophy of older organisms which have clung tenaciously to life by modifying their activities but not abandoning them. A palimpsest of structures has thus grown up which even its own officials sometimes find difficult to penetrate, let alone outsiders. And the mutual advantages that major development control agencies appear to have in maintaining the status quo cannot be entirely healthy. A second criticism must be

that even within COURLY the power of communes to exercise their new responsibilities diverges widely. In Lyon local autonomy has been a fact of life for two decades, perhaps for far longer, while the inner ring suburbs are already beginning to realise their strength even if they remain at one removed from the power wielded by Lyon itself. On the other hand, the smallest communes, though they may benefit from the availability of the expertise and savings offered by COURLY do not appear to have gained significant freedoms since 1983 and are as dependent on the activities of others as their rural counterparts. The pattern and distribution of power is thus, we can argue, not an even one across COURLY.

The context is thus set for a detailed examination of the way in which development control decisions are taken in the Lyon conurbation in the case studies that follow. These studies offer the possibility of glimpsing how the intricate structure of organisations in fact operates; they offer, too, a chance to explore how the participants in that structure use, and are bound by, a national framework of law and administration. And finally they allow us to explore how together a local system and a national framework effect the content of decisions taken on the development of Lyon.

6. CASE STUDIES OF DEVELOPMENT
IN THE URBAN COMMUNITY OF LYON

6.1 Introduction

The cases reported in this section represent examples of development control decision making in COURLY in the period 1984-1986. Five of the cases had been decided at the time of the empirical study but were sufficiently fresh in the participants' minds for it to be possible to recreate the pattern of events with relative ease. Three of the cases were still being processed at the time of the study and thus final decisions had not been taken: these are treated together in section 6.7. Of these, two are in Lyon itself and were the subject of a *consultation préalable* on 5 June 1986; the third, in Rillieux-la-Pape, was the subject of a meeting with officers of COURLY and the Agence d'urbanisme on 19 June 1986.

Each of the five determined cases is presented in the same form. A general description of the development is followed by an introduction to the commune, a description of the site, the planning policy context for the development and the principal participants. There follows a detailed description of the stages in the control process and an analysis of the process in terms of the procedures and their effect on the nature of the decision taken and the interests of the participants in that procedure.

The cases in the main concern housing developments. Four deal with schemes for detached or semi-detached housing on green field sites, one with terraced housing in a redevelopment area, and one with flatted housing over ground floor shops, again on a redevelopment site. Of the other two, one is an extension to existing commercial premises, and the other the conversion of a 19th century villa with extensions to form an old people's home. Two of the cases deal with an application for a *lotissement* and not a permission to build. Schemes have been taken from each of the sectors apart from the north-west and represent a diversity of locations and communes in

COURLY. The case studies cannot therefore be fully representative of development control in COURLY but are indicative of the kind of problems that may occur and the capacity of the system and the actors to resolve them.

6.2 Lotissement le Soleil levant - Vernaison

6.21 Introduction

This case deals with the development of two sites at Vernaison, formerly owned by M. Isaac and the Institut français de Gestion (IFG; the French Institute of Management), that collectively have become the housing estate known as Le Soleil levant. The case may be seen in various lights: as the paradigm of change on the fringe of a major conurbation; as part of the social transformation of a rural village to a suburban commune; as an example of the system of land ownership and development. For the purposes of this thesis, however, it is particularly significant as an example of the way in which zoning regulations are used in the control of development and as an illustration of the way in which actors with a stake in the decision relate to each other. It reveals the exercise of the newly acquired responsibilities by the mayor of a small commune and is a clear indication of how the *contrôle de légalité* is used. It allows some assessment of the impact of zoning and the process of the modification of the POS.

The case starts in April 1984 when the heirs of the estate of M. Isaac sought to sell the land for development. At first they tried to find the highest bidder, but were advised by one of the *aménageurs*, Décines-Immobilier, who refused to participate in the bidding, of the likely price ceiling in relation to the maximum density that would be permitted. Décines-Immobilier took an option to purchase the site. The IFG became involved when they heard of the proposal and part of their property, a strip of land at the rear of the Isaac site was incorporated into the proposal. By early 1985, Décines-Immobilier had prepared a scheme for a *lotissement*

which was discussed formally before an application was submitted at the end of February. Permission was granted in May, but the permission was withdrawn in August, a new but modified permission granted the same day. Work was well in hand on site by May 1986.

6.211 *Vernaison*

The commune of Vernaison is at the very southern end of COURLY and is the classic case of a village undergoing rapid suburbanisation. By the standards of COURLY its population at 3,373 is relatively small, although this is still considerably larger than the average population of all communes in France. Between 1968 and 1975 its population increased by 75 per cent, mainly as the result of the building of an HLM estate at the north end of the village next to the boundary with Irigny. The population is presumably set to grow rapidly again in the 1980s as a result of building to the south and west of the village core. For all that, Vernaison retains much of its rural character. The village is plain but quiet, clustered round a village square which is dominated by the 19th century parish church. Running through the village is the CD15, a minor through road linking Pierre-Bénite to the north with the town of Givors, outside COURLY, nine kilometres to the south, along which is sporadic development. A bridge crosses the Rhône from Vernaison village to Solaize, but is of minor significance as a transport link. The countryside around is attractive though not dramatic and is intensively cultivated with cherry orchards and vineyards. Running parallel with the river just behind the village is an escarpment which rises steeply to a height of some 35 metres above the valley floor and provides an attractive band of uncultivated woodland and scrub. The traditional rural character of Vernaison is reflected in the fact that the deputy mayor with responsibility for planning (one of three deputies) is a farmer.

6.212 *The Sites*

The sites are to the south of the village and share in the general character of the area. The Isaac site was partly cultivated and contains a section of the escarpment rising from the river valley. The old house fronted the CD15, but the main entrance to the future development was to be from a side road, the chemin de la Rossignole, which had recently been realigned close to the junction with the CD15 to provide a turning bay for buses from Lyon. The IFG site is at the top of the escarpment and appears from map evidence not to have been cultivated. Its frontage is on a lane running north from the chemin de la Rossignole, the chemin des Ferratières. The wedge-shaped plot lies alongside the main part of the IFG's ownership which consists of a large 19th century house and wooded grounds. The sites combined have a total area of 67.7 hectares.

6.213 *Participants in the Process*

The participants in the process are readily identified. On the one hand are those with the property interest; the original landowners and the developer who would lay out the sites for resale to individuals to build or have built, houses for themselves. By far the most significant of three sets of actors is the aménageur, Décines-Immobilier, whose partner-in-charge, Brignais, is supported by a firm of surveyors in the preparation of the layout. The landowners appear rather as responding to events than as initiating charge. The ultimate purchaser, and builders of the houses themselves, are unimportant to major stages in the control process although one question at least relating to the zoning regulations is likely to be resolved only when the individual permissions to build are processed.

The ranks of the decision-makers present a more formidable array. First of all there are the mayor of Vernaison, Dorée, elected in 1983, assisted by his deputy

with responsibility for planning, M. Dupré-Latour, who by virtue of having an approved POS is responsible for approving planning applications in the name of the commune. Then there are the officers of COURLY who include representatives from the Service d'Aménagement urbain and Opérations d'urbanisme in the Département Développement and representatives of groups responsible for water, sewerage and roads. There is the group leader for the south-west sector from the Agence d'urbanisme with a specific technical interest in the POS and the zoning. The DDE is present in a fairly minor role, and the Commissaire de la République exercises an important influence on events, but as it were off-stage. Other state bodies are also consulted but have no impact on the major outline of the case or its interest for this thesis except perhaps to emphasise the weight of administration that may be brought to bear on a relatively unimportant development.

6.214 *The planning context*

The planning context for the development is set by the POS for the south-west sector of COURLY approved in March 1982, modified in June 1984, and revised in March 1985. The plan, in its report identifies the existence of a natural environment of considerable richness in the south of the sector in the communes of Charly, Irigny, St.-Genis-Laval and Vernaison. These include the orchard and agricultural land of all the communes and the wooded edges of the Rhône; the conclusion of an addendum to the report suggests the natural environment "merits exceptional protective measures" (Agence d'urbanisme, 1982). Approximately 33 per cent of the whole area was thus identified as *coupure verte* (green wedges) and zoned NC or ND, not least a band about 500 metres wide running from the industrial area at the south end of the commune of Irigny to the southern boundary of Veraison. This includes the escarpment which receives special mention in the report for offering "magnificent views" and being "extremely visible from a very large number of points" (p.7). The plan also identified a reserve of 528 hectares of land in zones NA (for

future development) of which 67 hectares were located in Vernaison above the escarpment.

Thus at the time that the plan was approved the whole of the Isaac site was zoned NC although the IFG land was already classified as part of a zone NA. The effect of the revision of the POS in 1985 was to reclassify the Isaac site as NA with the exception of the escarpment itself between the 190 metre and 220 metre contours.

In addition parts of both sites were from the outset classified as *espaces boisés* and are therefore subject to Arts. R130-1 onwards of the *code de l'urbanisme* and not by independent regulations in the POS. On the Isaac site these statutory wooded spaces fall within the zone NC, but on the IFG site part of the zone NA nearest the road and to the southern edge are so classified. The further modification in 1985 involved the redefinition of the zone NC by shifting its boundary from the 190 metre to the 195 metre contour lines, across the width of the Isaac site.

6.22 Stages in Development

6.221 *Informal negotiations April 1984 - January 1985*

From the case history as it is presented by the various participants it is hard to decide whether the death of M. Isaac precipitated the rezoning of the land or not. Though it would be reasonable to assume that the inheritors of the Isaac estate were anxious to realise the maximum value of their inheritance and therefore sought a rezoning, both Dupré-Latour and Brignais insist that the principle had already been established in the development of an estate immediately to the south of the Isaac site, la Rossignole. This estate, completed at the time of the research, was already sufficiently well advanced in 1982 to be classified as a zone U in the POS, and incorporated the scarp slope most of which, as classified woodland, has been retained as an amenity area. Moreover, Dupré-Latour insisted that the commune of Vernaison

had wanted a larger area of land identified for future development than was eventually incorporated in the POS as approved in 1982. The presence of demand and demographic pressure and the desire of the mayor to proceed with a modification allowed the Agence d'urbanisme to produce a reasoned justification for allocating the land for future development.

It is entirely plausible therefore that the Isaac estate acted in the knowledge that their land would soon be designated for future development rather than themselves initiating the change. In April 1984 they organised a competition to tender for their site on which Décines-Immobilier refused to participate, offering instead advice on the maximum price the owners could hope to expect in light of the maximum zoning density. For whatever reasons, the owners heeded the advice of Décines-Immobilier, and it was they who acquired an option to purchase the land. From then onwards, they were engaged in a fairly extensive round of discussions, with the *mairie* of Vernaison and with the Agence d'urbanisme. None of these discussions is recorded formally, but by early 1985 a layout had been prepared which was at an advanced stage. The form which the application should take also apparently had been decided. Décines-Immobilier were anxious to have a ZAC declared, even though the process would have taken longer than a *lotissement*. They argued that the site was large for a *lotissement*; but perhaps more importantly the question of the regulations particularly in respect of the *espaces boisés classés* could be cleared up formally. The mayor, however, demurred, and the developer was advised to seek a *permis de lotir*.

6.222 *Formal negotiations - February 1985*

By the time the first records appear on the file, the principle and the method of proceeding had been decided, but there was still much detail to be resolved. The scheme that Décines-Immobilier had prepared proposed 49 plots with one road access from chemin de la Rossignole, and another on the IFG land from the chemin des

Ferratières. The two roads were not joined but a footpath descended the steep part of the slope to link each part of the development. 3.2 hectares of the NC land were to be left as open space, and the Residents' Association would be charged with its upkeep. In February 1985 two major meetings were held in which all the participants were represented. Several problems emerge.

a) *Widening of the chemin des Ferratières.* The mayor was opposed to the approval of the scheme without the widening of the road from the junction of chemin de la Rossignole to the access to the IFG site. Décines-Immobilier had, it appeared, reached agreement with adjoining owners and was prepared to purchase and use the land necessary for the widening. This could not proceed without the building of a new wall to the rest of the land in the IFG's ownership. COURLY officials appear to have been reticent about the time scale and Décines-Immobilier agreed to build the wall at their own expense.

b) *The Zone NC land.* The DDE objected that some plots actually infringed the NC land, even though most was to be retained as open space. Décines-Immobilier assured the DDE that though the plots would overlap the boundary, there would be no buildings on the zone.

c) *The problems of plot size.* The POS made it clear that land classified NAD would become subject to regulations for zoned UDC on development. The regulations for zone UDC stipulated a minimum plot size of 1000 square metres for individual houses, but the layout as prepared showed plots as small as 700 square metres. The DDE propose that some of the plots could be for semi-detached houses, but Décines-Immobilier are not prepared for commercial reasons to include more than five or six. The proposal as it stood therefore ran the risk of being referred to the administrative tribunal either by the prefect or by third parties if the mayor granted permission. The issue was resolved by the developers agreeing to delay the start of the work until after the end of the four month period in which decisions may be

contested.

d) *The levying and collection of the taxe locale d'équipement.* Décines-Immobilier argued that given the cession of land and the building of the wall along the chemin des Ferratières, they should be exempted from paying TLE and in this they were supported by the mayor. COURLY argued that the work would only be worth 30% of an estimated 360,000F payable in tax. At the second meeting, Décines-Immobilier asked instead for a deferral of the payment of TLE until the eventual sale of each plot. Given that TLE is based upon the floorspace of the buildings and the type of loan finance used for their construction, there is the risk of overpayment if the estimates are incorrect.

e) *The espace boisé classé.* Though this was to prove the major stumbling block after the decision was taken, at the stage of negotiation it was not perceived as a major issue, even though it was recognised that three plots on the IFG land infringed the classified wood land. The view appears to have been that the zoning was inaccurate because the 'woodland' was in fact scrub.

6.223 *Determining the application - March - May 1985*

The application was formally lodged with the *mairie* at Vernaison eight days after the second meeting, 28 February. At this stage, the revision of the POS was not yet approved, but the application was nonetheless processed in anticipation of the approval, and by the time the permission to develop was granted exactly three months later, the POS modifications had indeed been approved. The interest of this phase is mainly concentrated in the compilation of observations made by the Service de l'Aménagement urbain for forwarding to the mayor. The major points refer to the problems of plot size and the *espace boisé classé* and the deferral of TLE to the moment of the sale by eventual purchasers of the lots.

Two other consultations were also undertaken. The Architecte des Bâtiments de France was consulted because the site lay in the field of visibility of a historic monument (*monument historique inscrit*). The comment, advisory rather than mandatory, was to the effect that a landscape study was a prerequisite of giving a formal opinion and that the drawings as presented were inadequate. The advice appears to have been ignored. The other consultation was with the architecte-conseil whose main recommendation was that the assistance of a coordinating architect should be a requirement in the charges on eventual purchasers. The application was duly approved on 28 May, and thus well within the five months laid down by Art. R315-19 for estates of more than five plots.

6.224 *The withdrawal of permission and the issue of a new permission - August 1985*

Given that there were three infringements of the POS regulations in force it is perhaps hardly surprising that the prefect should have exercised his powers of *contrôle de légalité*. According to Dupré-Latour, what was surprising was the issues on which the prefect chose to contest the decision. The question of plot-size was ignored; the focus instead was on the infringement of the NC land and the *espace boisé classé*, perhaps significantly, issues which entailed national rather than local regulations. The decision was not referred to the administrative tribunal: the threat to do so was sufficient to persuade the mayor to withdraw the permission, on 16 August. This was followed on the same day, however, by a new permission which rectified the errors.

Indeed the problems were hardly awkward to resolve. Décines-Immobilier in their new application simply omitted plots 5,6 and 7 on the IFG land which infringed the *espace boisé classé*. There was also a minor modification to the limits of the same

NC in which the boundary was shifted from 190 metre to the 195 metre contour line thus narrowing slightly the allocation of the NA zone on the Isaac site and ensuring that all the plots were clear of the zone NC. The permission as received then specifically excluded the 8.4 hectares covered by the woodland and the zones NC, such a modification should in principle have been subject to a deliberation by the municipal council and a public inquiry, but neither appears to have occurred. Dupré-Latour insisted that in the revision approved in March 1985 the planners had made an "error" in the drawing of the boundary of the zone. The logic of the boundary as it appears on plan does not support such a hypothesis, and the modification was presumably drawn up before full details of the *lotissement* had been prepared.

All the parties in this case favour that the question of the *espace boisé classé* will be resolved in the fullness of time by a revision of the POS (the simplified modification procedure cannot apply to *espaces boisés classés* by virtue of Art. R123-34 of the code) and once complete, the three plots on the land can be reinstated. The total period for the decision to be taken was thus five-and-a-half months from the receipt of the application with a further month of formal negotiation immediately before the lodging of the application.

6.23 Analysis

The case may best be analysed in two ways: in terms of the use of procedures laid down by law and in terms of the particular interests and responsibilities of the major actors. The case is not less interesting for the fact that the principle of development in this site and in the form proposed by the developer was readily acceptable to everyone with a stake in the decision.

6.231 *Procedures*

The importance and the length of the formal and informal negotiations that preceded the making and the processing of the application is perhaps the most striking feature of this case. All the main issues connected with the case had been resolved before 28 February when the application was lodged, and the ultimate decision-maker, the mayor, had been fully involved in the discussions and party to the agreements reached. The period between 28 February and 28 May by contrast appears as no more than a bureaucratic and formal exercise in which the appropriate paperwork is completed. The operation appears largely covert therefore. That impression is confirmed by the mayor's preference for the lotissement procedure rather than a ZAC. With a ZAC, two of the three problems which caused difficulties for this case, the infringement of the zone NC and the size of plots, would have been dealt with in the PAZ which would have been subject to a public inquiry, and would thus have ensured a measure of accountability in the process. Certainly by requiring the developer to seek a permission to subdivide, the mayor could ensure that the discussions could be subject to less scrutiny by the public at large. It may also be that the image of the ZAC, as the vehicle for creating the high density modernistic estates of the 1960s was another factor in the decision.

To say there was no kind of accountability in the decision-making process in this case would of course be incorrect. Firstly, the reclassification of the Soleil levant sites as an NA zone required the full formal procedure of deliberation by the municipal council, *enquête publique* and formal adoption. Secondly, the mayor was accountable to the law for the detailed decision, and as we have seen, the prefect did indeed call him to account for the illegalities of the decision as issued on 28 May. Yet the fact that the prefect chose to attack only two of the three illegalities is clear indication of the discretion that he uses, in the exercise of the *contrôle de légalité*, a discretion which is exercised with virtually no real accountability. And because he exercises it in this way, mayors are encouraged, as in this case, to gamble on whether

the prefect will turn a blind eye or not.

Another feature of the procedures is the extent to which the zoning and the regulations, which had in large measure been determined and agreed by those involved in this case were such to be a hindrance to the proper realisation of the project. The classified woodland was seen to be an incorrect designation, because on inspection the zone was really only scrub; the infringement of the NC zone was acceptable because the developer agreed that all future building would be kept clear of its limits. But the illegalities of the decision of 28 May reveal the classic dilemma of a system that tries to express policy in terms of legally defined limits and standards. Sooner or later, the standards are found in a particular instance to be too restrictive, and creative interpretations of the law are attempted. The response is then to denounce the illegality and seek a tightening of the law. In such a process it is easy for the principle that the regulations are supposed to embody to be lost from view, and coherent planning policy to disintegrate in a series of ad hoc adjustments.

The final feature of the procedure is the total absence of public involvement in the decision. At no stage do members of the public appear to have commented on the scheme and the decision, which could have been contested by third parties, was of course attacked by the prefect. All the consultations during both the pre-application stage and the determining of the application were with the various levels of local and central administration.

6.232 *Interests of the principal actors*

The interest of the mayor in wishing to see the development go ahead is clear enough. An increased population adds to the prestige of the commune, even if it soon brings problems of social integration; but there must be at least the suggestion that a *lotissement* of houses on large plots was more acceptable than an HLM estate. More

importantly, however, an increase in development leads to an increase in the tax base which is of vital importance to a small commune without much employment.

The interest of COURLY was also to see the development go ahead, and once again the fiscal advantage is a consideration since the *taxe locale d'équipement* comes to COURLY and not the commune. That of course led to a minor conflict with the mayor who was quite prepared to see TLE waived in return for the widening of the chemin des Ferratières and the sewer connections for the properties on that land, in order to get the development to go ahead. The COURLY agents probably regarded it as more important not to antagonise the mayor and deferring the payment of TLE proved to be a mutually acceptable compromise. Moreover COURLY stood to gain from the work to the wall along chemin des Ferratières which they either could not, or as a matter of principle did not intend to, do in the near future.

The Agence d'urbanisme also had an interest in keeping in with the mayor. Whatever leverage the technical expertise they exercised gave them over the mayor's decisions, they and indeed the officials of COURLY nevertheless had to recognise the extent to which they were dependent on the mayor's goodwill to be able to operate at all. All the authorities therefore needed to see the development proceed, and were therefore prepared to acquiesce in the illegality of under-sized plots, which Décines-Immobilier regarded as necessary for commercial reasons.

The interest of Décines-Immobilier was certainly to be compliant on the question of minor work in order to protect the commercial viability of the scheme as presented. By the stage of the formal negotiations, they would have been well aware of the mayor's support for their scheme which no doubt encouraged them to insist on the deferral of the TLE payment, an apparently unusual procedure. They were also clearly prepared to do a deal with the authorities on the question of plot size; they were prepared to delay existing development for four months after the grant of permission, to ensure that if the prefect exercised his power of control, the mayor

would not become liable for compensation to the developer. In this scheme, therefore, there was a strong degree of mutual interest in seeing the development proceed and thus a willing connivance to bend the rules.

Two final points must be noted. The first is that those actors who were involved in the discussions before the beginning of 1985 were those who carried most weight in the final decision. Those consultations undertaken after the application had been lodged appear to have been mere formality: either the advice offered was disregarded or it added nothing to the debate. Secondly, there were of course no consultations with the public, and a striking feature of the case is that there was no public involvement at all; the case was contested by the prefect and not as might have been possible by a third party.

6.233 *Conclusions*

There are two aspects of this case which deserve final comment: the modification to the POS and the application of the regulations to the proposed development itself.

Relatively little has been said so far about the modification to the POS which was an essential prerequisite of the development of *Le Soleil levant*. Nevertheless the mayor's desire to increase developable land in his commune clearly has potentially grave consequences for the maintenance of policy. The POS, as we have seen, laid some stress on the environmental quality of the whole of the sector's rural areas, but particularly the banks of the Rhône and the escarpment. The concept of the 'green wedge' therefore strongly advocated in the POS and is a direct elaboration of a principle contained in the SDAU. It must be questionable whether the sole retention of the scarp slope as amenity open space and the development of the rest of the land answered either the desire to protect the banks of the Rhône or to ensure that the

conurbation was contained by open country. And the retention of the classification NC - land to be protected primarily for its agricultural value - was a nonsense given the poor quality of the land on the slope itself and its use as part of the housing estate.

It must be stressed that there can be no suggestion of impropriety in this modification to the POS. Yet the lack of heart-searching is striking. The mayor, we have already noted, had every reason to request an extension of land of development, and was evidently not faced with local opposition. Perhaps more surprising was the willingness of the other authorities to acquiesce in this desire, unless one is prepared to examine the dynamics of the power relationship between elected representatives and technicians. There would appear to be frequent temptation 'to give the mayor what he wants', to maintain the rapport that will already have existed, and to ensure the availability of technical services in their role of servants of the consumers, and thereby their ultimate ascendancy in the decision-making process. The cost of this relationship is the nibbling away at apparently committed policy.

As far as the application of the regulations is concerned, the question may reasonably be asked whether the bending of the rules was really such an important matter. The classified woodland was after all scrub; the plot sizes proposed still allowed for a very low density scheme and the developer was prepared to ensure there was no building in the NC land, even if the plots did slightly infringe it. There are, however, several observations to be made. Firstly, insofar as the principal actors appear accountable to anyone for the decisions they took, it appears to be to the prefect, who as we have seen, has in practice wide discretion to act or not to act. The accountability for *his* exercise of discretion must be fairly attenuated. Secondly, as with all standards, there must be doubt as to what the limits were designed to achieve, and therefore whether it mattered that in the event they were bent. What, if any, were the acceptable parameters of tolerance? Did the proposal stay within such parameters? These questions are impossible to answer because the system, the

procedure and regulations, are not couched in such a way as to make the debate possible in these terms. Either a proposal follows the rules or it does not: there is no intermediate position. Thirdly, the existence of regulations which potentially hindered the development appears to divert discussion from questions of overall layout and the relationship of buildings to site; we may note that the request by the Architecte des Bâtiments de France for a full landscape appraisal appears to have been ignored. Fourthly, the manipulation of the regulations, be the intentions with which it is done never so honourable, must undermine the legitimacy of the whole system.

Perhaps in the end it is the last observation that is the most important in this case. The estate, after all is likely to be unexceptionable, if unimaginative, in its form and layout, and at no point does its location appear to have been queried. The decision is justified by the existence of a POS approved and carried out according to a procedure which allowed a measure of citizen involvement. Yet the decision in this particular case was not taken in accordance with the regulations that in principle provide the safeguard of everyone affected by the proposal to develop and the departure from the regulations was done in a highly covert manner. And it is clear that the decentralisation of powers to mayors did nothing to reduce that covertness in the process of this particular case.

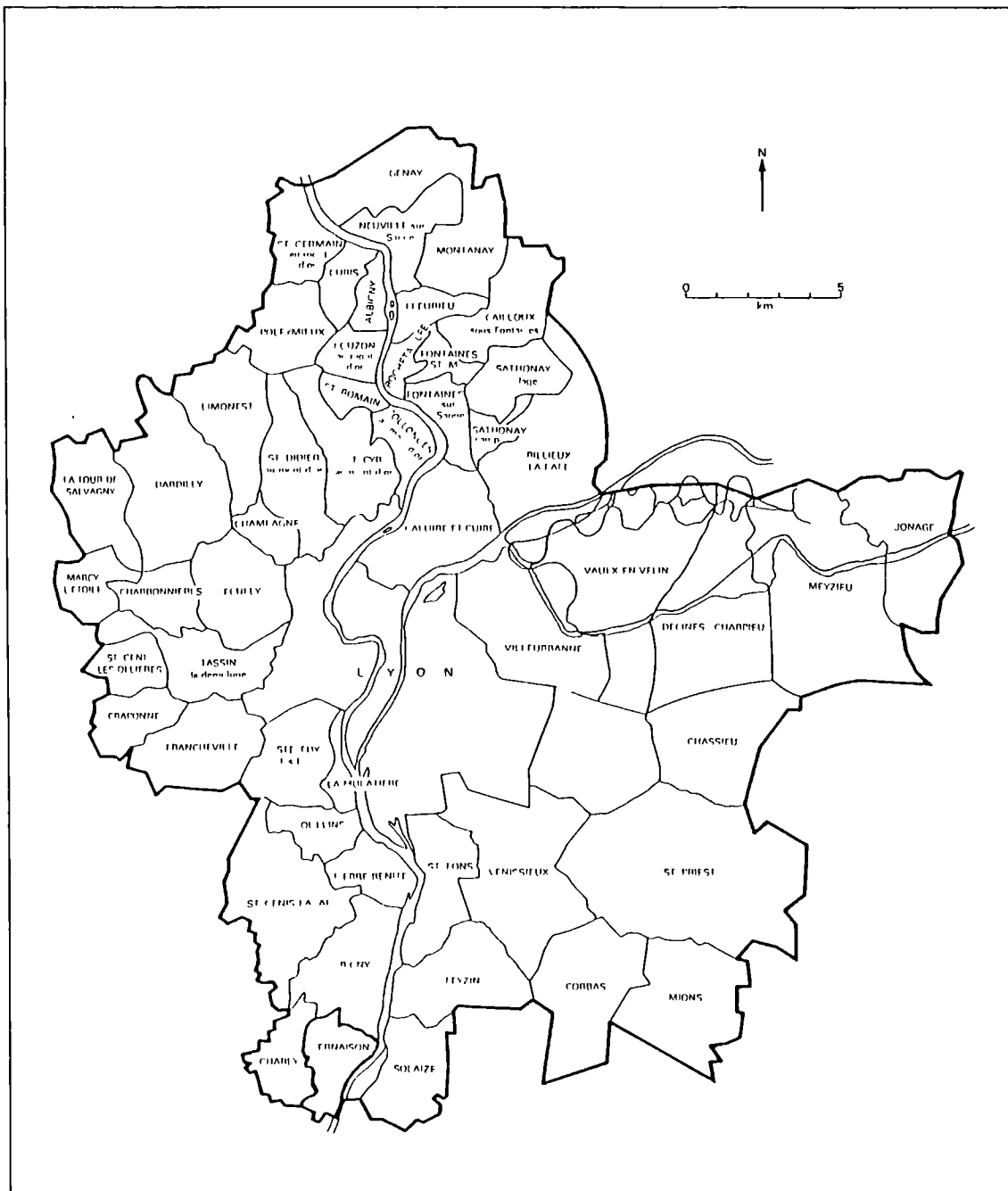


Figure 6.21 Commune of Vernaison: location map

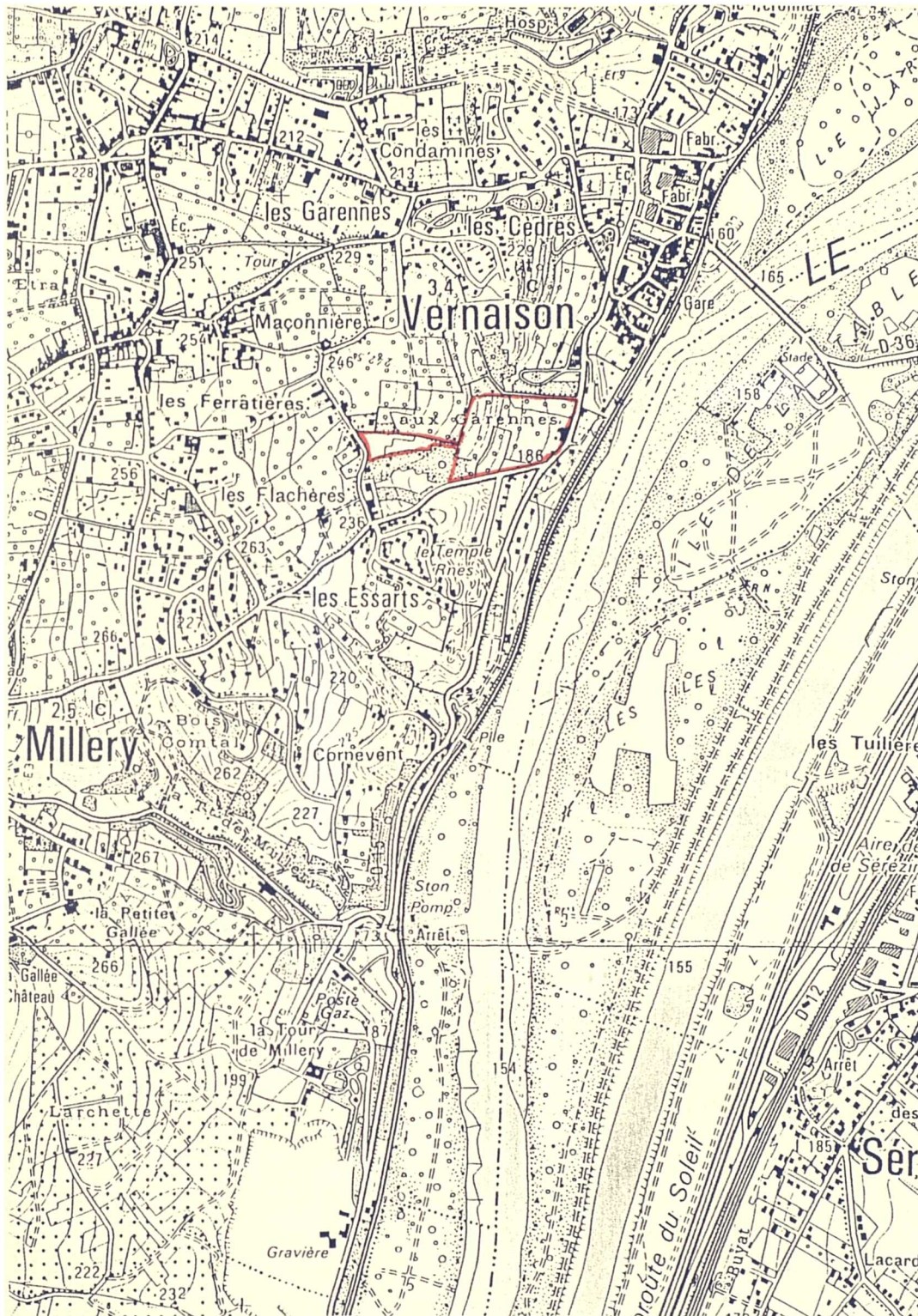


Figure 6.22 Lotissement Le Soleil levant : location map

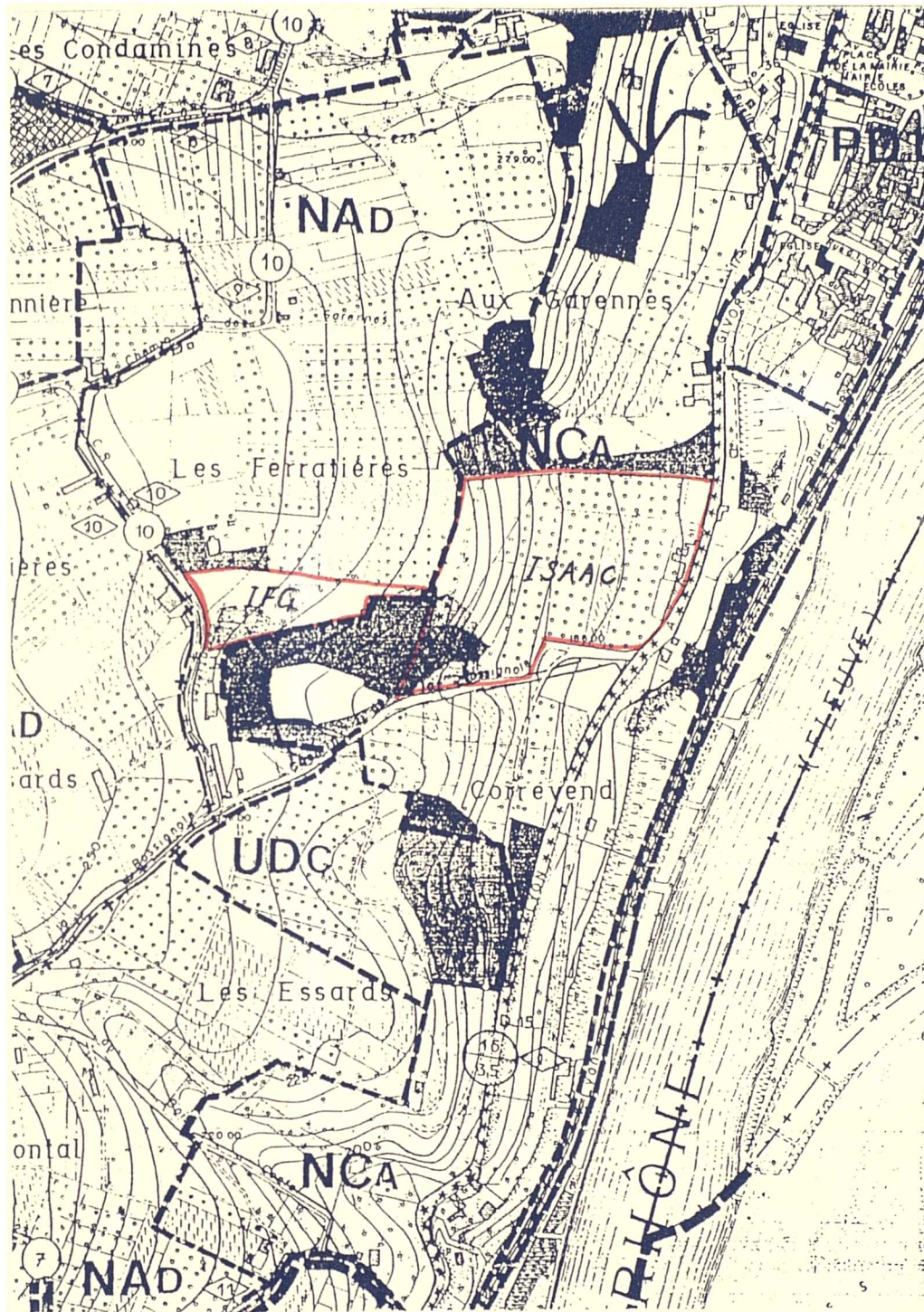


Figure 6.23

POS for the South-Western sector of COURLY as approved in 1982

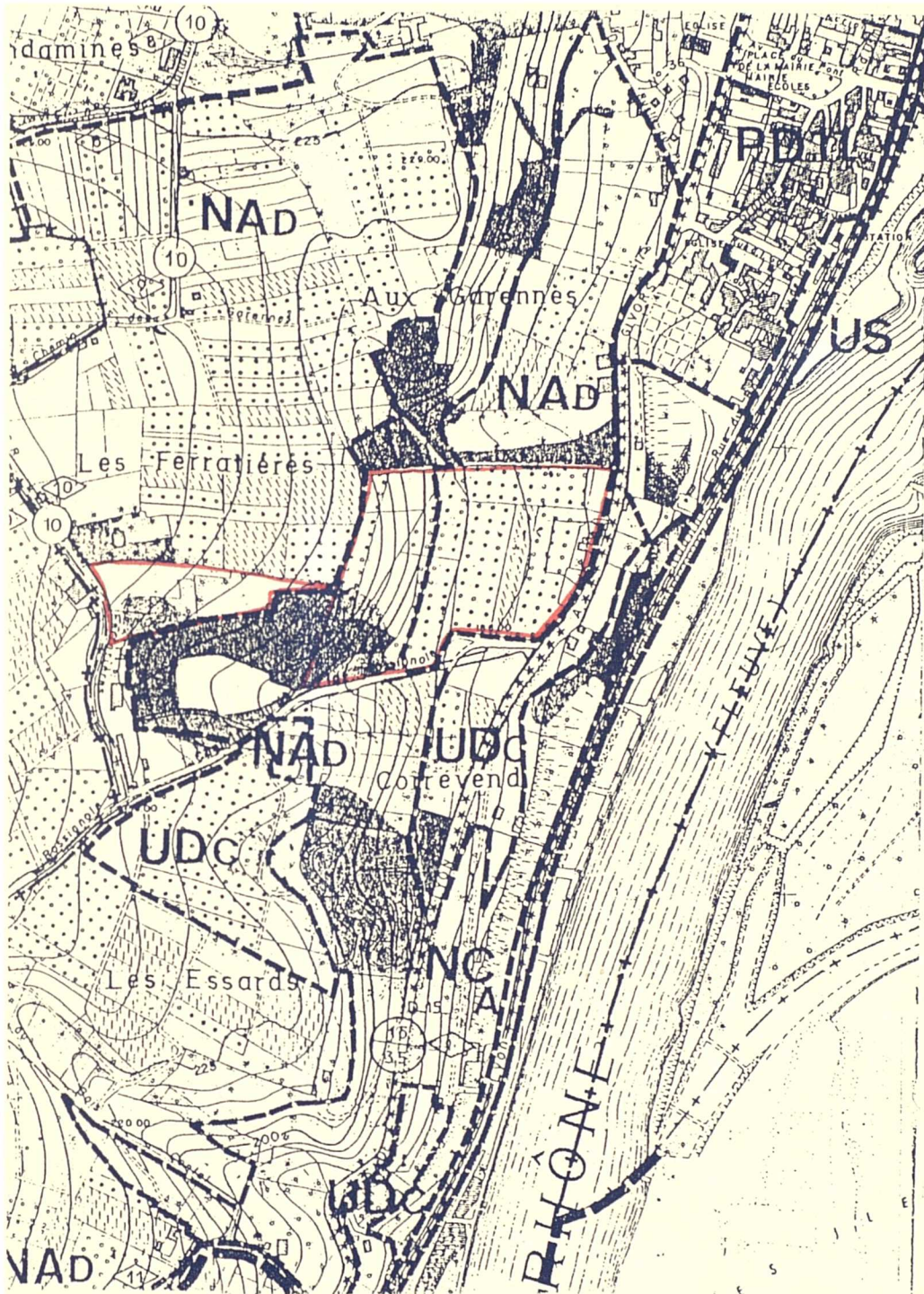


Figure 6.24

POS for the south-western sector of COURLY as finally amended to show the NA zoning for the Isaac site



Figure 6.25 *Lotissement Le Soleil levant*



Figure 6.26 The Isaac site looking west to the scarp slope zoned NC

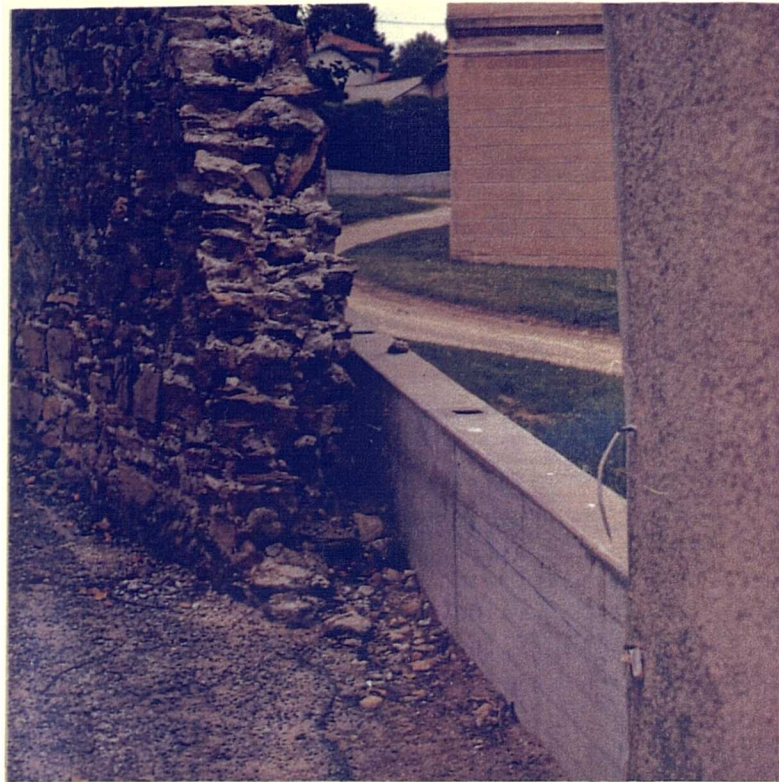


Figure 6.27

Chemin des Ferratières showing construction of new wall



Figure 6.28

The IFG site: the *espace boisé classé* is to the right

6.3 Le Hameau des Cigales - Décines-Charpieu

6.31 Introduction

This case concerns the development of part of a *zone d'aménagement concerté* (ZAC) in the commune of Décines-Charpieu to the east of Lyon and represents the relative difficulty of making changes to plans as approved when the original proposals are overtaken by events. It also reveals, however, an undercurrent of turmoil between the commune and the technical officers of COURLY and the DDE, which exemplifies the general problems of relationships between officials and elected representatives, and between central and local government.

The case starts in 1984 when the developers Groupe Maison Familiale (GMF) replaced the original developers of the site France-Constructeurs, who were to have built flats on the site. The GMF scheme, however, proposed detached, semi-detached and terraced houses, formed by linked garages, to a density that was substantially lower than those proposed in the regulations of the *plan d'aménagement de zone* (PAZ). An application was lodged in February 1985 and was approved in April. Just before the expiry of the period in which the *contrôle de légalité* might be exercised, the prefect announced his intention to refer the case to the *tribunal administratif*. In the end, however, the prefect was persuaded that strict adherence to the letter of the regulations was inappropriate.

6.311 *Décines-Charpieu*

Décines-Charpieu is one of the 'second ring' communes of Lyon, and has been an industrial suburb since before the war when an artificial silk mill attracted many immigrant workers (Moutin, personal communication). Since the war its population has grown steadily, and has seen an increase in the latest census period 1975-82 to a population of 22,832. The commune is continuously built up along the main road

from Lyon to Crémieu (D517) and up to the Canal de Jonage. The old village centre and that of the hamlet of Charpieu lie on by-roads to the south of the D517 and there is agricultural land to the south between Décines and the commune of Chassieu. The town is suburban and has few attractions; the mayor is concerned at the influx of North Africans, and the fact that those with the means are more likely to move further out than Décines should they decide to leave the centre of the conurbation. There has, however, been new development, not least in the ZAC de Bonneveau in which the case study is located. Much of this new development appears to be low cost housing for sale and for rent. Décines does not at the moment undertake its own processing of planning applications and has no immediate intention of doing so.

6.312 *The Site*

The site of the ZAC de Bonneveau is immediately south and a little west of the old village core and is essentially an infill between existing developments on rue Émile-Zola and rue Raspail. Two residential feeder roads have been created in the ZAC: avenue Louise-Michel running north-south and rue Simonetti linking avenue Louise-Michel and rue Émile-Zola in an arc. The case study site for the development to be known as Le Hameau des cigales consists of 1.07 hectares to the east of avenue Louise-Michel and at the eastern boundary of the ZAC. By December 1985 half the total of 245 individual houses had been completed and a group of 135 flats over shops (Les Jardins de Bonneveau) were underway at the corner of avenue Louise-Michel and the Émile -Zola (Décines-Charpieu 1985). By June 1986 these latter were complete and occupied, by the same date there had presumably been further completions in the low density areas of the ZAC. Work had not however started on Le Hameau des cigales which remained derelict agricultural land.

6.313 *The participants in the process*

The main participants in the process include the developer of the case study site itself GMF and the *aménageur*, Décines-Immobilier whose activities have been described fully in case study 6.2. GMF has existed since 1949 and has always been a builder of individual houses: it was founded to undertake the reconstruction of Cambrai after the war. Its activities now have diversified, and in addition to housebuilding has subsidiaries that deal in building materials, insurance, house improvement, housing finance. It also manages several hotels and holiday accommodation. In 1985 it was ranked as the first property developer in France. Its housebuilding activities are equally divided between the estate layouts, mainly built by its low-cost subsidiary SA ILM CARPI, and its one-off houses destined in the main for *lotissements* built by its subsidiary Maison Familiale constructeur. The combined total housing completions were 7,575 in 1984, to which must be added small numbers of flats, housing for rent, second homes, and buildings completed abroad. In France, much of their estate development is classified as 'Résidences villages' designed for low-income owner-occupiers and 'Résidences hameaux' which are designed to offer greater choice to a slightly more moneyed clientele. (GMF 1984, 1985).

On the side of the public authorities M. Moutin, mayor of Décines also takes particular responsibility for planning and has thus been closely involved in the designation of the ZAC and its subsequent implementation. He is socialist and has been mayor for 24 years. The Agence d'urbanisme were involved both in the preparation of the ZAC and in the negotiations over the case study itself. The prefect plays an important role once again in the exercise of the *contrôle de légalité*, a role which is essentially off-stage.

6.314 *The planning context*

The planning context for the site is created by the PAZ of the ZAC approved in July 1981 by prefectoral decree and specifically by the regulations for zone HC1 which covers the site. The zone was intended for multi-storey housing to a maximum of 8,600 square metres of floorspace or 70 dwellings. The regulations specified that "buildings must be laid out round a central square at the edge of the principal feeder road [avenue Louise-Michel] and opposite the secondary road [Simonetti]", with the possibility of shops at ground floor level. The southern strip of the site, unidentifiable from the case file layout drawings, but known from the documentation to cover plots 1 to 8, was outside the ZAC on land zoned NA within the eastern sector POS.

6.32 Stages in Development

6.321 *Informal negotiations to October 1984*

Décines-Immobilier had tried to achieve the objectives of the PAZ by the development of flats. The original developers, France-Constructeurs, withdraw during 1984, perhaps because of the start made in December in Les Jardins de Bonneveau with its mixture of flats over shops. Whatever the reason may have been, the development of Les Jardins de Bonneveau negated the intention for zone HC1. Again it is not clear whether Décines-Immobilier specifically sought out a builder of houses rather than of flats, or whether GMF made the first move, but the result was the same. A low density scheme of houses, not flats, without a commercial component was the basis for discussion at a meeting on 10 October 1984 that appears to have been acceptable, indeed welcomed, by all parties.

6.322 *The submission of the planning application - October 1984 - February 1985*

GMF produced a detailed layout which showed an L-shaped estate road serving 24 out of a total of 38 houses. The remainder fronted rue Louise-Michel or rue François-Jégo to the north, but three faced south into a square which was presumably intended to evoke the 'central square' of the regulations. Houses are shown detached, in pairs, linked by garages in full terraces; and according to the note accompanying the application, are standard house types. The file note also makes play of the fact that the houses are grouped and that the polychromy of the rendering was intended to reinforce the diversity of the scheme. The application was lodged on 18 February.

6.33 *The processing of the application February - April 1985*

The formal processing of the application appears to have followed largely predictable lines, with the mayor confirming his support for the scheme in a letter of 24 April to COURLY. Only two problems emerged.

a) *The calculation of the taxe local d'équipement (TLE).* TLE was not payable on the bulk of the site within the ZAC, but did apply to the part of the site zoned NA. In practice this covered plots 1 to 8 and the calculation, based on the type of loan finance and the floor area was thus readily agreed.

b) *The infringement of the regulations.* The Service de l'Aménagement urbain of COURLY in the synthesis of comments were bound to incorporate the DDE's observation that the development did not conform to the regulation in terms of density or form. COURLY were evidently prepared to disregard the infringement, however, by giving a favourable opinion on the scheme, subject to minor details of

the road layout and turning spaces.

The scheme was approved by the mayor in the name of the commune in early May 1985. The prefect threatened to exercise his powers of *contrôle de légalité* in July but was persuaded that the effective modification of the original regulations was appropriate, and the case was not therefore referred to the tribunal administratif.

6.33 Analysis

In terms of the procedure, this case is interesting for the way in which the major decision, to depart from the original concept of the development for the site, was agreed during the period before the lodging of the application. It is equally interesting for the reflection it casts on how the regulations were to be understood, and the kind of interests that lay behind the interpretations.

6.331 *Procedures*

In the case study of *Le Soleil levant* at Vernaison (case study 6.2), we noted that the mayor had preferred to adopt the *lotissement procedure* to the creation of a ZAC because, it was suggested, there would be less public scrutiny of the decisions. It is reasonable to enquire, therefore, whether in this case the decision-making process was any more accountable. The ZAC de Bonneveau was of course different in scale to the *lotissement* at Vernaison, in that each of the sites was large and required further infrastructure; the regulations were therefore likely of necessity to be less precise than those relating to a *lotissement* of individual parcels. Yet the process by which changes were made to regulations in force is essentially similar in each case, with the decision being taken effectively before the formal procedure had begun and the accountability of the decision making being achieved only through the

challenge of the prefect. We should note particularly that the accountability to the public that is achieved through the formal procedure in approving the ZAC was entirely negated for this site by the subsequent changes.

The second issue must relate to the interpretation of the regulations. For the planners in the Agence d'urbanisme they expressed an urban design concept, a policy for the eventual form of the development. For the DDE and the prefect they were rules to be applied, and at the least according to the planners, were interpreted as presenting an envelope for the development (*composition en gabarit*). For them, the argument then hinged on whether the regulations specified a minimum density or not. There is a clear mismatch in the understanding of what purpose the regulations are designed to serve.

It has to be said, however, that the regulation for zone HC1 was not particularly effective as policy. There was no sense whatsoever in which Le Hameau des cigales represented a realisation of the spirit if not the letter of the PAZ; the small green area has nothing to do with the original concept of a market place. The judgement of the appropriate design form of the development appears to have been taken without adequate reference to developer's intentions either on this site or elsewhere. Pragmatically, the decision was of course likely to have been the right one in the circumstances, but the changes quite apart from being taken in unaccountable fashion, invalidated the urban design basis on which, it could be argued, the ZAC as a whole had been based. Regulations did not prevent a pragmatic response to changed circumstances, but equally did not appear in this case to exert the kind of control over the ultimate form and character of development that the planning officials at least were seeking. But that in itself raises questions about the interests of the participants in this case that must be explored in more depth.

6.332 *Interests of the Participants*

The mayor of Décines clearly had an interest in development in the ZAC for the usual reasons of increasing the tax base of his commune. The form of such development was at least in retrospect an issue for him. A number of themes emerged at interview. Firstly there appears to have been concern that Décines-Charpieu was losing ^{out} in popularity to communes further out as a place for younger households to live in. The mayor believed that they would only be attracted to Décines if the development had consisted of detached houses on 800 square metre plots (i.e. considerably larger than those of the houses at Le Hameau des cigales). Secondly, by extension, there was considerable disappointment with the flats which the mayor said, were selling badly. Finally, this concern for the form of development appeared to be closely bound up with attitudes to race and class which cannot be overlooked. All the inner suburbs of COURLY have large proportions of immigrant populations. Of these, the North Africans are perceived as creating social and economic pressures which the communes are left to their own devices to resolve. Creating houses on large plots appears thus to have been seen as the way of ensuring that the growth of the commune was not achieved simply through the continuing influx of immigrants (Moutin, personal communication).

Whether the strategy would have been successful must be open to doubt. Décines-Immobilier may have found it difficult to secure a developer willing to build flats, but the developers who did take options on sites in the ZAC de Bonneveau evidently perceived the market as being for small houses in the lowest price range. Whether too, this attitude of the mayor was merely the wisdom of hindsight must also be open to question; after all the ZAC as proposed, was very far from being a low density *lotissement*. But if it was not merely hindsight (and the fact that Décines-Immobilier had originally looked for a *lotissement* solution suggests that it was not) some explanation must be given as to why the mayor accepted the proposals of the Agence d'urbanisme. By the same token we must examine how the officials of the

Agence d'urbanisme perceived their role in this development.

The scheme that the Agence d'urbanisme proposed was a classic architectural solution to the problem of creating identity in new development by using high density housing and evoking traditional urban form with the use of such terms as 'market place'. At one level it appears a naive approach to new development in the 1980s which failed to recognise the general nature of the market and the ambitions of aspiring home owners and took no account of the structure of the development industry. In part this can be explained by the architectural training that all the sector group leaders have. In part also it can be related to the fact that the Agence exists as a separate entity somewhat apart from the general administration of COURLY. The planners therefore see themselves as offering a particular specialist expertise, untainted perhaps one could say, by considerations which might properly be left to others. Mayors of communes accept this expertise because, firstly, there is not an alternative source of advice available and secondly, perhaps because the vision of the Agence d'urbanisme is a seductive one which helps to bolster a commune's self-image even when there are doubts, as in this case. The doubts are only fully vented when the development, as in this case, fails to go entirely to plan.

Décines-Immobilier had proposed a *lotissement* originally and would no doubt have had fewer problems if they had not been required to find a developer willing to put up flats in the first instance. Though the regulations certainly delayed the process, in practice the company had relatively little difficulty in persuading both the mayor and the Agence d'urbanisme that the GMF solution was the only one practicable. The mayor's response was favourable because whatever initial doubts he had had, by that stage had been boosted by the delay to the development, and the subsequent loss of taxes. The Agence d'urbanisme's response, apart from being a sensible adjustment of a concept in the face of reality was perhaps also a desire not to lose face with the commune, as present and future client. They were clearly not initiators of the process of change and could do no more to respond to events.

6.333 *Conclusions*

Few people would doubt that to accept the GMF proposals for Le Hameau des cigales site was in the event sensible; few would argue that the change was really very significant. Nevertheless the case does cast doubt on both the policy making process and the capacity of the system to respond to change in an accountable fashion. On the first point the failure to outline a sustainable policy might simply be regarded as a temporary lapse which has little significance in more general terms. Yet it could be seen in terms of the Agence d'urbanisme's desire to make a distinctive, urban design contribution, even when it was not tenable in the face of development pressures, and with the multiplicity of organisations involved in the process the decision becomes understandable. On the second point enough has been said already: it reinforces the fact that the French development control system cannot apparently deal with change in an accountable fashion if the regulations are circumvented.

6.4 Les Longs des Feuillus - St. Priest6.42 Introduction

This case deals with a housing development being prepared by a national speculative developer for a site zoned NA on the outskirts of St.-Priest. It is of interest in the way that it illustrates the kind of agreements that may be reached between elected representatives and developers and in the difficulties that regulations within the POS may create for the successful implementation of a project. In this case, it was the maximum length of the cul-de-sac that caused problems, and the case is as revealing about the attitude of technical officers to the regulations as of the effect of the regulations themselves.

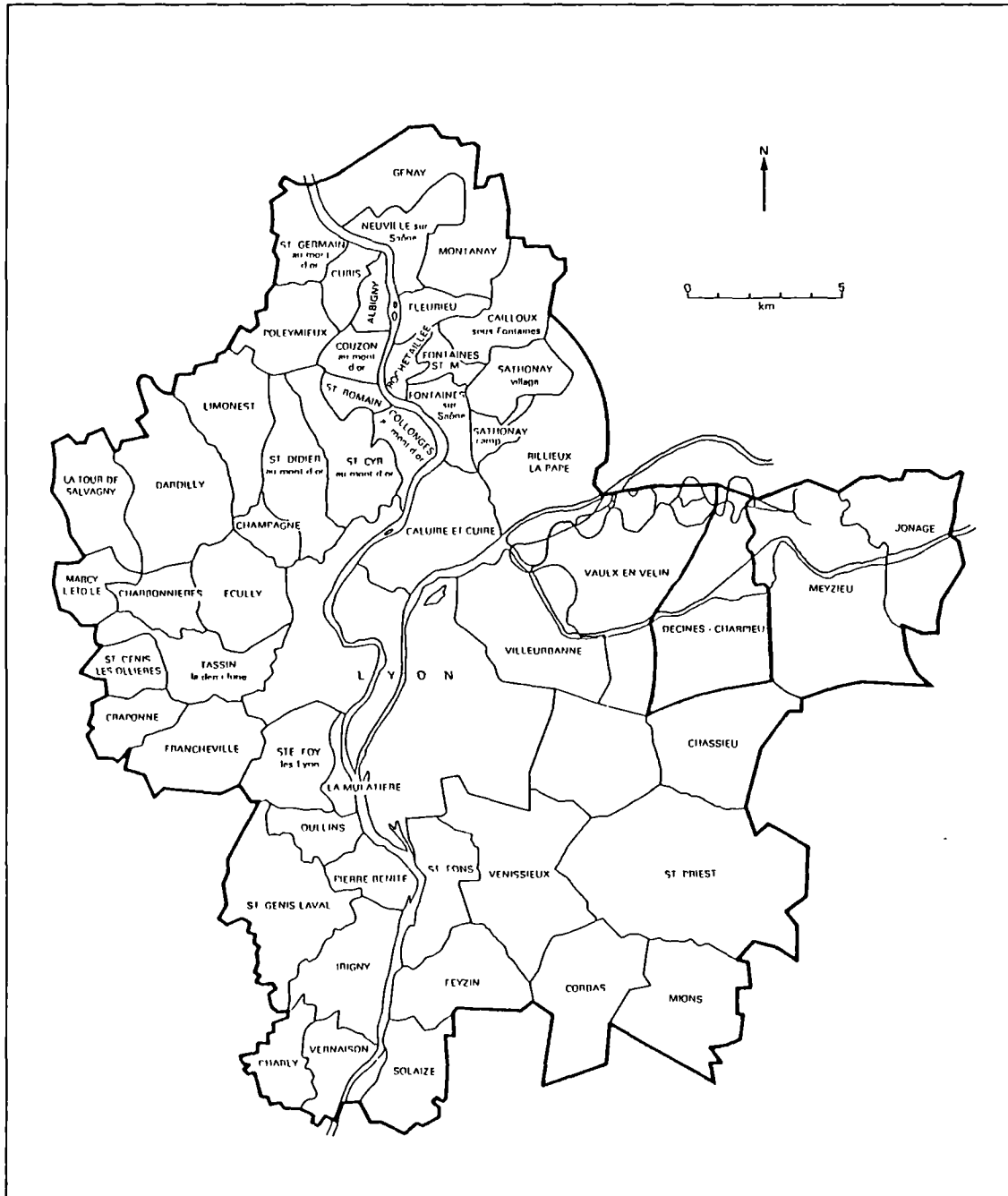


Figure 6.31 Commune of Décines-Charpieu: location map

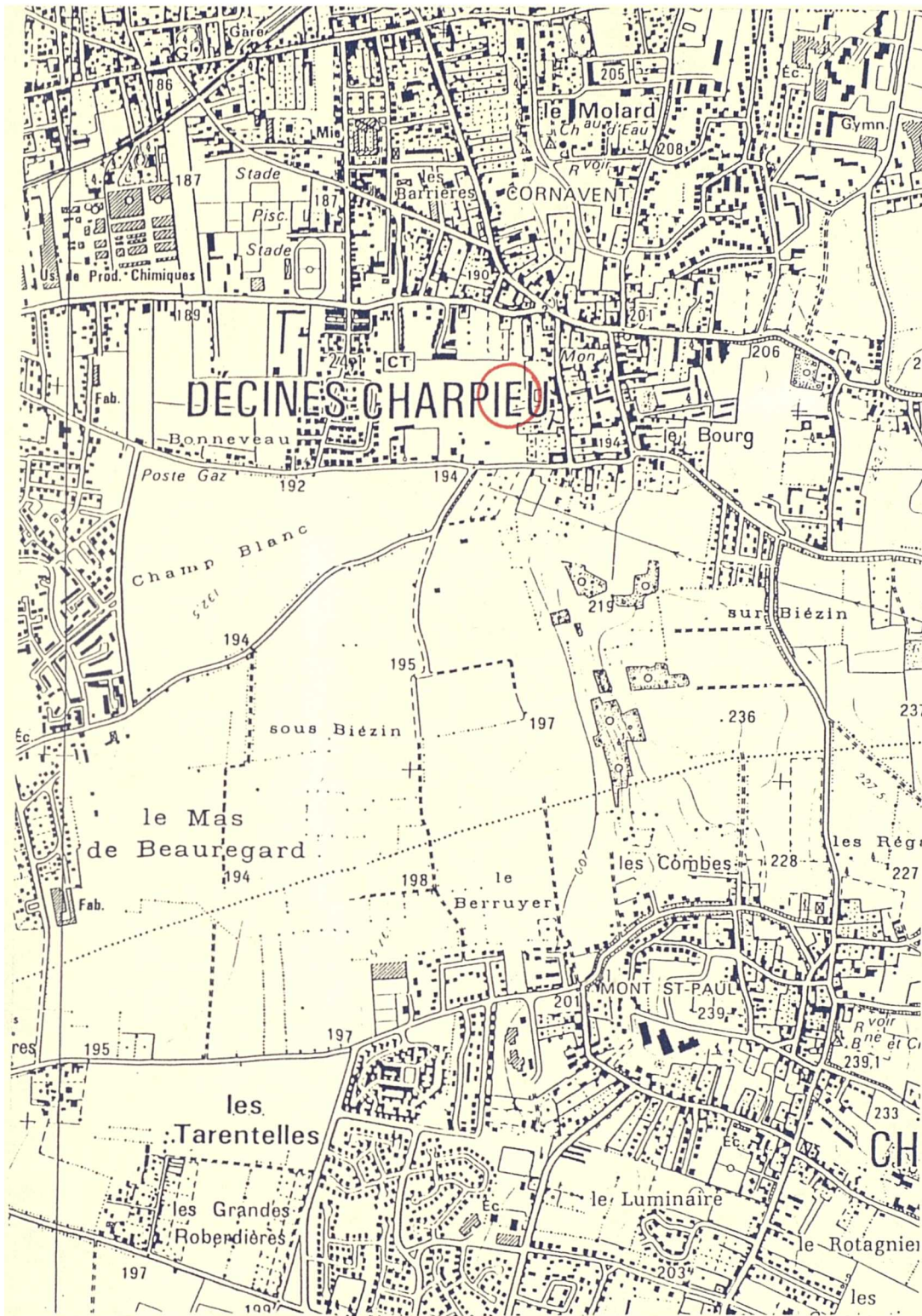


Figure 6.32

ZAC de Bonneveau and Le Hameau des cigales: location map

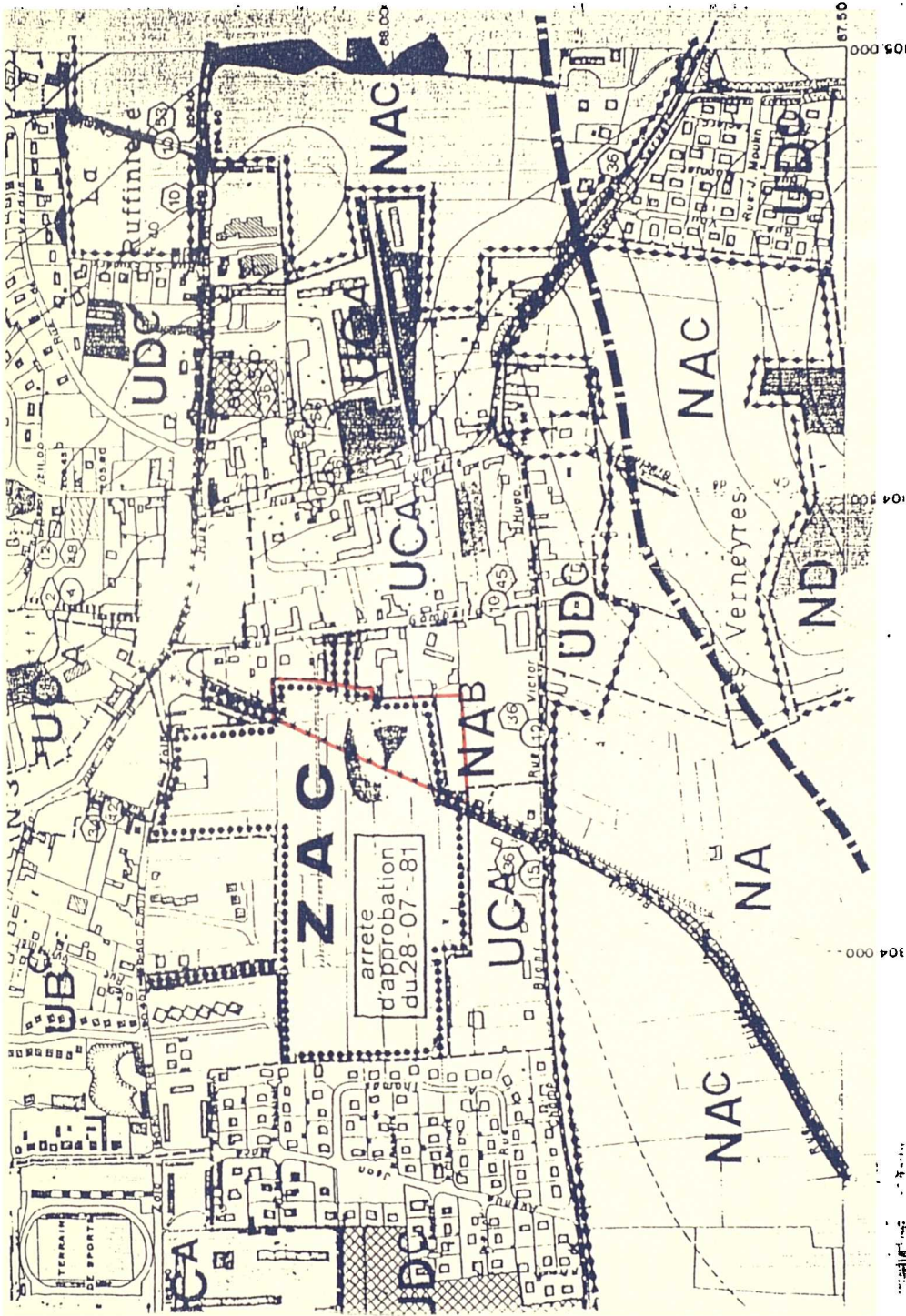


Figure 6.33 POS for the eastern sector of COURLY



Figure 6.34 The site for Le Hameau des cigales looking east from avenue Louise-Michel



Figure 6.35 The commercial development of Les Jardins de Bonneveau

The case begins sometime during 1984 when the developer STOK-France acquired an option to purchase a strip of land in rue des États-Unis with the intention of developing it for housing. An initial approach was made to the mayor whose response was that no development was acceptable without incorporating an adjoining strip which was even narrower. Together the sites formed the last remaining open frontage on the east side of rue des États-Unis. The mayor then required that part of the land be ceded to the commune for the building of low-cost rental housing (HLM). Applications for the development were lodged during 1985 but required amendment on two occasions, with the major problem being the length of the site, and thus the length of the cul-de-sac that would serve it, exceeding the 150 metre maximum laid down by the regulations. A solution was to create the potential for a link at the east end of the site through to rue Laënnec to the north, which entailed working land owned by COURLY. Because the link could not be realised immediately the prefect exercised his power of *contrôle de légalité* and the application was withdrawn. A new application was lodged in March 1986 which reduced the length of the road, and therefore the number of houses on the site, and was approved in the same month.

6.411 *St.- Priest*

St.-Priest is an industrial commune to the east of COURLY in its outer fringes. The Berliet factory lies just across the boundary with Vénissieux and smaller scale industry extends south-eastwards between the CD518 route de Lyon and the railway. The population of the commune has grown rapidly, from just over 20,000 in 1968 to 42,677 in 1982. It has few obvious attractions: its character is typically suburban. Older areas of villas are interspersed with high-rise blocks, of the 1960's and later, and the landscape is flat and without distinguishing features. There is evidence of civic pride, however, in the newly completed town hall and the adjoining sports complex still under construction. There also appears to be the political will to

process applications at St.-Priest although the means and the expertise are not yet sufficiently developed to do so.

6.412 *The Site*

The site lies to the west and slightly to the north of the centre of St. Priest. Rue des États-Unis runs parallel to the main dual carriageway through the commune, the route de Lyon, the CD518. On either side of the site is prewar and postwar villa development served by minor roads running eastwards from the rue des États-Unis, which serves as the local distributor and bus route. At the rear of the site are open fields, but the locality is essentially unattractively suburban. The area of the site is 1.64 hectares, the length 240 metres and the width at 71 metres inadequate to take a service road and plots on either side.

6.413 *Participants in the process*

The principal actors on this case are the developers STOK-France, represented by their Lyons agent, M. Henri Payet, STOK-France is one of the newer generation of developer-builders whose activities closely relate to British speculative activities in that they acquire land and build directly in the form of individual houses. STOK-France is in fact the creation of a Dutch developer who believed there was more fertile ground for his profession in France than in the Netherlands. The company's headquarters are at Lille; there are offices in Paris, where the company's activities are most intense and Marseille. In 1986 the Lyon office had schemes underway in five communes in COURLY with house sale prices ranging from 390,000FF to 515,000FF.

The other actors included the mayor of St.-Priest supported by a small technical service unit at the town hall, and the technical officers of COURLY and the

Agence d'urbanisme. The landowners play little role in the case, except insofar as the owner of the narrower strip of land felt able to increase the asking price in the light of the development proposed. The prefect is present in the exercise of the *contrôle de légalité*. The planning context of the development is set by the POS for the eastern sector of COURLY. The site was zoned NAD, but because the developers were proposing to build the houses themselves, the lotissement procedure was not appropriate for this site and the development dealt with by a normal permission to build.

6.42 Stages in Development

6.421 *Informal negotiations 1984 - June 1985*

During this part of the process the main form of the development was agreed, and it was clear that the agreement of the mayor was the critical element. He insisted first of all that the plot that STOK-France originally had an option to purchase had to be amalgamated with the adjoining strip before he would countenance development. He also sought the cession of part of the combined plots for low-cost rental housing to be built by the local offices of the HLM. STOK-France complied with these requirements. The adjoining strip was acquired and an agreement to offer part of the site to the commune at an undisclosed price. The exact location of the rental housing land was the subject of discussion. An original proposal on the file, date 28 February 1985, located land for perhaps six units at the

rear of the site, a solution that did not commend itself to the mayor who insisted on the frontage to rue des États-Unis and sufficient space for nine dwellings (increased later to twelve on the same site area).

The early scheme also apparently ran into difficulties on the density of the proposal: 52 houses on the site (excluding the land to be ceded to the commune) exceeded the zone density of 25 dwellings per hectare. The developer argued that for semi-detached houses the regulations permitted a higher density than for detached, but was warned that he stood little chance of receiving permission unless the density was lowered. These discussions evidently involved members of COURLY and the Agence d'urbanisme. By 15 May 1985 the mayor was able to write that he could give a favourable opinion on the proposal as it then stood and in effect encouraged STOK-France to lodge an application for permission to develop which they did a month later.

6.422 *The first application 18 June - September*

The first application was in fact presented in two parts, but since this was reportedly done for tax reasons and has no bearing on the planning case history, they may be considered together. The allocation of the HLM housing land is shown along the frontage of rue des États-Unis with nine plots identified (though these did not form part of any of the applications made by STOK-France). A single cul-de-sac is shown running the length of the site with a chicane at the boundary of the HLM site and the STOK-France site. 39 houses are on the STOK-France site, all of which are linked, some as fully semi-detached houses, some linked only by garages. Most line the cul-de-sac but a group is formed around a pedestrian access at right-angles to the road, at the end of site nearest rue des États-Unis. The question of the cul-de-sac length had obviously already arisen, for where the pre-application sketch showed a turning-head in the first application drawings the road is continued to the eastern boundary and then turned through 90 degrees to form a potential link to rue Laënnec to the north. To complete such a link, the road would have to be continued

across undeveloped land owned by COURLY. A four metre wide pedestrian 'mall' runs along one side of the cul-de-sac.

By 1 August, the Agence d'urbanisme had commented on the scheme and suggested that a formal meeting with all the technical sources which was duly held a fortnight later. Several problems emerge.

a) *Problems of non-conformity with the regulations: open space.* The regulations specified that 20 per cent of the site should be devoted to green space. No recommendation about how this allocation should be achieved appears to have been given at the meeting, and the breach may have been considered relatively unimportant.

b) *Problems of non-conformity with the regulations: the cul-de-sac.* The developer's attention was once again drawn to the fact that the cul-de-sac exceeded the maximum of 150 metres permitted by the regulations in the POS. The Agence d'urbanisme suggested that given the link to rue Laënnec could not be completed concurrently with the development by STOK-France, a turning point should be provided at 150 metres from rue des États-Unis. The combination was deemed to be a satisfactory approximation to the regulations.

c) *Urban design problems.* The representative of the Agence d'urbanisme asked for the houses to be brought closer together in order to "reinforce the character of the street" and to leave more space at the rear of the houses.

d) *The pedestrian way.* The reservation of the pedestrian way was to be six metres, and to contain a footpath and cycle way as well as a strip for car parking.

On the 23 August COURLY wrote to the DDE to request an extension of time for processing the application in order to allow STOK-France time to submit new drawings: a decision should have been delivered by 18 September. Revised drawings for consultative purposes appear to have been produced by the end of September.

6.423 *The second application 29 October 1985 - February 1986*

A new application rather than a revision to the earlier ones was lodged at the end of October, and instead of two separate stages the scheme was now presented as a whole. One reason for the new application appears to have been the revision to the HLM scheme which necessitated very minor revisions to the STOK-France layout. For the rest, however, the new layout incorporates all the suggestions proposed in the August meeting. The turning circle is provided as agreed and forms the focus of a grouping of houses at that point rather than at the west of the site. The only observation on the scheme from the technical services was that two car parking spaces per dwelling were to be provided. The scheme was duly granted permission. However at the last possible moment, the prefect declared the scheme illegal on the ground that the link to rue Laënnec would cross land zoned NA for which no scheme had yet been prepared. The permission had, therefore, to be withdrawn.

6.244 *The third application - 7 March 1986*

STOK-France produced their last scheme shortly after the second application had been withdrawn. This limited the cul-de-sac to the 150 metre point and provided for an extension at a later date from a conventional circular, turning-head. 0.4 hectares of land was left undeveloped and the scheme limited to 28 houses. The third application scheme thus removed the only remaining obstacle and permission was granted on 12 March. Site work had just started in May 1986, and site sales office had been set up.

6.43 Analysis6.431 *Procedure*

As with the case of the controversial Le Soleil levant at Vernaison the Les Longs des feuillus case demonstrates the importance of the informal negotiation process, particularly where development is proposed for land zoned NA. There was never of course any doubt that housing development was suitable for the site, and though the land was classed as unserviced in fact existing water mains and sewerage in rue des États-Unis were quite capable of supporting the extra development, and therefore in British terms, servicing was scarcely a problem. The two main issues for discussion in the informal stages of negotiation were thus the density of development and the quid pro quo that the mayor would look for if permission were granted. The developer's argument that they thought a higher density was permissible for grouped housing sounds distinctly disingenuous and could indeed be interpreted as a classic 'try-on'. On the other hand, the mayor's request for part of the land for rental housing was well within the rules of the game as it is normally played, and the negotiation there centred not on whether the land should be ceded, but in which part of the site the rental housing should be located. The third issue settled in the informal period appears hardly to have been a matter for debate at all: the mayor made it plain that no development could take place if both strips of vacant land were not acquired by the developer.

The negotiations that took place during the formal applications stages were of a rather different calibre. The questions of the open space regulation and of the urban form of the estate are of minor significance, part of the small change of development control negotiation. The issue of the cul-de-sac length is on the other hand critical. Here we see all the actors in the process working hard to find a solution which would accommodate the regulation. The resolution of the difficulty may of course be interpreted in different ways, either as the sincere attempts by the planners to find a solution which respected the spirit of the regulations while allowing the

development to go ahead, or as a concerted attempt by technical officers to subvert the regulations in order to gain a political advantage. By the same token the *contrôle de légalité* can either be seen as drawing out the process considerably, because literalistic interpretations prevent the acceptance of sensible compromises, or as the entirely necessary prevention ('in the nick of time?') of abuses of a system guaranteeing proper administration of the country's land uses. At all events, the length of time that it took to resolve the difficulties with this site appears inordinate, with nine months taken over the formal processing and a considerable period of negotiation preceding the lodging of the first application. The developer's complaint that the period was unnecessarily protracted looks justified. Nevertheless we need to examine the actors' interests in the case to determine whether such a view is tenable.

6.432 *Interests of the participants*

Land that is zoned NA is in principle less expensive than fully serviced land in zones U. The lower cost will reflect the relative lack of servicing, and perhaps also the conditions that may be placed on development proposals before they become acceptable. This case exemplifies the search for mutual advantage primarily between the mayor of St.-Priest and STOK-France. On the one hand the mayor seeking land for rental housing; on the other, the developers proposing a relatively high density solution and leaving the rental housing to be located at the far end of the site as an unattractive residual, and then being forced to concede the frontage to rue des États-Unis and a lower density. The mayor's interest in the case is clear: good development for his commune together with a site for rented housing. He was able to realise that interest by virtue of the power to approve or refuse permission for development on NA land. At this stage the regulations were relatively unimportant in determining the form of development.

STOK-France appears beleaguered by the degree of power that the mayor was able to exercise in this case; and forced to make concessions at each turn. Yet it was in their interests to do so. Of course they looked for the maximum return from the site; they may have grumbled at the price of acquiring the extra strip of land, but they did not withdraw from the process and we may note that the selling price of the houses to be built is less than similarly sized houses built by the company at St.-Fons and Francheville, in the south and west of COURLY respectively. They also evidently believed it to be in their interests not to prepare a revised version of the scheme which limited the cul-de-sac to 150 metres in October 1985, even though in the event it would have speeded the start of the development. In taking the calculated risk, however, they were aided and abetted by the technical officers in the case, and therefore must have reasonably supposed that they would stand to gain by not leaving the future of part of the site unresolved.

The interests of the officers of COURLY and the Agence d'urbanisme are perhaps harder to gauge. They presented the case as an example of the way that regulations could hinder sensible development; they presented themselves as reasonable men finding acceptable compromises that fulfilled the spirit, if not the letter, of the law in the face of unexceptionable development proposals. The irony, however, is that the regulation limiting the length of the cul-de-sac is contained in the POS prepared by the very officers who were dealing with the application for Les Longs des feuillus. An altogether less attractive construction could therefore be put on the events described, that there was collusion between the controllers and the controlled to outwit the system. Yet there is no foundation for inferring a conspiracy between the parties in the case - indeed the developer's complaints against the system would give the lie to that - but the way in which the technical services reacted represents the delicate balance of power between the authorities. There was good reason for the officers to prepare a liberal interpretation of the regulations, in that to maintain their credibility with the mayor of St.-Priest, they had to be seen to be

smoothing the passage of development which brought a clear advantage to the commune.

6.433 *Conclusions*

The case illustrates well two features of the French development control system which have worrying consequences for the way in which decisions are taken. The way in which the national regulations for the POS are drawn up in the Code de l'urbanisme give considerable possibilities for mayors to dictate the terms on which land zoned NA is brought forward for development. The extent to which they are then accountable for the negotiations that take place must be open to doubt, except insofar as the prefect is prepared to intervene when regulations are infringed, as he did in this case. The other striking feature of the case in illustrating the power that mayors may wield in the negotiation over NA land is the extent to which the technical officers do not evidently see themselves as having a role in the negotiation. Their concern was to make sure that the development took place in the light of a clear political will to proceed.

The second feature is the rigidity of a system that is made accountable by the imposition of legally binding rules. The rule emanated originally from the Agence d'urbanisme, and if it was valid as an expression of policy the attitude of the officers were indefensible. In truth it is much more likely that the 150 metre limit to cul-de-sacs was the inappropriate expression of a general view about a performance criterion. It is worth noting, too, that the proposal was unacceptable because the link to rue Laënnec would have crossed NA land for which no plan had been prepared. A wise precaution, perhaps, to prevent decisions being taken in a legally unaccountable fashion, and development occurring without proper consideration. But the system allows no mechanism for decisions to be taken in the light of exceptional circumstances, except by bending the rules; and as soon as the rules are bent, the accountability of decision-making vanishes.

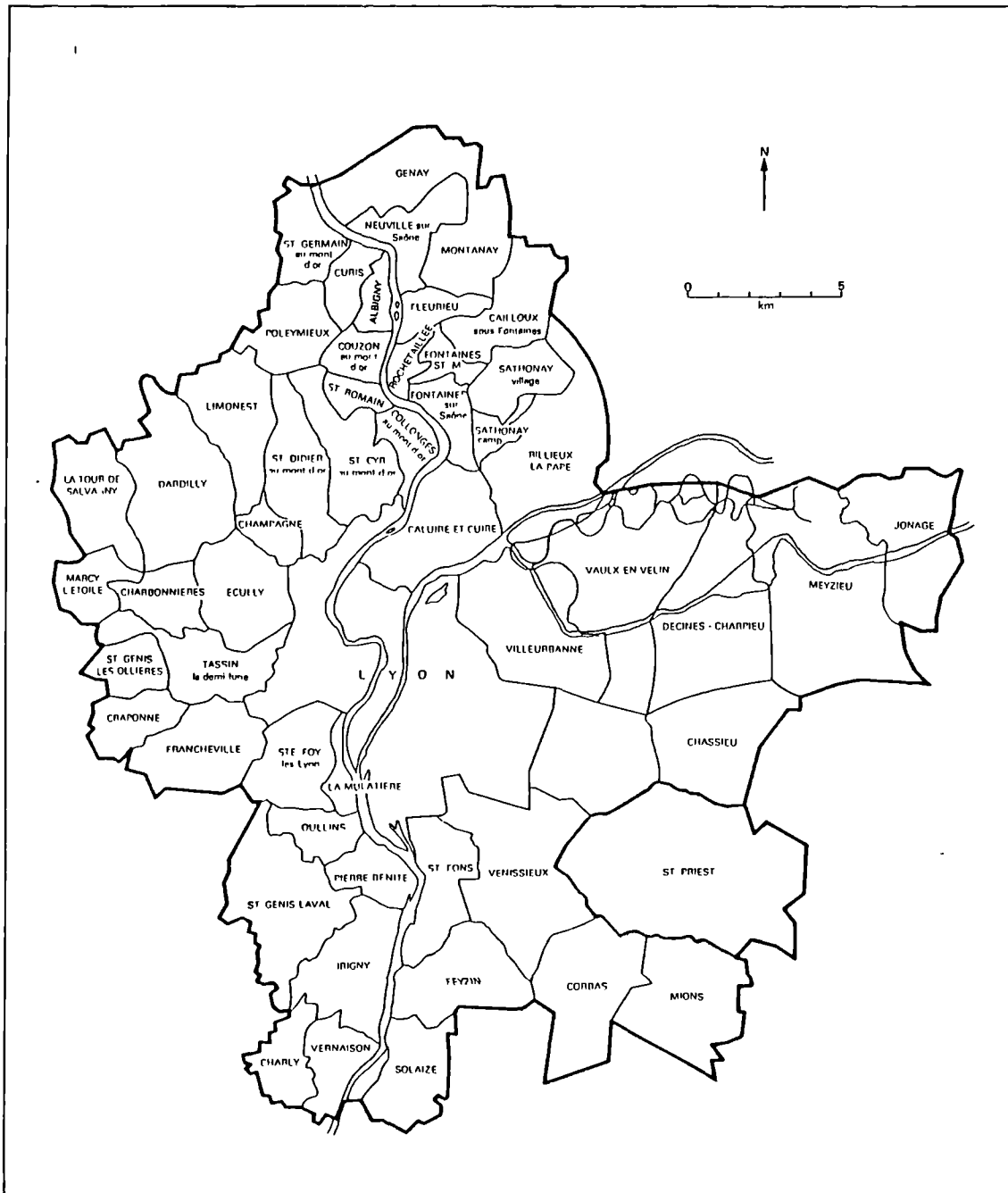


Figure 6.41. Commune of St.-Priest: location map

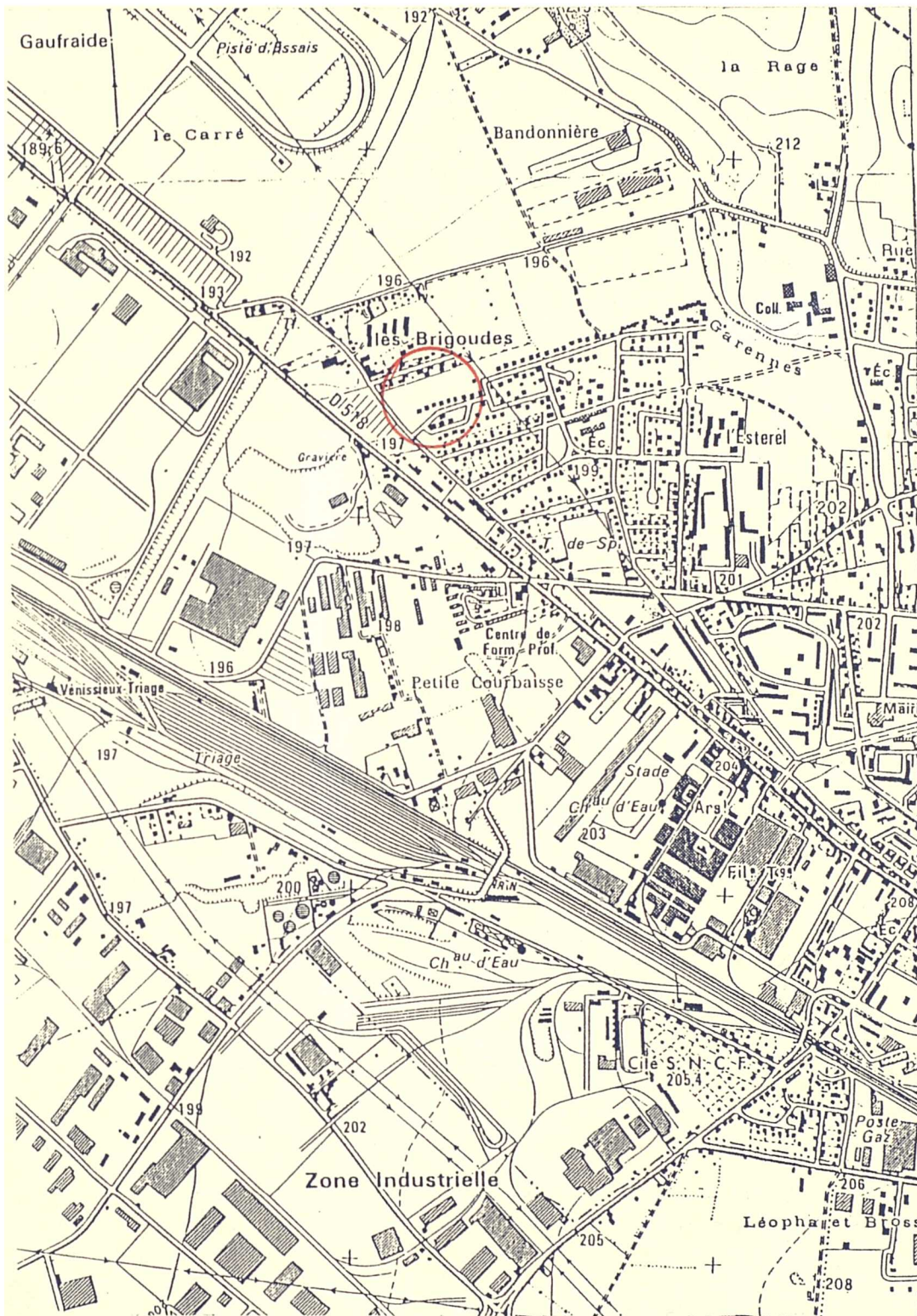


Figure 6.42

Le Long des feuillus: location map

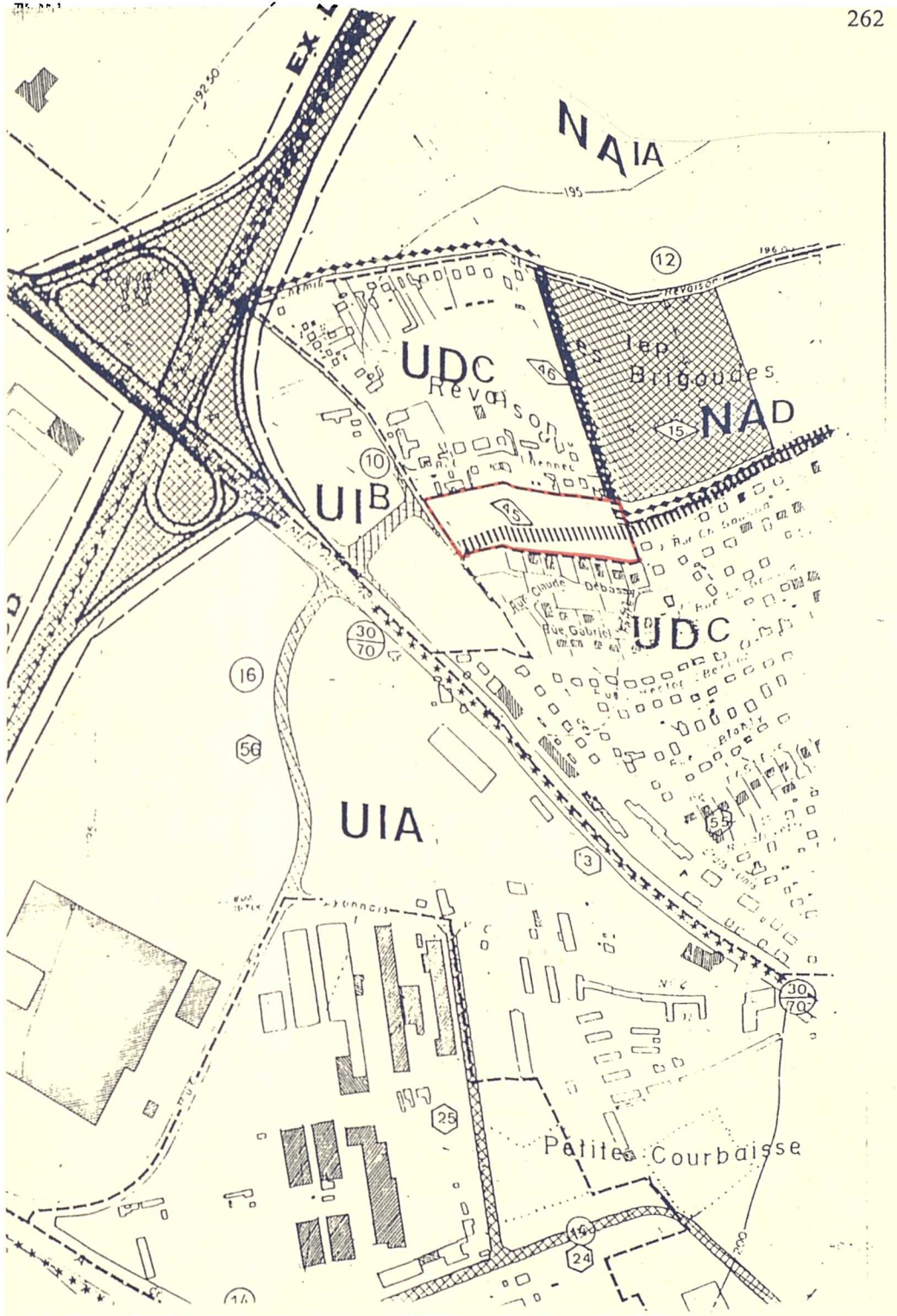


Figure 6.43 POS for the eastern sector of COURLY

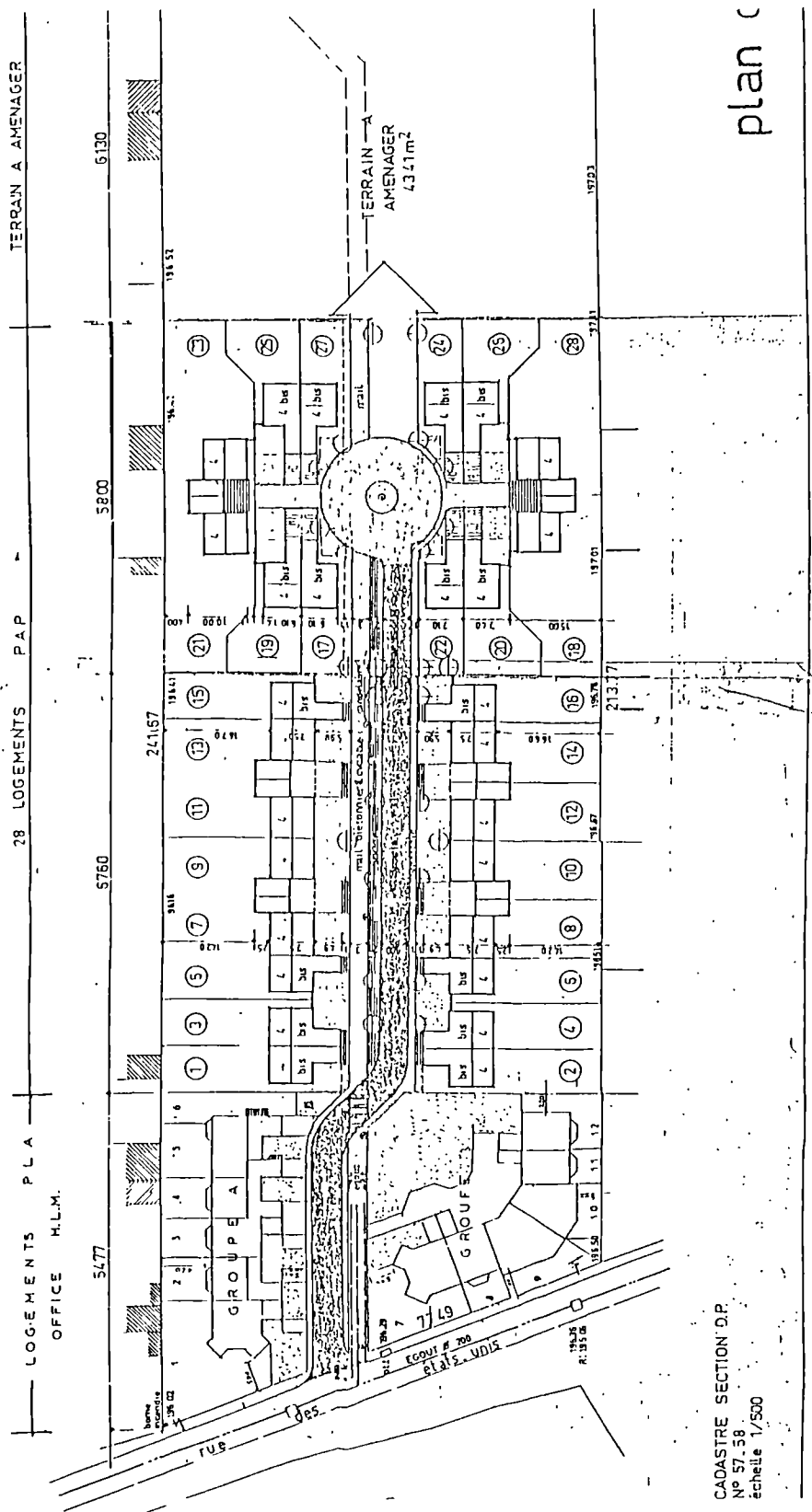


Figure 6.44 Plan of Le Long des feuillus as finally approved on 7 March 1986



Figure 6.45 Rue des États-Unis looking south-east. The Le Long des feuillus site is to the left



Figure 6.46 The site for Le Long des feuillus looking north-east

6.5 Rue du Château Vénissieux

6.51 Introduction

This case deals with the implementation of part of a *zone d'aménagement concerté* (ZAC) in the centre of the industrial suburb of Vénissieux. Its interest lies in the way the regulations are used in the control of projects and the extent to which they can provide an adequate framework for negotiation. It is also illustrative of how complex in the organisation for implementing projects may be. The ZAC had been prepared by the Agence d'urbanisme for the mayor of Vénissieux. Vénissieux turned to the mixed economy company (*société d'économie mixte*) SERL as the *aménageur* for the whole zone, but individual parts of the ZAC were then built by a variety of companies. For the case studied the builder-developer was STOK-France. The difficulties with the scheme were blamed variously on the regulations, the differing interpretation of the zoning of the ZAC by the different sectors and the obstinacy of the developers.

The ZAC du Vieux Bourg in Vénissieux represents a concerted attempt to revivify the centre of Vénissieux which had become neglected since the war. The area around the church and rue du Château itself represents the oldest part of the town, the remnant of a medieval fortified settlement. None of the buildings are of any great age, however, and much of the area has been cleared for development. The case starts with the informal negotiations that took place after STOK-France had successfully tendered for the site which surrounded the southern flank of the church. An early scheme was evidently unsatisfactory, and a change of architects produced a new scheme which met STOK-France's desire for individual houses and was presented for planning approval in June 1985. A modified scheme was finally approved in November, but work had not started on the site in May 1986.

6.511 *Vénissieux*

Vénissieux is COURLY's third largest commune after Lyon and Villeurbanne which experienced a very big population increase between 1968 and 1975 but has since declined to 64,000. Its status as an industrial suburb was established well before the war. The Berliet factories were established in 1919 and the railway depot and marshalling yards started the year after. Berliet has since been taken over by Renault, but despite the firm's financial difficulties, Vénissieux remains France's centre of production of heavy goods vehicles. More recently the commune has gained notoriety from the Minguettes estate built on a hill to the south-west of the old town centre between 1967 and 1975, a veritable high rise new town comprising 9,000 dwellings in slab and tower blocks. Its social and physical problems have become the cause of concern at national level and action is being taken to improve the estate, not least by demolishing some of the tower blocks. The old centre meanwhile languished, although it was always intended that the central area should be redeveloped as a counterpart to the Minguettes development.

Vénissieux has recently completed for itself an imposing new town hall as an expression of civic pride and has a staff of some 1,000 technical and administrative officers. Its Sixth Directorate is a department that combines both economic development activities with town planning and its stated objective is to expedite the increase of the commune's employment and tax base (Fischer, personal communication). In spite of strong political will and a commitment in principle to undertake its own processing of planning applications, the lack of computerisation and the lack of staff (the commune has committed itself also to not increasing staff above 1,800) have so far prevented them doing so.

6.512 *The Site*

The site of the development which forms this case study lies to the south of the church and forms the inner side of the semi-circular rue du Château which marks the line of the ancient fortifications of the old town of Vénissieux. The church is late 19th century and the northern half of the line of fortifications was presumably lost when place Léon-Sublet was created, presumably again, at the end of the last century. The aerial photograph taken before the site was cleared shows tight terraces of houses in a simple rural style with shallow pitched roofs clad in Roman pantiles. A few of these on the south side of the rue du Château are to be retained in the redevelopment, but the site between the church and the street has been entirely cleared. Immediately adjoining the case study site to the west is an area destined for car parking with access from place Léon-Sublet in front of the west end of the church.

6.513 *The planning context*

The planning context for the site is created by the PAZ of the ZAC approved formally in 1982. The area of the ZAC extends from the south side of the church to rue Jean-Macé which is being realigned, and westwards from the rue du Château beyond rue Gambetta to the line of a new road which would divert through traffic from the narrow rue Gambetta and its northward continuation avenue Jean-Jaurès. The ZAC proposes that rue du Château becomes pedestrianised with car access and a parking space at its west end, and that a new pedestrian way should be created southwards from rue du Château to join Jean-Macé and provide a pedestrian link between place Léon-Sublet and the new town hall in avenue Oschatz.

6.514 *The participants in the process*

The actors in the case include STOK-France, the developer, whose major interests are in building individual houses at the lower end of the market. Their operations are described in more detail in case study 6.4. The *aménageur*, SERL, is also a key actor. In terms of their role in providing the infrastructure for the ZAC they may be compared with the private firm Décines-Immobilier laying out the lotissement at Vernaison (case study 6.2) or the ZAC de Bonneveau at Décines-Charpieu (case study 6.3), but their scale of operations and their method of control is rather different. SERL is a mixed economy company which means that it contains both private and public sector elements elected representatives are members of its board, but it is independent of local authorities. SERL acts however on behalf of local authorities and since the 1960s when it was founded has been responsible for many major building projects in COURLY, not least the construction of Les Minguettes at Vénissieux itself (SERL, publicity material).

On the side of the public authorities are the mayor of Vénissieux, M. Gérin, and his deputy with responsibility for planning, M. Fischer; the commune has been communist controlled since 1935 (Fischer, personal communication) and its leaders have a declared policy of public involvement in decision making. Officers of COURLY and of the Agence d'urbanisme provided the technical expertise; the PAZ was of course prepared by the Agence and their conception of how it was to be implemented in detail was important in the process.

6.52 Stages in Development

6.521 *Defining the ZAC 1970 - 1980*

The strategy for the Lyon region contained in the SDAU projected among other things "a strong axis of growth" comprising 15,000-20,000 dwellings to be built

in Vénissieux and in the communes immediately to the south, Corbas, Feyzin and Mions. This in turn was seen as creating the need for a major intermediate centre at Vénissieux served by high speed roads and a metro. During the 1970's it became clear that the ambitions of the SDAU were unlikely to be realised. The Minguettes estate, destined to be only the first place of the urbanisation, was the only part of the strategy implemented. The road network envisaged in the SDAU has been substantially reduced. The metro line D linking Gorge de Loup and Vénissieux was only started in 1985 and will stop short of the town centre at the gare de Vénissieux in the north of the commune. The restructuring of the town centre went into abeyance. By 1979 COURLY and the commune of Vénissieux recognised the need for a new set of objectives for the town centre. The Agence d'urbanisme undertook preliminary studies and a boundary for a ZAC was defined and approved by COURLY in 1980 and SERL appointed as the developing agency (SERL, 1986).

6.522 *The preparation of the PAZ and the implementation of the plan 1980-1985*

The objectives of the PAZ lay heavy emphasis on the continuity of the past and present. Thus the line of the rue du Château is retained and some of the older buildings are identified for rehabilitation. The PAZ identifies both old and new buildings in a relatively schematic way. A second objective was to provide public facilities that would enliven the centre and as a result encourage private sector development elsewhere in the town (SERL, 1986). The general desire on the part of the commune for the involvement of the public took the form of a well-attended public meeting in 1982 (Fischer, personal communication).

In spite of the new optimism and the relatively modest scale of operation, progress appears to have been slow. The first development of 25 dwellings, was not started until 1985, and one interviewee contrasted the progress made on the

Minguettes estate in the 1960s where 9,000 dwellings were completed in 10 years with the ZAC due Vieux Bourg where SERL would be lucky to complete 50 a year (Kobialka, personal communication). The 25 dwellings consisted of eight flats for rent above shops, seven rehabilitated houses and ten houses for sale that are the subject of this case study, all on rue du Château. At the same time an old peoples' home and an administrative block comprising the post office, local tax office, and offices and workshops was started fronting the new pedestrian way being created from rue du Château to rue Jean-Macé.

6.523 *The STOK-France development in rue du Château: initiation of the scheme in early 1985*

For the site to the north of rue du Château SERL turned to STOK-France as a developer with experience of low-cost housing for sale: the houses were to be sold under the subsidised *prêts à l'accession à la propriété* loan scheme (*prêts PAP*). A first project was produced to designs by an architect proposed by SERL that clearly pleased no one very much. STOK-France described the scheme as "rather strange" (Payet, personal communication) and its apparently modernistic appearance was presumably not seen to be in sympathy with general design objectives of the PAZ. The major reason for rethinking the project, however, was STOK-France's insistence that the houses should have clearly identified and separate front doors and gardens to the rear, neither of which featured in the first scheme. A new scheme was the subject of a meeting in the town hall in May and was submitted for planning approval on 26 June 1985 by the architectural firm SUD.

6.524 *Determining the Application June–November 1985*

The submitted scheme consisted of ten terraced houses of two and three storeys with pitched roofs, separate doors and gardens to the rear, the whole thus appearing more traditional than its predecessor and more in accord with STOK-France's own design preferences as a builder developer of small houses. Various problems emerged when the scheme was presented.

a) *The form and appearance of the scheme.* Interviews revealed that the scheme still did not conform to the conceptions that the actors had for the area. For the commune of Vénissieux it was evidently more important that the development took place than that it should be precisely right (Fischer, personal communication) and that too lavish an attention to detail was inappropriate in an area which, for all that its street patterns were ancient, had few old buildings and was largely destined to be redeveloped (Kobialka, personal communication). For the planners, it appeared to be a less than sensible use of the site given its orientation. They had envisaged a scheme with front gardens and small *cours anglaises* at the rear; rear gardens will largely be in the shadow of the church (Bonacorsi, personal communication). Yet none of these objections appear to have surfaced in the formal record of negotiations.

b) *The relationship of the proposal to the zoning of the PAZ.* COURLY's examination of the scheme suggested that it infringed the limits of open space and car parking area by 30 per cent. The regulations of the PAZ allowed, however, a certain flexibility in the extent of the open spaces, and a compromise was reached whereby STOK-France incorporated an eleventh garage into the scheme to compensate for the loss of parking space.

c) *The relationship of the scheme to the pedestrianised rue du Château.* The scheme would limit the street to five metres at its narrowest point and to six metres in front of the houses to be rehabilitated, which was regarded as too little. The town

hall staff at Vénissieux recommended the moving of plots one to four to meet this objection.

d) *A right of access to the walls of the church.* The commune agreed that plots nine and ten would have to be modified to allow the right of access (*droit d'échelle*). This could be done without any modification to the scheme.

All three problems were resolved at a meeting in late August and a revised scheme submitted by 6 September. Approval was granted by the mayor on 19 November 1985. The fact that by June 1986 work had not started on site apart from clearance is no reflection on the planning process. STOK-France maintain that SERL had implied they owned all the land affected by the proposal, only for it to become clear later that ownership was divided between SERL, COURLY and two other owners (Payet, personal communication).

6.53 Analysis

The significant factor of this case is the role of the PAZ in helping to define the conditions under which development would be acceptable. Within a ZAC the PAZ replaces the POS, and therefore like the POS is a legally enforceable document, carrying with it its own regulations. The focus of the analysis must therefore be on the application of those regulations and the interest of the actors in the way in which they were applied.

6.531 *Procedure*

For a document whose zonings and boundaries have a legal force, the PAZ for Vieux Bourg is curiously imprecise and is quite clearly intended to be diagrammatic.

The impression is yet further reinforced by the fact that the regulations allow a "certain flexibility" in the definition of the open spaces. The impression is reinforced by the assertion by STOK-France that SERL had suggested they do a project and the limits of the block would be defined afterwards (Payet, personal communication). The PAZ was thus being made to operate at two levels; as a document in the hierarchy of statutory machinery set up by the *code de l'urbanisme* and as informal guidance to the developers being used in negotiations both by the authorities (the Agence d'urbanisme, the commune of Vénissieux, and COURLY) and by the *aménageur*, SERL.

The evidence of this case suggests that it operated badly on both counts. It was manifestly absurd to use the PAZ as a precise definition of boundaries, when the zonal boundary lines represented several metres width on the plan. At least, however, the regulations expressed the diagrammatic nature of the plan, and there was no attempt by the prefect to challenge the legitimacy of the decision, even though the scheme as approved still exceeded the limits of the zone defined for it in the PAZ. On the other hand as a diagram, the PAZ did not contain all the constraints that a future development on the site would have to accommodate. The width of the rue du Château for example, emerged as a controlling factor as did the right of access to the rear of the gardens around the church only after the application had been lodged. Nor was there much guidance on the form of the building except insofar as the PAZ specified the maximum height of three storeys, though continuity of the urban fabric was clearly implied in the way in which the plans had been prepared.

Compared with some of the other case studies in this thesis the timescale of the informal and formal procedure was relatively short; the delays after the application was granted approval have to do with land ownership and not with planning control. Yet the five months which it took to process the application could conceivably have been reduced if the guidance offered at the outset had been clearer. It is necessary to look at the interests of participants in the process to understand both

why the process took the form that it did.

6.532 *Interests of Participants*

The commune of Vénissieux, COURLY and the Agence d'urbanisme were united in their desire to see development take place in the Vieux Bourg. For Vénissieux the anxiety over the 'failure' of Les Minguettes and the increasing rundown appearance of the dreary town centre, made it necessary for there to be action to restore morale. Vénissieux needed a new image and one that respected human scale. For the Agence d'urbanisme, a real concern for the quality of the environment coupled with, perhaps one might infer, a need to maintain face with the commune, also made the development a necessity. SERL as developers of Les Minguettes, had perhaps also to win back the commune's confidence by showing they could carry out attractive development. Moreover to have lured STOK-France away from its habitual green field sites was considered something of an achievement, for which a development of houses with gardens was a relatively small price to pay. The open-endedness of the brief to the developers may reflect a desire not to hamper the course of development.

There is another possible interpretation of the open-endedness, however. Given the large number of participants in the process the vagueness of the information offered to the developer at the outset may reflect a desire on the part of the technical experts to keep control over the form of the development, through negotiation. One of the problems of the French system appears to be the way in which the intentions expressed in the regulations are interpreted in their application. Permissive regulations which convey discretionary powers give, particularly to members of the Agence d'urbanisme, a greater control over the process. The zone in the PAZ was to be interpreted as "espace préférentiel" (the preferred area) and the important thing was to be a "rapport d'échelle" (a relationship of scale) and not a

"rapport géométrique" (a geometric relationship) between the scheme and the buildings opposite (Bonacorsi, personal communication) which was to be determined during discussions with the developer.

STOK-France were clearly well placed to insist on a scheme of the type with which they were familiar. Presumably locating in the centre of Vénissieux was a sufficient act of faith on their part for them not to wish to try an innovative house form or layout that they could not be sure of selling. They were in a stronger position to reject the first scheme prepared by the architect suggested by SERL because none of the other participants appeared to be attracted to it either. They would naturally wish to push the flexibility of the zoning to its utmost to achieve the kind of layout that was closest to the type they were most used to building.

6.533 *Conclusions*

This case illustrates the kind of fetters that a regulatory system of planning appears to impose on those who are concerned with the promotion and control of development. The PAZ clearly recognises the inadequacy of legal precision in coping with a complex programme of reconstruction and rehabilitation. Yet in the absence of formal rules, there seems to be a hesitation in preparing policy guidance in terms of performance criteria in isolation from specific design solutions. The appointment of a consultant architect for the ZAC is perhaps a measure of the uncertainty, although his existence did not appear to have been significant in resolving the difficulties in this case.

If the departure from strict zoning and legally enforceable regulations leaves a vacuum in the planners' armoury of policy documents it creates a problem, too, in the accountability of decision-making. With the POS and PAZ expressed in clear terms, the decision-makers are accountable before the law for the development

control decisions they take. Where the regulations permit discretion, the pattern of accountability is immediately lost; power rests with whoever has control over negotiation with the developer, and there is little redress against the exercise of that power. The appointment of an independent expert in the form of the consultant architect may of course be interpreted as a recognition of that fact. The planner concerned specifically alluded to the need to share responsibility as a reason for his appointment (Bonacorsi, personal communication).

The effect of appointing outside experts may indeed be to help individuals within the system being subjected to all the odium in the event of difficulty, but it can hardly be said to have increased accountability, and it certainly did increase the number of participants in the process. Indeed the case also demonstrates how the numbers of different organisations involved in such development may make the process unnecessarily complex for a developer. The complexity in its turn is a reflection of the relative weakness of the communes, and their need to turn to outside organisations for professional and technical advice. The commune of Vénissieux may feel that in the past they have been too dominated by COURLY and SERL (Fischer, personal communication), but practically they have had little option but to seek such help to carry out their policies for the town. This multiplicity of organisations must be yet another brake on the effectiveness of the system.

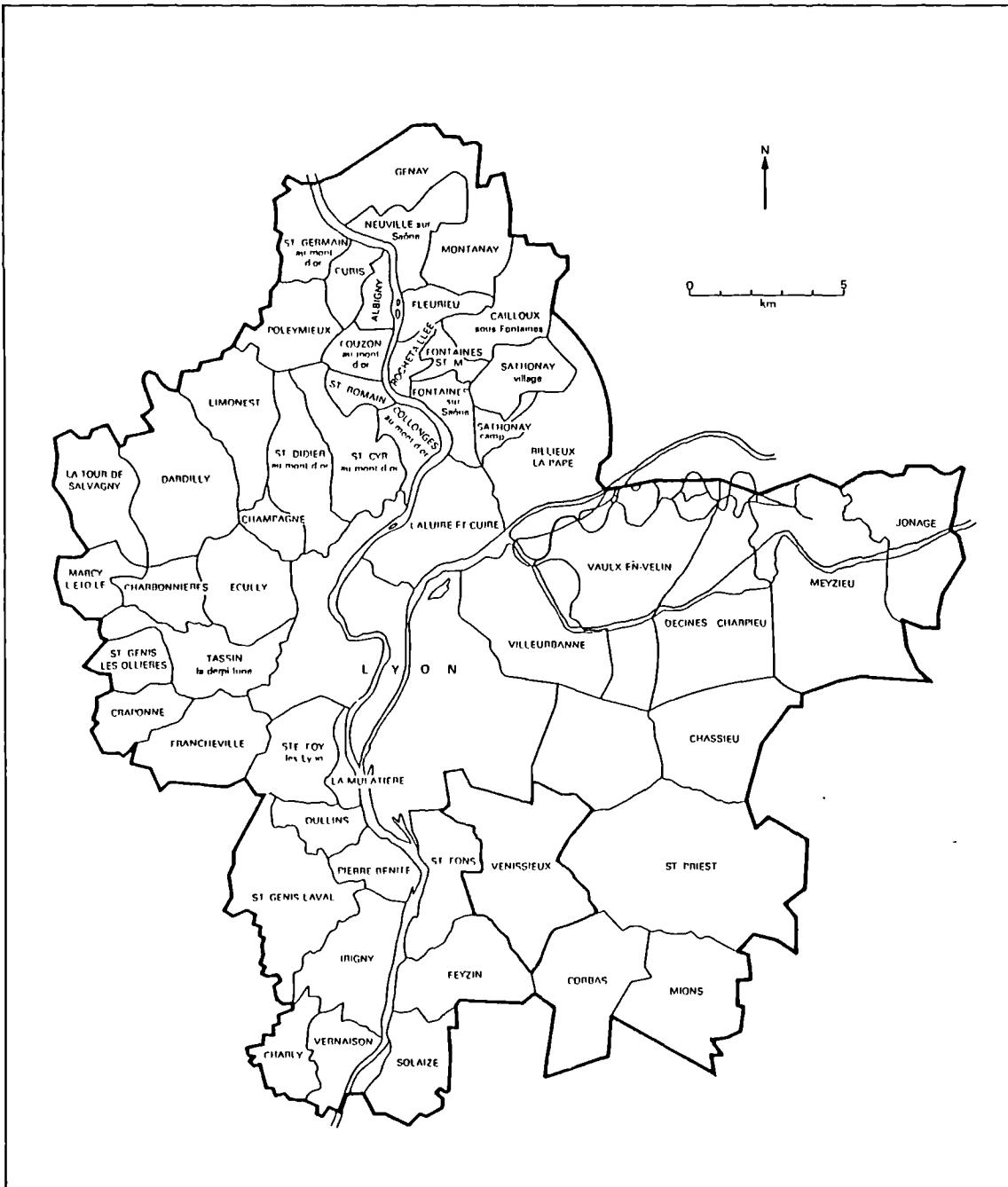


Figure 6.51 Commune of Vénissieux: location map

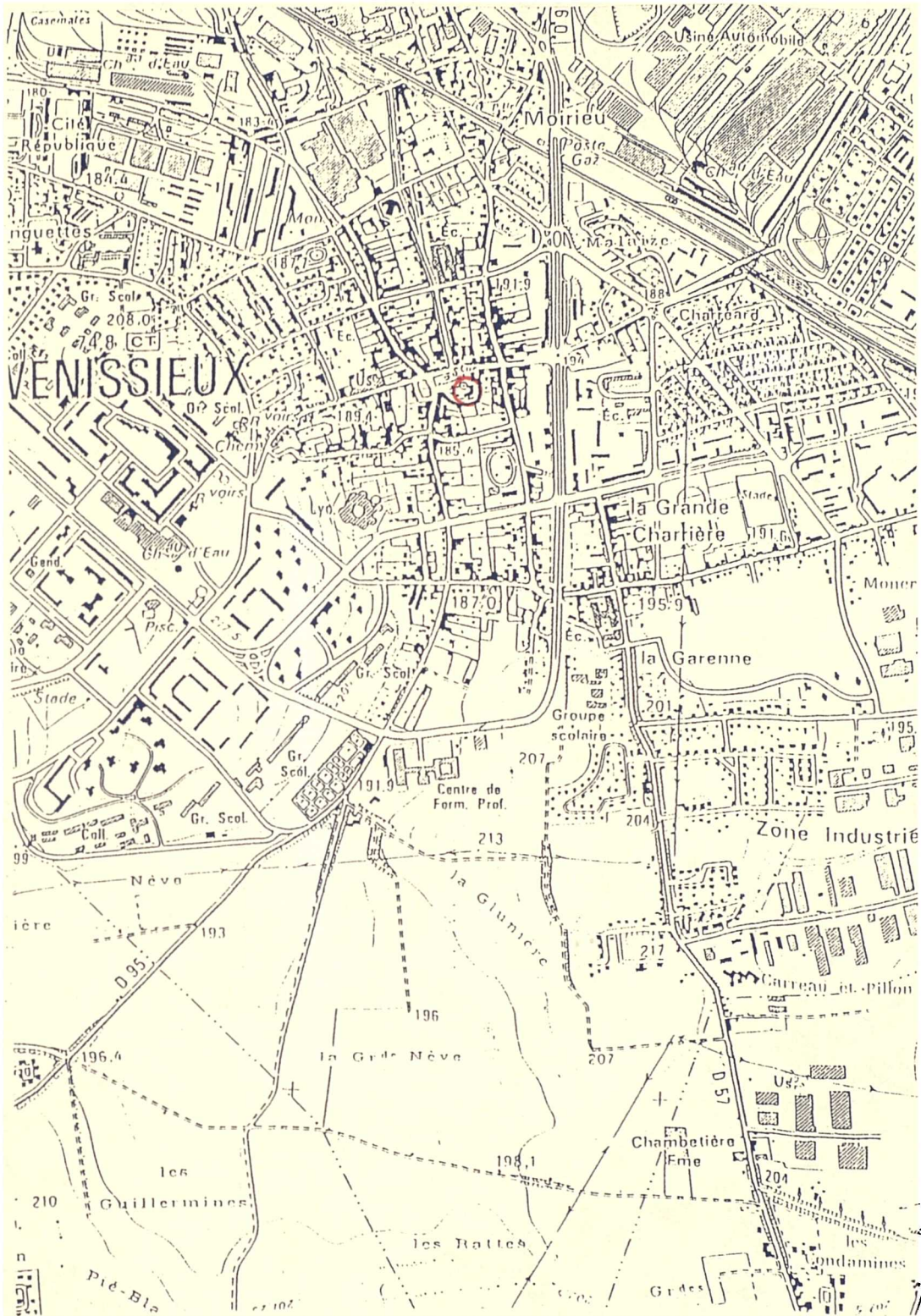


Figure 6.52

Rue du Château: location map

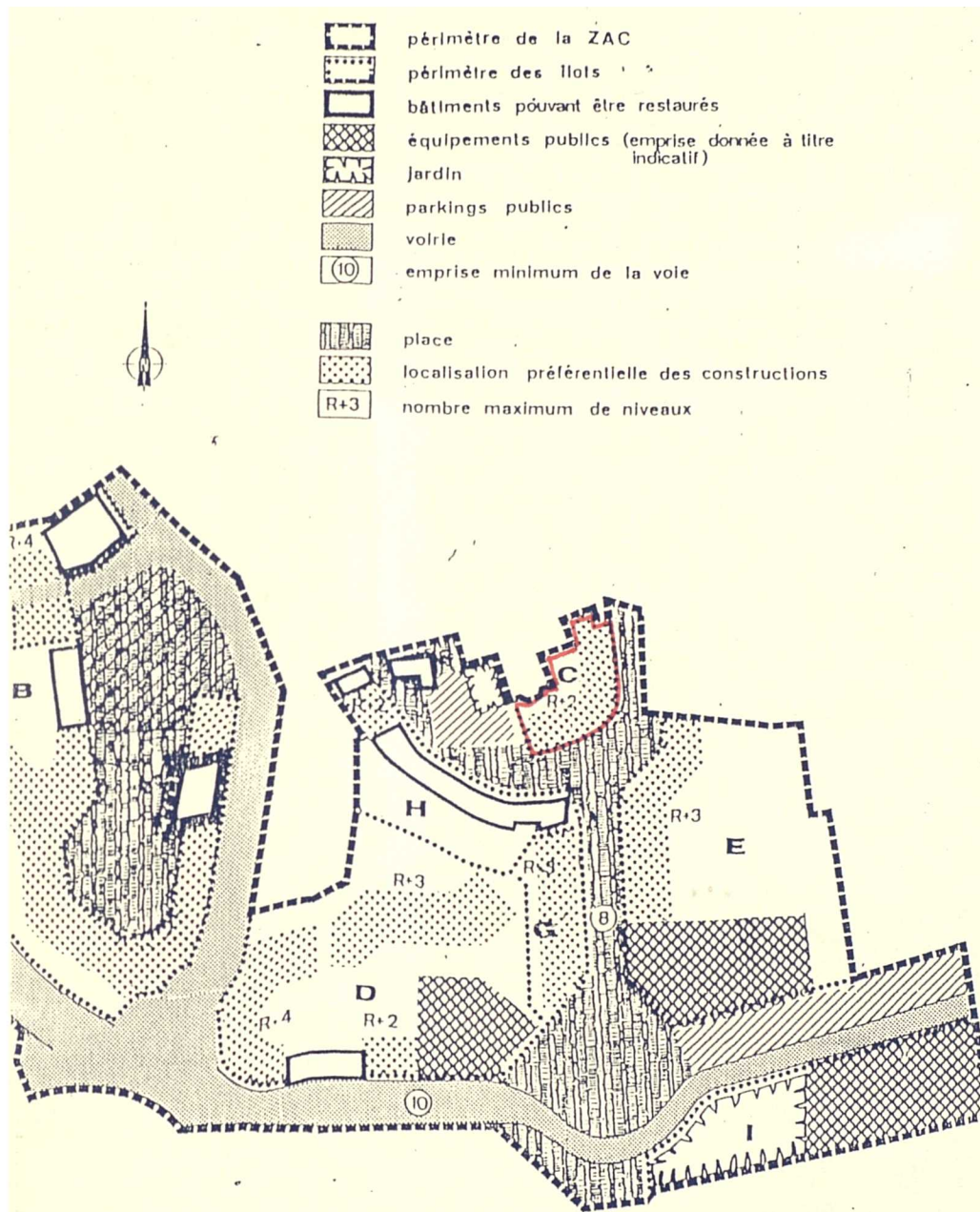


Figure 6.53

The PAZ for the Vieux Bourg

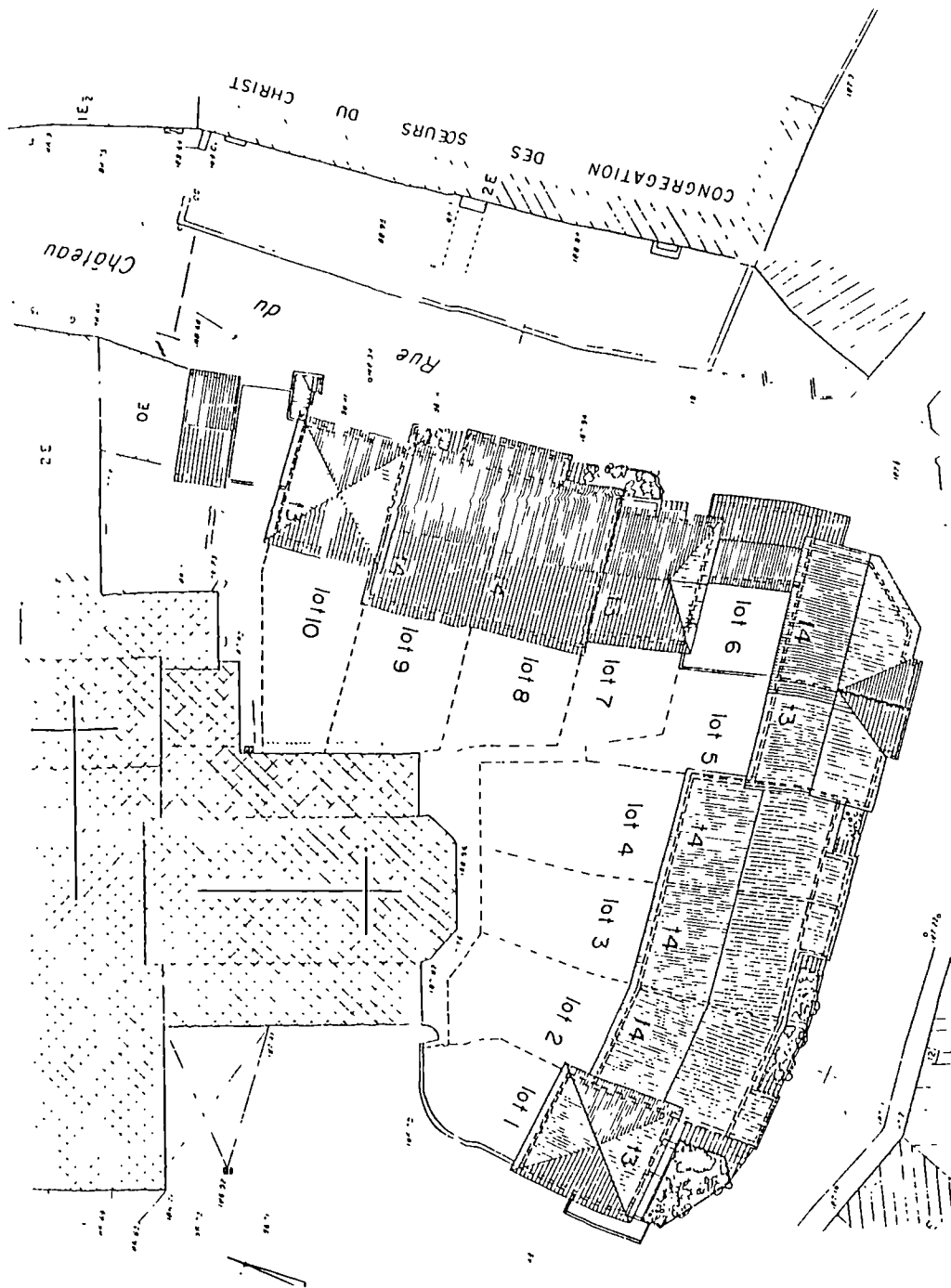


Figure 6.54 Block plan for the scheme as presented on 26 June 1985



Figure 6.55

Rue du Château site looking west: the houses opposite from the southern boundary of the street



Figure 6.56

Rue de Château site looking north towards the church

6.6 Transports Griset Vernaison

6.6.1 Introduction

This case concerns the extension to an existing road haulage depot in the commune of Vernaison in the south-west of COURLY. The firm had been set up shortly after the end of the war and by 1986 was a thriving business run by the son of the founder with a second depot in south-western France. The particular interest that this case presents is that the Griset depot lies in a semi-residential, semi-agricultural part of Vernaison where there is no intention to allow further commercial or industrial development; in British terms the case is one of a non-conforming user with established use rights. The questions of whether to allow the extension, whether the extension would increase the impact of the company on its surroundings, and of what the balance of advantage for the public interest might be make this case a classic one, heightened by the vigorous opposition of local residents. The underlying issues are, therefore, how the zoning regulations cope with the exception to the general rule and how the French development control system deals with objectors.

The facts of the case in detail have been the subject of some squabbling among the participants, although in essence the history is simple enough. M. Griset *père* had set up the business in 1948, since when it had expanded on three occasions: in 1953 with addition of a workshop; in 1978 with an office building and depot with trading bays and 1985 with doubling of the 1978 depot by the addition of 1,959 square metres and the creation of a parking area for lorries for which further land had been bought. The local residents claimed there were six, not three, extensions. They regarded the early development of the site in the early 1950s as comprising two phases; they took the office and the depot of 1978 as two separate stages, and the most recent expansion as likewise consisting of separate parts. Certainly the application for the extension to the depot in 1985 was followed by a separate application in January 1986 for the laying out of an extensive parking area. However the stages of development are recorded, there is no disagreement that whereas in 1948

the business was a little family enterprise run by the older M. Griset with two lorries, by 1986 it was a major employer in the commune with a staff of some 200 and 150 heavy goods vehicles. The two most recent applications were those that were studied for this thesis. By June 1986 work had been completed on the buildings, the parking area and the boundary work was still incomplete.

6.611 *Vernaison - Le Pellet*

The commune of Vernaison has been described in the case study of Le Soleil levant in section 6.2

The hamlet of Le Pellet lies west and slightly north of Vernaison centre and is an area of scattered housing that extends into Charly. The chemin du Pellet on which the Griset premises are situated form the boundary between the two communes. Behind the frontage development cherry orchards clad the pleasant rolling hills. All the roads in the area are narrow, and houses are all individually built and of various ages.

6.612 *Participants in the process*

The principal actors in the case are limited. There is M. Griset, son of the founder of the firm; there is the mayor of Vernaison, Dupré-Latour. COURLY and the Agence d'urbanisme play virtually no role in the decision. Then there is the Association pour le respect de l'environnement et des résidents du Pellet, the local residents' and amenity association, whose role is of particular interest in this case. Finally, the Service des contentieux at the Prefecture plays a long-stop role as mediator in the dispute that ensued between Griset and the residents. In May 1986

the dispute had not been resolved, although there was by then no longer any possibility of the permission being revoked or annulled.

6.613 *The planning context*

The planning context of the case is defined for the POS for the south-west sector of COURLY approved in 1982, which defined the whole of Le Pellet as a zone UDC: "a zone of detached housing in which low density collective housing may nevertheless be permitted in certain sectors". The general presumption is against other types of development. Article 2, however, allows for certain exceptions to the general presumption against non-residential use of which the following is relevant:

"the extension, or transformation or reconstruction of industrial or craft enterprises may be permitted on the following conditions

- *that they are accompanied by a reduction of the danger, the inconvenience or the unhealthiness of an enterprise;*
- *that they do not exacerbate the general conditions of the location of the enterprise in the environment.*

(Agence d'urbanisme, 1982: Règlement p. 121)

A regulation of this kind clearly leaves room for different interpretations. It is also singularly devoid of criteria by which the level of nuisance might be measured.

6.62 Stages in Development

6.621 *Determining the application: February - May 1985: the official process*

There was no evidence on file of preliminary discussions between the applicant and his agent and COURLY and the Agence d'urbanisme. If such discussions took place, as is likely, they have little bearing on the course of the case.

The more important part of the process starts after the submission of the application on 11 March 1985. The processing initially appears to have been rapid: comments from the official committees were received by the beginning of May. Four minor problems were identified:

a) *Article 7 of the regulations for zones UDC.* The building exceeded the maximum height of 3.5 metres allowed by the regulations, because of the fall of the ground away from the front of the site. In the permission as granted, the infringement appears to have been regarded as a necessary "minor adaptation" caused by the topography and acceptable by virtue of Art. L 123-1 which while forbidding major departures allows for some flexibility in specific cases.

b) *The planting and landscaping of the site.* The Agence d'urbanisme and COURLY clearly agreed on the need for the laying out of the green space and the planting of a boundary screen of trees. These were translated into conditions on the permission requiring the banks and parking areas to be planted and trees of "minimum height of 1.2 metres to be planted at 80 centimetre intervals around the boundary.

c) *The layout of the parking areas.* The applicant was required to submit further details of the parking layout.

d) *The treatment of waste water.* A condition was imposed on the permission requiring the separation of oil wastes from the waste water from the working bay.

The applicant was forced to accept these conditions, but did so unwillingly and had not, by May 1986, implemented the condition on tree planting, arguing that 80 centimetres was too close for planting.

6.622 *Determining the application: May - July 1985: the intervention of the residents*

Given that the official processing of the application was complete by mid-May, there was no good reason for the application not to have been determined within three months of receipt. However the first signs of organised opposition emerge in May also, with the sending of a petition signed by 96 people (of whom several were members of the same family) to the mayor. But it seems fairly clear that conflict between the Griset firm and local residents is longstanding and the clashes as much at the level of personality as of genuine environmental concern. The deputy mayor talked of *vieilles histoires*; the residents themselves complained that night working had disturbed their peace for three or possibly five years. Perhaps on the advice of others, the residents formed themselves into an amenity society to be known as the Association pour le respect de l'environnement et des résidents du Pellet (ARERP), depositing the statutes of association at the prefecture on 12 June 1985 with a membership of 35. By virtue of being formally registered, ARERP had gained the legal right to make representations against the eventual decision on the application.

Presumably the delay in determining the application results from the determined lobbying of ARERP, who besides the petition to the mayor, according to their own evidence, had approached the President of the Republic, the Minister of the Environment, and the prefect. There is no evidence as to the nature of the discussions that may have taken place during the period, except through the oblique references at interviews. The only written record of this period is contained in letters sent by ARERP to the mayor and councillors of Vernaison on 17 January 1986, and the Service de l'Aménagement urbain on 10 March 1986. The factors that appear to have been decisive in this period were; the long establishment of the firm on its present site; Griset's need to expand to ensure there was no fall in his receipts; the cost to Griset of moving his enterprise elsewhere; and the lack of available

alternative sites within the commune of Vernaison. The application was granted permission on 9 July 1985, and therefore still within the four month period which is allowed for processing of applications for commercial and industrial development by Art. R421-18.

6.623 *Implementing the permission: July 1985 - May 1986: the conflict continued*

Between the grant of permission and the date of research, action appears to have been pursued by ARERP on three fronts. Firstly, they appealed to the *tribunal administratif* for an annulment of the permission. Secondly, they sought a prefectural decree to limit the nuisance caused by the 24 hour working, the bright lighting of the site and the noise. Thirdly, they complained that the work had not been carried in accordance with the permission and that therefore a certificate of conformity should not be issued.

a) *Appeal to the tribunal administratif.* The history of the appeal is short. It was not allowed to proceed because of faulty drafting (*vice de forme*): ARERP had not it seems made reference to a deliberation of the council of the association which was necessary for the appeal to be legally valid.

b) *The prefectural decree.* ARERP claim that their first approach to the prefect went without response and that it was only after writing to the Minister of the Environment that the prefect did finally respond. The action, it should be noted, was not carried out within the framework of the *code de l'urbanisme*, but under the law of nuisance and resulted in decree being issued on 10 April 1986. ARERP claimed that the decree had not been respected by Griset in the two months following.

c) *The non-conformity of the scheme with the permission.* As well as arguing for a formal review of the activities of the company the residents were also concerned that the development did not conform to the application drawings. There were two particular areas of non-compliance: that some of the loading bays and parking places to the rear of the building had been suppressed and that the vehicle washing bay was incorrectly located. Of the two, even ARERP accepted that the first was no more than "minor infringement which had little impact on the acceptability of the project". The second was more serious: the washing bay had been placed close to the boundary of the Griset site backing onto the garden of the secretary of ARERP, Mme. Desbos. She complained of the spray and of the noise when the machine was in operation.

At the time of the investigation the case was far from closed, although Griset had received his permissions for the extensions which were effectively beyond challenge. In early June a conciliation meeting was held at the prefecture to try and sort out the differences between the various parties.

6.63 Analysis

There are several points of interest to emerge from this case history. In terms of *procedure*, the value of the zoning regulations in determining the exception to the general rule must be considered. We need also to look at the extent to which the residents found it easy to make their views known and influence the decision-making process. In terms of *interest groups*, there are several issues that must be addressed. Apart from the general question of what interest each of the actors had in the outcome, the relationship of the technical officers to the mayor of Vernaison and his deputy is one such issue. Another is the perceptions that the principal actors had of ARERP and ARERP had of the system with which they were obliged to treat.

6.631 *Procedure*

Procedurally this case is straight forward. Its most striking feature is the fact the POS and its regulations offered little guidance for the decision that had to be taken, and in the absence of such clear guidance, the application appears to have been seen as hard to resist. Nevertheless it is surprising that there was no apparent discussion of whether the new extension and the car park would in fact adversely affect the environment for residents. ARERP for example considered it very strange that the road engineers had not objected, given the narrowness of the chemin du Pellet, with the implication that money had changed hands. Nothing, of course, was present in the evidence to confirm such an assertion. This case would suggest, however, that in the lack of firm legal guidance, decisions are left prey to expediency; the concept of policy beyond the regulations appears to be absent.

It must be added that it was no part of the investigation to consider whether conditions really were worse in 1986 after the development was complete, than they had been in 1985. Indeed the more significant extension of activity may have occurred in 1978 with the creation of the offices and the first stage of modern loading bays. Moreover, part of the problem appears to have been one of increased intensity of use of the existing buildings: the continuous working, with the resulting noise and disturbance from bright lights predates the latest extension.

ARERP's intervention in the process can be seen as occurring in two stages. There is first of all the informal lobbying that occurred before the permission was granted, which started before the association was formally constituted. The residents were alerted to the application for the extension by the large display panel that Griset erected at the front of his site. From Griset's point of view this might be said to have been tactically unwise, given that the only other way that residents would have known about the application would have been if they had regularly consulted the applications lodged at the town hall. The effect of the petition was not to alter the

decision taken, but at least, so it would appear, to delay the grant of permission.

The second stage was only possible after the granting of permission when the decision could be challenged in the *tribunal administratif*. But, as we have seen, the technicalities of the appeal procedure defeated ARERP, in spite of the help they received from the Service des contentieux. Nevertheless, as a result of considerable persistence on their part, they did finally persuade the prefect to issue a decree limiting the nuisance that the depot caused. Possibly the challenge under the law of nuisance was bound to be more fruitful than opposing the planning permission. Nevertheless on each count they were forced into responding to a *fait accompli*.

A final point to note is that whereas in comparison to some of the other cases studied for this thesis, the procedure in this case appears relatively 'light' and relatively swift. Yet for M. Griset, it was neither. He complained of the bureaucracy and of the inappropriate conditions imposed on his permission, all of which, he argued, conspired to make his task of staying in business even more difficult.

6.632 *Interests of participants*

The mayor's balance of interest in this case is clear. Certainly an approval of the extension led to the vociferous opposition of the residents, and therefore to an electoral disadvantage, but the increased tax base was clearly of greater value and conversely the loss of a commercial establishment in a commune which has little other industry, should Griset have chosen to move, would have been disastrous. Griset was therefore in a strong position to propose what in effect were conflicting arguments: that on the one hand moving from the present site was too costly to countenance, and on the other, that if he was not granted permission to extend he would have to move. The threat to move was too serious to be taken lightly.

More problematic was the role of COURLY and the Agence d'urbanisme, whose response to the proposal appears muted. Several interpretations are possible. The first might be that the proposal did not fall neatly into any given category of uniformity or infringement of the regulations. Whatever decision was taken therefore did not threaten the substance of the POS, and the POS had little bearing on the decision. Neither COURLY nor the Agence needed to feel too concerned about the outcome. Another might be that because the case had little urban design significance the Agence took less interest in the case's outcome. A third interpretation could be that both COURLY and the Agence have an interest in retaining the mayor's goodwill without which the ability to propose policy which is acceptable is severely hampered. The technical officers, therefore, distanced themselves from the decision-making, perhaps because of their lack of interest in the matter to be decided, or perhaps because of their interest in not interfering in the process when the issues at stake were purely local to the commune.

The residents were not able to rely on the mayor in his traditional role of protector of his people. They perhaps correctly perceived their interest in circumventing the local network by appealing ever higher up the hierarchy, and ludicrous though writing to the President of the Republic may appear to have been, they claim that only when they had written to Paris did they get action from the prefect to resolve the question of nuisance. They also correctly perceived that it was to their advantage to form themselves into an amenity society, and thereby give themselves legal status in the opposition to Griset.

6.633 *Conclusions*

The elements of this particular case are curiously familiar: a determined operator who needs to expand to stay in business; elected representatives determined

not to lose an important commercial asset; residents adversely affected and vociferously promoting a campaign against the development. Several significant points emerge, however.

Firstly, the POS appears to offer no security in this case: the decision was taken primarily in terms of expediency; the freedom to interpret the regulations that the articles of the regulation permitted does not appear to have been used to make an assessment of the environmental impact of the scheme. Secondly, because the regulations were not materially infringed by the decision, or the POS undermined, technical guidance did not focus on whether the scheme was acceptable or not, but on how the outcome should be implemented and the conditions that would be necessary to impose on the eventual permission. Thirdly, the residents found the cards stacked very heavily against them in trying to oppose the development on planning grounds, and their recourse to the law was foiled on technical grounds that might prove to be a pitfall for any group in ARERP's position. Indeed, they were only able to make any headway under the law of nuisance and that only with difficulty. Finally, in spite of ARERP's forming itself into a properly constituted body, the opposition could nevertheless be presented by the elected representatives and the technical officers alike, as no more than a neighbourhood dispute which carried no important point of principle. It was in the interests of the mayor and the officers of COURLY to do so, of course; but the case does highlight the way in which French planning law deals with objectors solely in terms of private property interests.

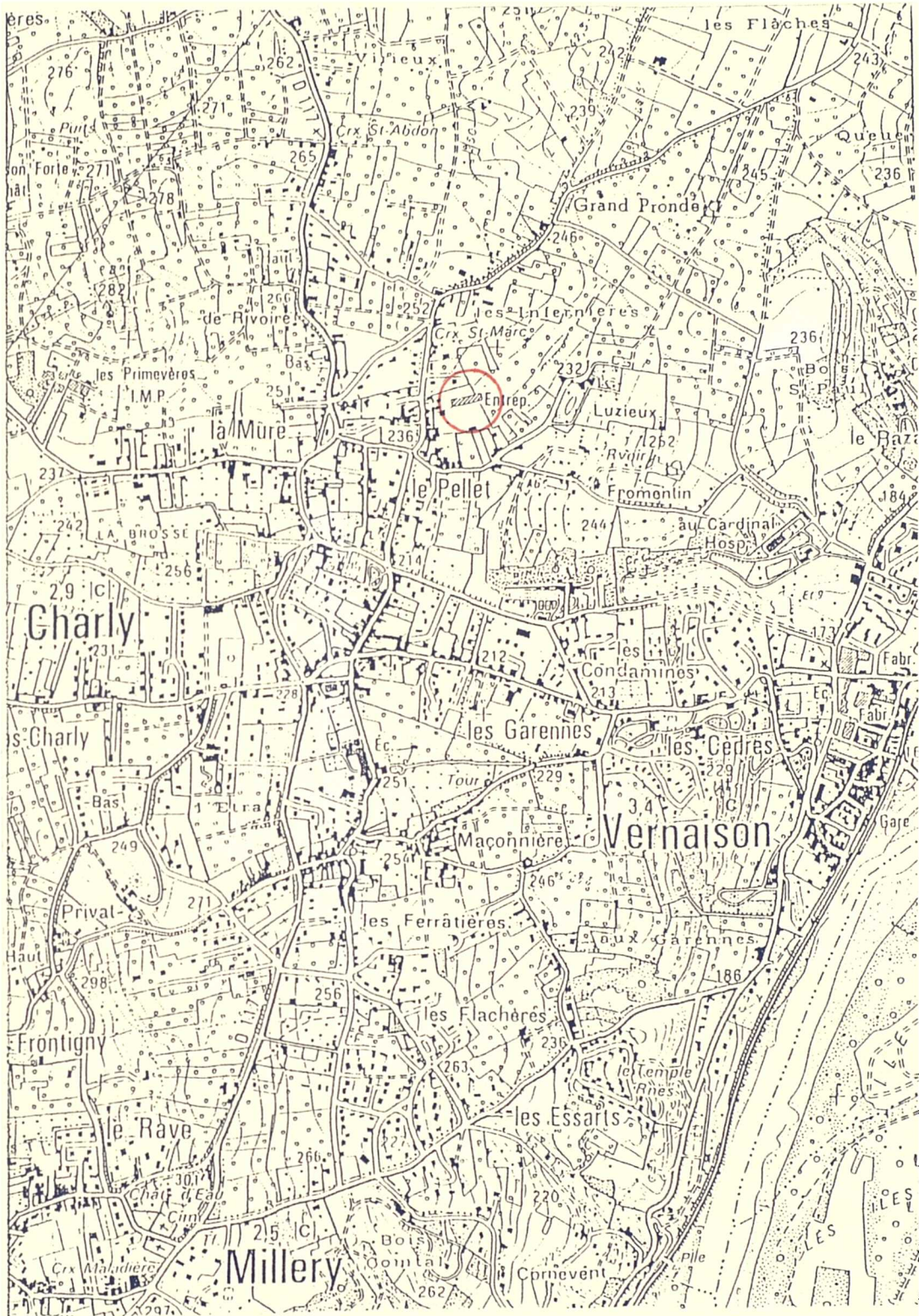


Figure 6.61 Transports Griset: location map

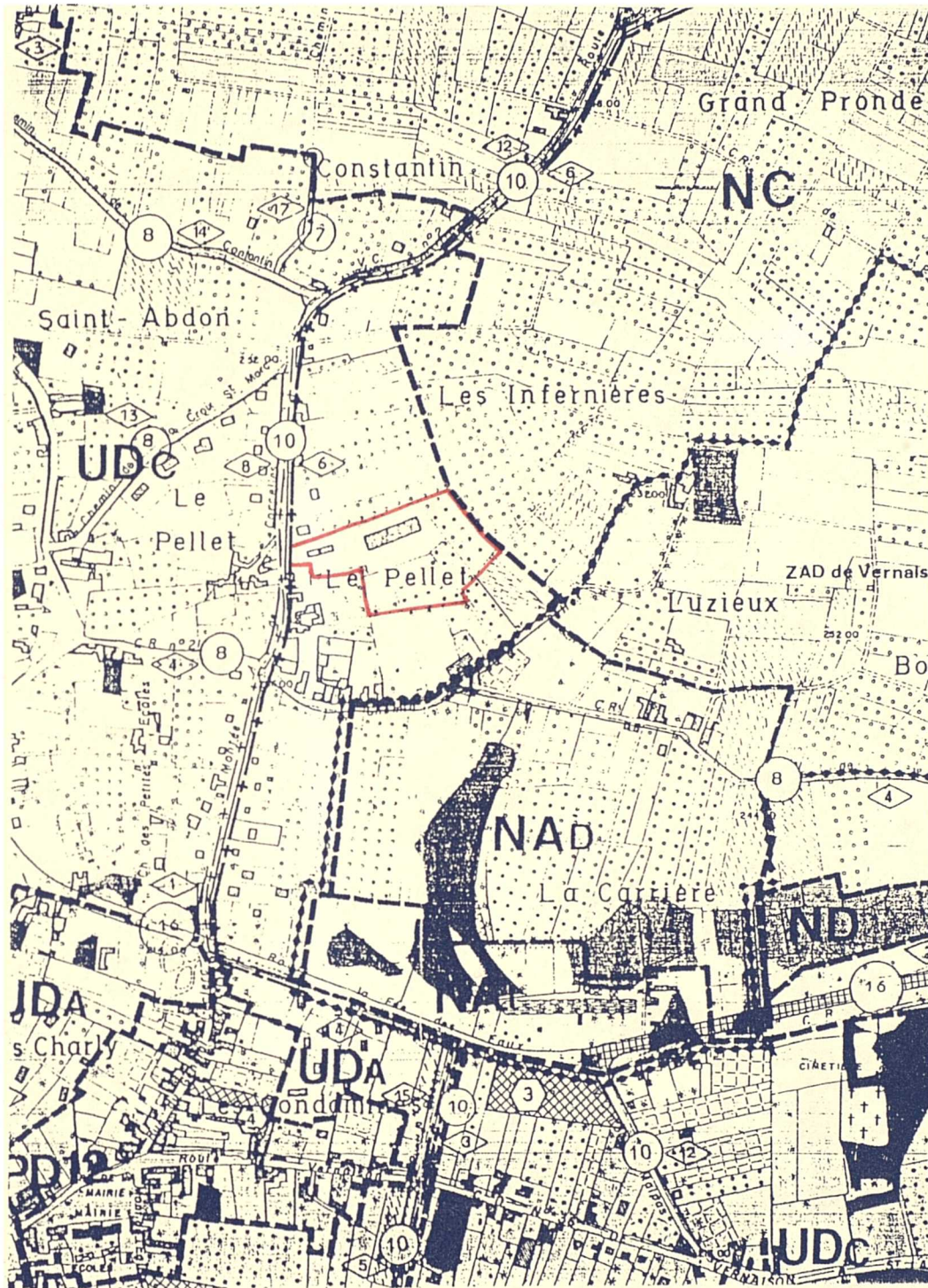


Figure 6.62

POS for the south-western sector of COURLY showing Transports Griset



Figure 6.63 Transports Griset showing the 1978 extension and offices



Figure 6.64 Transports Griset. The 1985 and 1986 extensions are indicated by the lighter coloured roof coverings and concrete work

Those who argue that decentralisation is the first step towards total anarchy might wish to cite this case in evidence. For the mayor was able to exercise wide discretion in the decision, and the accountability for that decision was far from clear. It is perhaps more to the point to note that in the absence of clear guidance in the POS, the system appears to afford little redress for those who feel threatened by the decision taken. Even if ARERP's appeal to the *tribunal administratif* had not been faulted on a technicality, it is doubtful whether they would have been able to oppose Griset successfully given the open-ended nature of the regulation. Thirdly, the fact that the technical services act as agents for, and are not directly employed by the commune, appears to make it possible for them to withdraw, for whatever reasons, from the responsibility for the ultimate decision. Yet it could be argued, that technical advice is needed precisely when, in such cases, a mayor is faced by a problem that is inevitably clouded by his own direct involvement in the affairs of the commune.

6.7 Current Cases

6.71 Introduction

The three case studies incorporated in this section were all in the process of being determined at the time of the empirical survey undertaken for this thesis. They are presented together because they are significant primarily in terms of the pre-application negotiations that appear to be an essential feature of the French development control system. They are also revealing of the extent of the power of elected representatives in the process, in one case by the references made to the mayor *in absentia*. Unlike the previous case studies, none of these development proposals contained a major difficulty, although there was some discussion about the interpretation of the regulations in one of them. Two of the cases are revealing of the use that is made of the *consultation préalable* in the commune of Lyon itself, which seems to formalise the informal procedure and bring together technical advice

and political input from the deputy mayor responsible for planning, Moulinier. It also allows applicants direct access to the decision-makers.

6.72 Place de la Reconnaissance: Lyon 3ème Montchat

The development proposal consisted of a block of 20 flats over shops at the corner of rue Bonnand and cours Richard-Vitton very close to the boundary of Lyon and Villeurbanne at Maisons-Neuves. The developer was the small firm SOGERIM (Société générale des Études et Réalisations immobilières) whose main activity is in the field of social housing for sale under the *prêts* PAP loan scheme. The architects for the scheme were the local firm, Sagnard, Ballandras, Mirabeau. The development fell within part of the zone URM of the POS for Lyon where a continuous street frontage is required. It is perhaps interesting to note that the architects were not simply acting as agents for the developers, but took a key role in the development process. The architects had themselves found the site and had interested SOGERIM with whom they had already undertaken three previous projects. The architects claim that the decision to develop is often taken in the light of urban design considerations. They had, for example, considered buying three more parcels in cours Richard-Vitton, but the unwillingness of one of the owners to sell would have resulted in that plot being sandwiched between the proposed development and an existing building. The architects had therefore not proceeded to purchase the other two, and preferred to wait to see the three plots developed together.

M. Ballandras, the partner in charge of the project had asked for the meeting with the *consultation préalable* because of a desire to ensure that all difficulties were resolved before the application was lodged. The scheme had not been seen before, and the architects came with two alternative design solutions. The first of these proposed a frontage simply onto rue Bonnand and left an empty corner above the ground floor shops. The second proposed a frontage that returned around the corner

to provide an elevation to cours Richard-Vitton. Unsurprisingly the consultant-architect and the deputy mayor favoured the second solution, but this had been the intention: the architects also favoured the solution, which would be somewhat more costly to build, and needed the decision of the *consultation* advice to exert leverage on SOGERIM.

Only two other points retained the attention of those present at the *consultation*: the provision of adequate car parking at one or two places for dwellings (Art. URM 12), not indicated on the plan and the small open space at the rear optimistically labelled "terrace" (terrace) on the plans but as the note of the meeting recorded could only properly be considered as a "courette" (little court). The architects were, however, encouraged to proceed with the formal submission.

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6.73 23-27 Boulevard de la Croix-Rousse: Lyon 4ème Croix-Rousse

This case consisted of a proposal to develop the site of a large 19th century villa in Croix-Rousse as a residential home for the elderly, providing medical and residential care. The proposal was a sophisticated solution in that it retained the existing villa as a day centre and installed a new block at right-angles to the street which gradually increased in height away from the street. This not only allowed the surroundings of the existing building to be retained, but also created a relationship with a development proposal for the adjoining site, 21-23 boulevard de la Croix-Rousse, which had been approved but not implemented at the time of the study.

The developer was a charitable, religious organisation, the Association des Amis des Oeuvres protestantes (AOP) who had already developed one such centre in Lyon. The architects for the scheme Mortamet, Vidal, Manhès are a Lyon-based practice whose working area covers the Rhône-Alpes region and are specialists in hospital design. The development proposal fell within a zone URM of the POS of

Lyon where no indication is given of continuous or discontinuous frontages in new development. The block in which 23-27 boulevard de la Croix-Rousse is situated is indeed already mixed. Along the boulevard with its double row of chestnuts are the large villas of the 19th century, but to the rear is rather more modest terraced housing. Though much work had still to be done on the financing of the project, in seeking the Ministry of Health approval and in reaching agreement on a contract to sell with the two owners of the site, the architect was seeking preliminary approval from the *consultation préalable* to smooth the path to the eventual submission of an application for permission to build.

The scheme was sophisticated not only in its handling of a constrained site but in its approach to tactics. M. Manhès, the partner in charge of the project, believed that retaining the existing villa would provide a good environment for the elderly residents, and was a sensible use of resources given the villa was still in good condition. But there was a tactical advantage in that next door to the site lived the president of the local residents' association who had objected vociferously to the proposal to demolish no. 21 boulevard de la Croix-Rousse. The scheme was therefore likely to satisfy residents' objections which might weigh with elected representatives. A further tactical advantage was sought by offering an option on the use of flat or pitched roofs on the scheme: and a model was presented with detachable roofs. It was perhaps hardly surprising in these circumstances that those present at the *consultation* gave their blessing to the scheme subject only to the planting of trees to replace those that would be lost in the development, and the making of a clear distinction between old and new in the connecting block.

6.74 Lotissement Avenue Victor Hugo/Chemin des Contamines; Rillieux-la-Pape

The development proposed in this case was for a *lotissement* on NA zoned land in the northern suburb of Rillieux, consisting of lots for grouped and semi-detached houses and was therefore in general accord with the POS regulations which permitted grouped, semi-detached or detached houses in that zone. The scheme was being discussed at an informal meeting with officers of COURLY and the Agence d'urbanisme on 19 June before the submission of an application for permission to develop. Though the scheme was broadly acceptable, a number of problems were identified.

a) *The provision of open space.* The POS regulations required 15 per cent of the area to be devoted to green space and there was argument as to whether that had been achieved. The architect argued that including the little cul-de-sac turning heads ("placettes") and a strip of land in the ownership of COURLY which was agreed to be essential to the successful development of the site the total was 18 per cent. The officers of COURLY argued that the COURLY land could not formally be part of the application for permission to develop and that turning heads were not what was intended as open space by the regulations.

b) *Pedestrian routes.* The representative of the Agence d'urbanisme asked for a proper consideration of pedestrian ways through the site.

c) *The cession of the COURLY land.* As noted above, the strip of land to the north of the site was considered essential to the scheme, and much discussion centred on how the cession was to be achieved. No one at the meeting objected to the principle, but the process was not made clear until near the end. Officers of COURLY's Service foncier, responsible for COURLY's landholdings, suggested that it would require a decision of council backed by ministerial approval, both of which

would depend on the agreement in principle of the mayor of Rillieux to the scheme.

d) *Problems with semi-detached houses.* Some considerable time was spent discussing whether the implementation of the block plan would be possible, particularly for houses drawn as being linked by garages. The officers expressed concern that it would be difficult to prevent abuses of the scheme when individual purchasers built houses. The possibility of co-ownership was voiced as a means of solving the problem, but no resolution was reached.

e) *The attitude of the mayor.* Throughout the discussions, the attitude of the mayor was evoked as an important criterion in the decision-making process, although no one present was able to say what his attitude would be. A DDE representative suggested by analogy with a scheme outside COURLY, that the overall appearance of a scheme and its relationship to its surroundings was likely to be more important to the mayor than a strict adherence to the letter of the regulations. The architect proposed a site visit to a scheme at Marcy l'Étoile on the western edge of COURLY which might help convince the elected representatives of the appropriateness of the scheme.

By the end of the meeting a procedure had been established for the following stages. First of all the architect was to discuss with the representative of the Agence d'urbanisme the question of pedestrian routes and open space. This would then lead to preliminary discussions with the mayor of Rillieux. Assuming that the mayor was in favour of the proposal, the question of the land in the ownership of COURLY would be resolved.

6.75 Discussion

The three cases make explicit the role of informal negotiations in the French development control process, but also highlight differences in procedure and the exercise of authority in different communes. The *consultation préalable* offered clear advantages to the architects of the Croix-Rousse and Montchat schemes because they were able to tap both technical expertise and an expression of political will at the same time. It was therefore shortcutting the lengthier process that faced the architect of the *lotissement* at Rillieux, who evidently feared that he would spend much time being shunted between officers and elected representatives. The *consultation* also served an important role in giving the officers a clear political lead. Yet it says much, both about the nature of the system and the desire of the elected representatives of Lyon to keep control over decisions on developments that the *consultation* took place with the *architecte-conseil*. It appears to suggest a desire on the part of the commune's representatives to remain aloof from the traditional bureaucracy by seeking outside independent advice to temper the recommendations provided internally.

The commune of Lyon may feel that they exercise control more decisively if the process is formalized by a monthly session in this way. The power of the mayor of Rillieux was apparently as important to the process of approving the *lotissement*, however, and the constant references to the mayor at the meeting of 19 June cannot be understood in the same light as a planning officer's reference to the planning committee in Great Britain, as an appeal to higher authority to boost the advice being offered. The uncertainty as to the likely reaction appears genuine. The absence of knowledge, however, gave the officers of COURLY and the Agence d'urbanisme an important power: they could be seen to be mediating the proposal to the mayor, important as both a means of maintaining their standing with the commune and as a means of keeping control of the process. The control over the informal process that these meetings represent therefore also represents the key to the decision-making

power within the system. Indeed it might be argued that a powerful commune like Lyon has much to gain by using a formally constituted *consultation* than a smaller commune where power is more effectively wielded in the traditional manner, which nevertheless leaves the officers more scope to control the outcome.

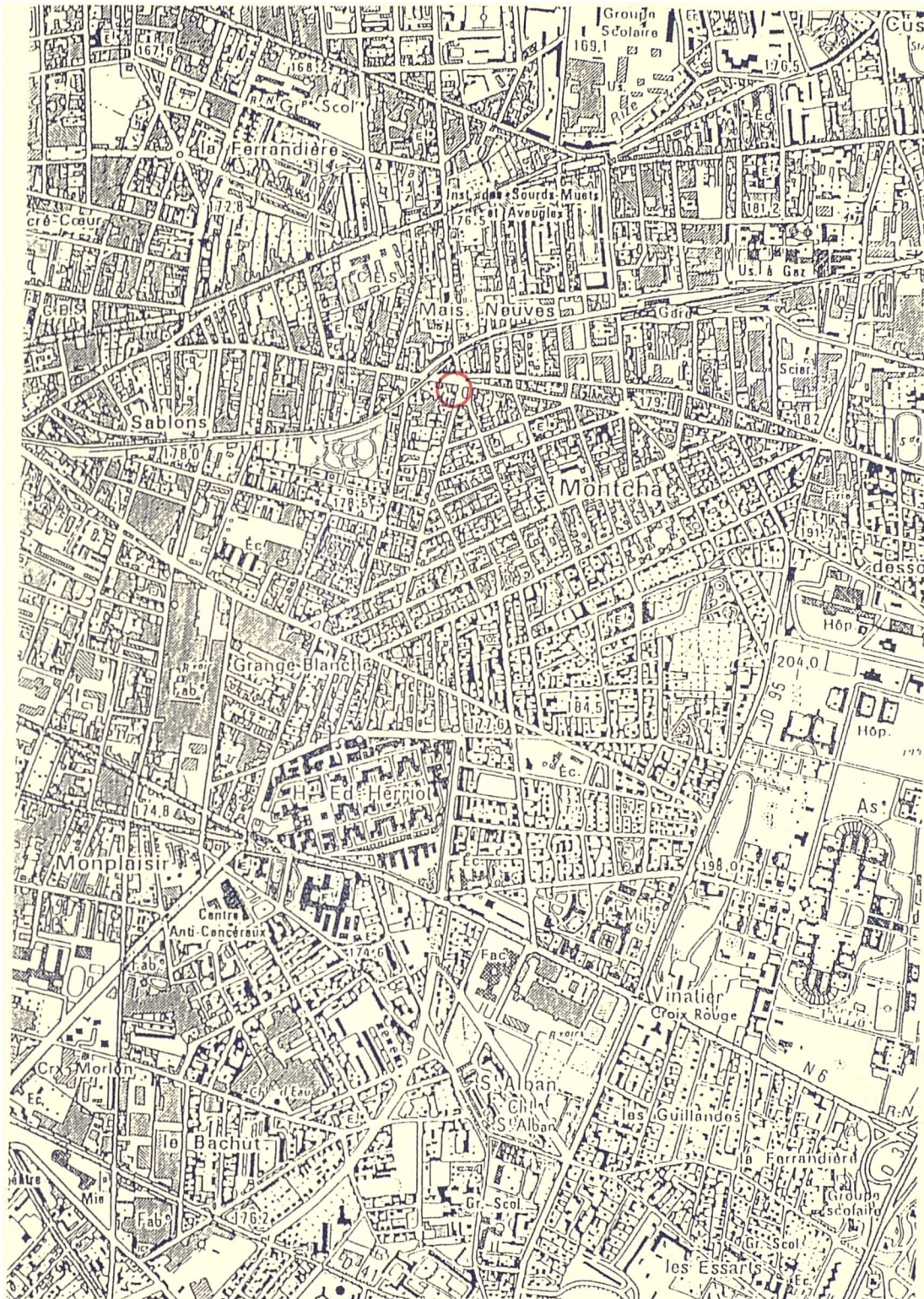


Figure 6.71 Place de la Reconnaissance: location map

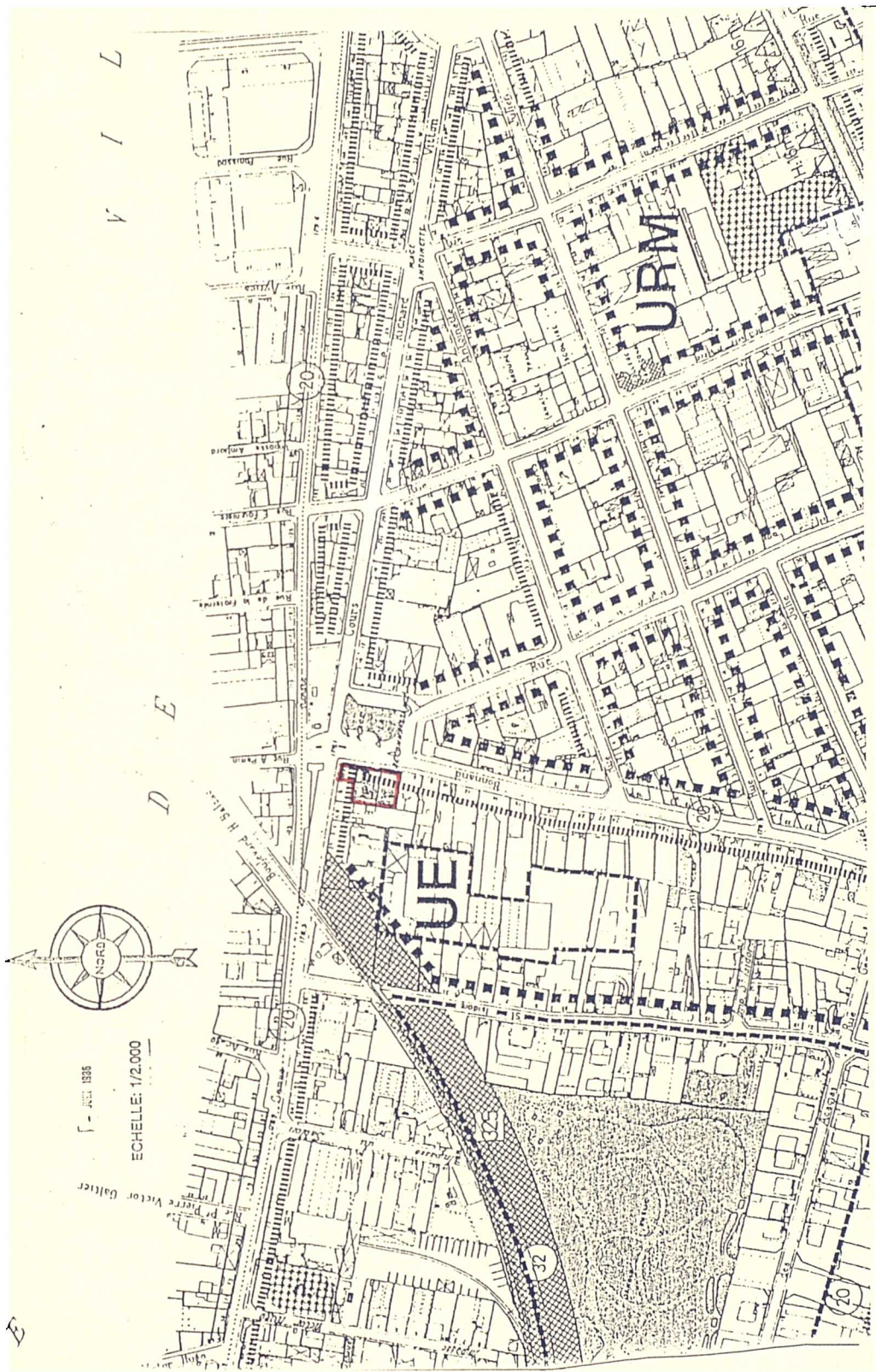


Figure 6.72 POS for Lyon showing place de la Renaissance



Figure 6.73 Boulevard de la Croix-Rousse: location map

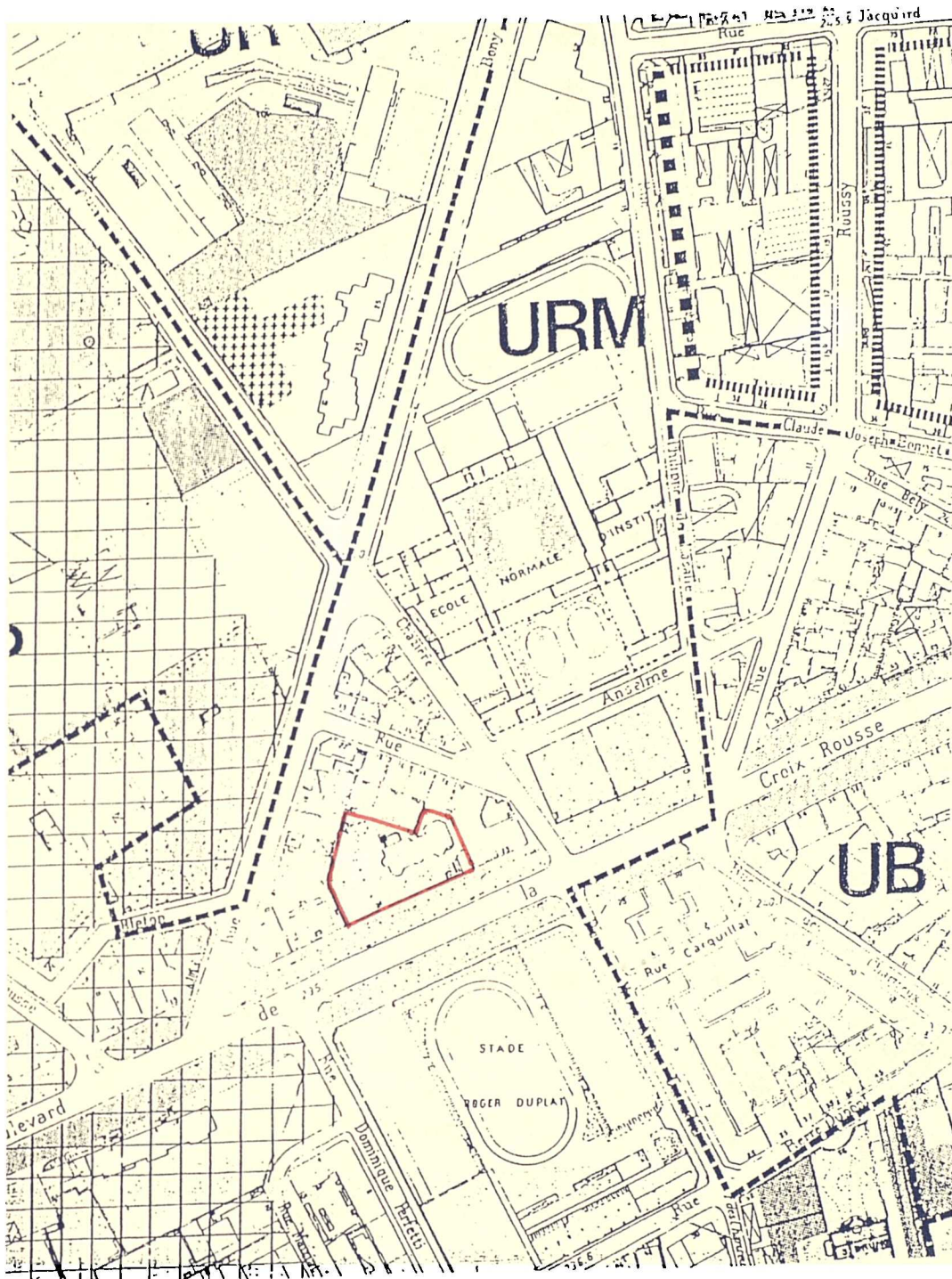


Figure 6.74

POS for Lyon showing 25-27 boulevard de la Croix-Rousse



Figure 6.75 Boulevard de la Croix-Rousse looking east: entry to no. 25



Figure 6.76 Boulevard de la Croix-Rousse looking west: entry to no. 27

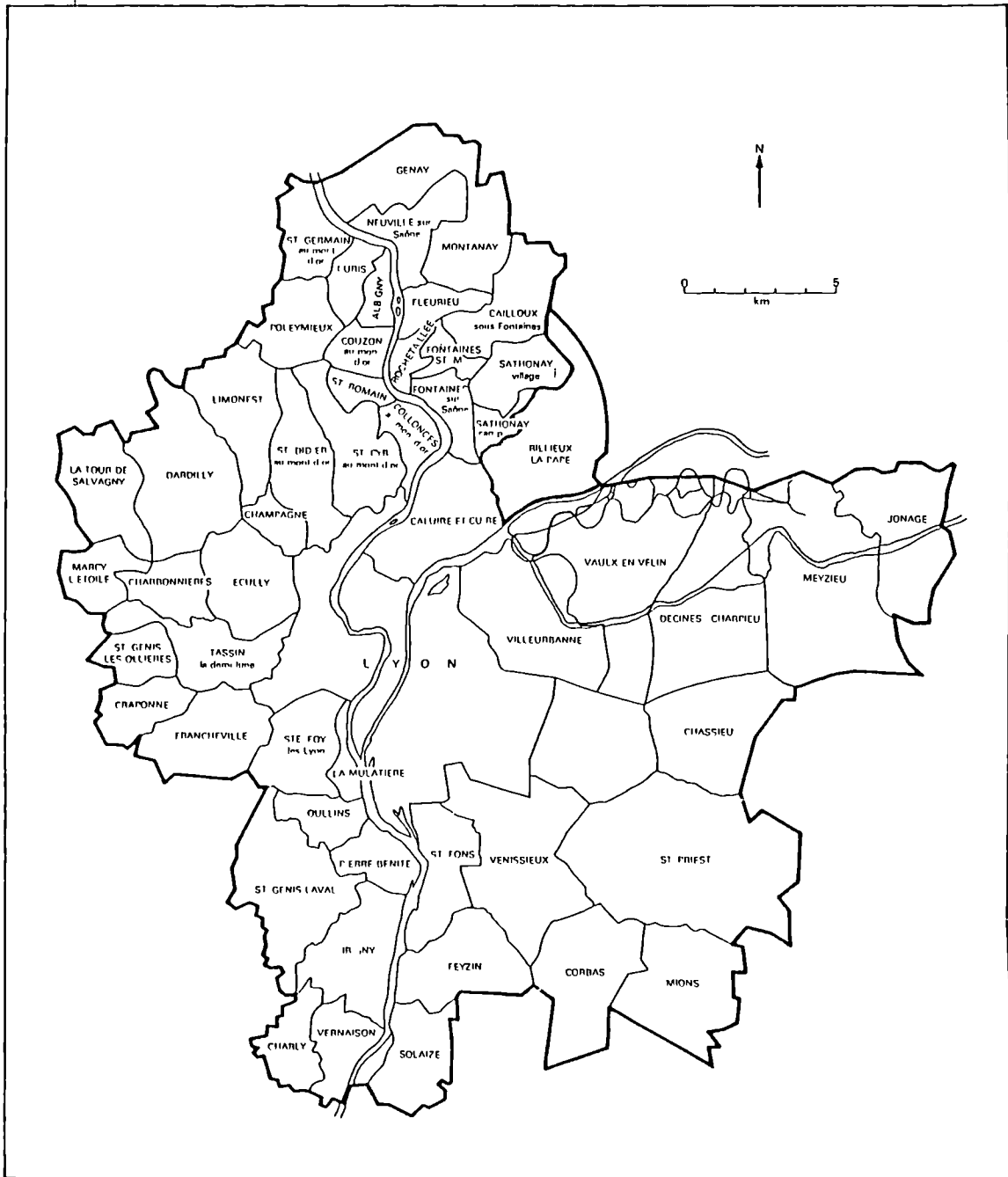


Figure 6.77

Commune of Rillieux-la-Pape: location map

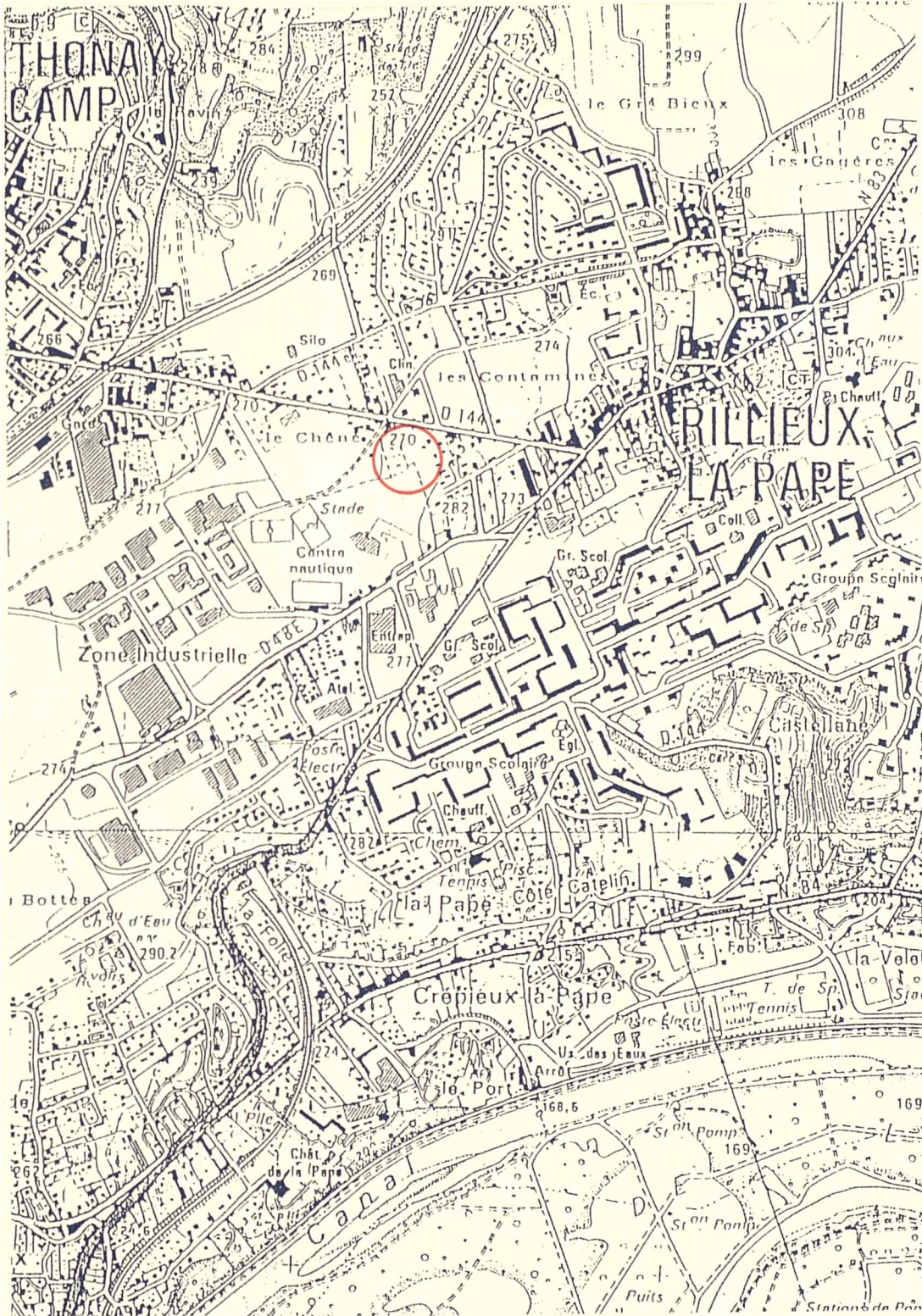


Figure 6.78

Chemin des Contamines/rue Victor-Hugo: location map

7.

CONCLUSIONS

7.1 French Planning Machinery: The Effects of a Codified Planning System

At the beginning of this thesis there appeared to be four principal questions to be asked about the French development control system and its relationship with the system of forward planning. Three of these concerned the direct capability to plan within the given framework of the system, and the impact of the system on its users; the fourth had to do with the impact of the decentralisation of powers on the operation of the system. Within these four questions, however, was to be found a broader series of issues that had to do principally with the nature and availability of discretion, the accountability of those with the power to take decisions and the concept of certainty. The analysis that follows attempts to draw together the findings of the empirical research in a way which cuts across these distinctions. Firstly, it concentrates on the mechanics of the system itself: the effect of the procedures on the ability to formulate and implement policy and the impact of the procedures on those who treat with the system. Secondly, it looks at the location of the power to take decisions, the relative importance of the different actors, and the degree to which they can be held accountable for their decisions. Within the context of these two broad areas it is possible to draw some conclusions about the impact of a regulatory system of law on the practice of town planning and about the effects of decentralisation.

7.11 The Regulations: Certainty, Speed and Flexibility

Perhaps the most striking point to emerge from this study is that zoning and regulations contained in a POS do not appear to confer a greater degree of certainty on an inherently uncertain process than does a system of indicative plans and wide discretionary powers. Everywhere there was a general question of how the

regulations might be interpreted in a given instance. Leaving aside the wider issues of discretionary power and the exercise of judgement, the drafting of the regulations was itself such as to leave doubt, not simply room for manoeuvre as to how they should be applied in specific circumstances. Such was the argument put forward in part in relation to the *espaces boisés classés* (classified woodland), although there was possibly a measure of special pleading here. Such, too, nationally, has been the problem with the rule of *constructabilité limitée* (contained development).

The complexity and opacity of the regulations in the national code is one thing; it might be thought reasonable to expect locally determined regulations to be freer of confusion. The essence of this study suggests otherwise, however. Five specific problems arise in the case studies that manage to undermine the certainty of the plans.

a) *The problem of zone boundaries: Vénissieux (case 6.5).* The problem with STOK-France's development was whether or not it fell within the zone defined in the PAZ of the ZAC du Vieux Bourg. The planner involved with the case pointed out the absurdity of using the zonal boundaries shown as strict limits given that the line itself was several metres thick. In the absence of precise guidelines, the developer was unsure as to how best to proceed and the scheme was delayed.

b) *The problem of the non-conforming use: Transports Griset (case 6.6).* This case reveals the weakness of exclusive zonings if exceptions have to be made. The regulations for residential areas in the POS had perforce to make an exception for existing commercial users, and used impact criteria, couched in the most general terms, as the basis in which decisions would be taken. There were no firm guidelines which the objectors to the scheme could declare had been infringed. There was no checklist that would have allowed the professionals to have advised against the proposal, had they wished to do so. But we should also note that M. Griset felt that he had not been given that degree of certainty that was necessary for running a

business.

c) *The problem of land zoned NA, for future development.* The uncertainty here does not specifically relate to the regulations which in the case of both Le Soleil levant (case 6.2) and Le Hameau des cigales (case 6.3) specified the regulations that would apply if the land were brought forward for development. The uncertainty is rather a question of what infrastructure would be required to make the development acceptable; what in other words, the negotiating stakes were likely to be.

d) *The problem of regulations overtaken by events.* At Le Hameau des cigales (case 6.3), a decision to locate commercial development elsewhere had effectively undermined the logic of part of the regulations for the site. An insistence on the letter of the regulations, so it was said, effectively delayed the preliminary discussions on the development proposal. The uncertainty was generated by the mismatch between the dogmatism of the rules and the fluidity of the economic context.

e) *The attempt in all the five major cases to trim the rules to fit the exigencies of the development by in effect pleading the clause in article L123-1 of the code which allows "minor adaptations".* Thus in every case some part of the rules cease to be absolute limits and become instead the basis for negotiation. This may be beneficial to the developer and sometimes to the other participants; in the case of Transports Griset (case 6.6) it undermined residents' confidence in the system.

To these five problem areas must be added a sixth; the ease with which regulations may be changed by modifications to the plan, as considered by the case of Le Soleil levant. Certainly the process is less arbitrary and subject of a greater degree of surveillance than the practice of *dérogations* which it replaced, but the risk of minor changes accumulating into a major shift in POS policy must be present. Worse, it must also erode the confidence which third parties might place in a plan.

How soon will it be before a mayor seeks, literally, to change the rules?

These six problem areas may also be generalised in another way. Firstly, there is the question of regulations that do not quite fit the circumstances, the inevitable and obvious mismatch between the ideal and the real. This is the problem that we suggested we would be bound to encounter in French development control, on the basis of a common sense application of experience. There can be no dispute that both cases at Vernaison could be said to display this problem, as did Les Longs des feuillus at St.-Priest. But this begs the larger question of the appropriateness of rule-making to define specific policy which is raised by all the cases studied, and which brings the argument back to Jowell's analysis of legal control (Jowell, 1973). We noted earlier that French legal commentators fear the particularisation of planning. This is in effect the obverse of Jowell's view that rules cope well with generalised recurrent problems, but were not suited for action that is unique. Particularism challenges the rules. Making rules for some of the substance of the decisions that needed to be taken was inappropriate, one might argue, because the substance did not lend itself to rule-making. There are too many reasons for wanting to protect woodland, and too many types of woodland to protect, to make the application of a single set of rules as detailed, and as categorical, easy to apply across the whole country. The problem of Transports Griset and its impact on the locality was too specific for rules to help, and the POS could not have specified a classification.

Secondly, when the certainty of rules becomes a yoke to be shaken off, the system is bereft of alternative ways of articulating policy. Here the problem is twofold. The failure to distinguish between policy and law leads to a conceptual difficulty in framing policy documents. Planners were quite clear, both in the ZAC du Vieux bourg at Vénissieux and the ZAC de Bonneveau at Décines, that their proposals in the respective PAZ were to be thought of as a concept, not a prescription. Yet at Vénissieux the PAZ did not appear to be able to express, and

certainly did not achieve, the urban design intentions of its creators, while at Décines a change in the rationale of the original intentions for Le Hameau des cigales rendered the regulations more or less worthless. The reasons for this conceptual problem is not that the code constrains the authors of plans to prepare detailed regulations for a highly articulated series of zones, because it does not: the POS for example only has to show the distinction between urban and natural zones. Rather it is a question of a legalistic system generating legalistic thinking. The possibilities available in the French planning system are demonstrated by the zoning URM in the POS for Lyon which, as we noted, specifically offers alternatives to be assessed in relation to particular sites.

The other facet of the absence of alternatives to rules in the French system is that a departure from a rule-based approach leaves no means of testing policy. Regulations not merely create certainty for applicants and third parties, they are the touchstone, if not the guarantee, for administrative action, even if officials choose to depart from them. The open-ended policy is productive, we might argue, of an insecurity in those who operate the system. Significantly, Lyon, with its POS that does confer discretionary powers, has developed a sort of forum to test policy in the *consultation préalable* and has thus to some extent gone beyond the problem. The Lyon experience perhaps suggests an important way forward. As we noted, architects appear to welcome the freedom that some of the Lyon zonings offer, even if they may resent the way in which all the participants like to offer their two-pennyworths of comment. At least there could be discussion about the appropriateness of pitched roofs (Boulevard de la Croix-Rousse, case 6.73) or whether the corner of a building should be open or closed (Place de la Reconnaissance, cases 6.72).

Thirdly, the ability to hold a land-use strategy whether in the large-scale as defined in an SD or in the smaller scale as defined in the POS appears to be weak. At Vernaison it looked as though a major policy change had taken place without a

full consideration of the impact on the commune or its neighbours as a whole. La Rossignole estate had established a principle for development on the scarp; Le Soleil levant was thus 'no more' than a logical mopping up of the intervening space. Yet together they appear to undermine an important point of principle in the POS, to protect the scarp slope and river banks south of Vernaison. The relationship between the SD and the eventual decisions on applications for permissions to build has long been recognised as a problem by French commentators, but there also appears to be a problem in maintaining a policy in a POS. The shifts and adjustments that take place do not entail a full rehearsal of the original ground on which the policy was based.

In the same vein, a more specific problem arises with land for future development. Where large tracts are zoned NA and then become subject of a ZAC, the detailed implementation of a general policy to permit development can be properly coordinated. The piecemeal permissions for *lotissements* is another matter. In Vernaison there did not appear to be a coherent pattern of urbanisation, whether or not the allocation of land in itself was justifiable. The problem is that development anywhere on NA land will be accepted if the infrastructure is provided by the developer, and that the provision that a developer is proposed to make for infrastructure, off as well as on the site, as in the case of Le Soleil levant is liable to colour the decision. To that must be added the general advantage of development in bolstering a commune's tax base.

The question of certainty is not simply expressed in the relationship between the plan, the decisions or individual applications. The likelihood of receiving of approval for development and the time it takes to process the decision is equally a measure of certainty. Unfortunately the evidence is equivocal. We saw that the approval rate for applications was higher than in Britain in 1982 and 1983, and we raised the question of whether in fact unsuccessful schemes often never reached the stage of application. The case studies neither confirm nor deny that hypothesis, but

they do reveal how important decision-making before an application was lodged was to the process. The impression for example in the case of Le Soleil levant was that all the important issues were resolved by the time of the application and that the formal processing was indeed a formality. Similarly, the informal process at Décines was considerably longer than the formal period of processing.

On the other hand at Les Longs des feuillus at St-Priest negotiation appears to be spread equally between the period before the first application and the subsequent modifications to the first submission. Two points are worth commenting on. The first is that the negotiation that took place in the two periods was essentially of a different order. In the first instance the negotiations were primarily about ceding the land for HLM housing (and thereby gaining the mayor's approval for the release of the site for development). The later negotiations were devoted primarily to how the regulations might be met. There was, therefore a fundamental shift in the type of negotiation and the line-up of participants. The second point is that the time taken to process the various applications was well within the periods defined in the *code de l'urbanisme*. A case that was inordinately protracted, therefore, would not appear from official statistics to have been delayed, and by virtue of the first applications being in effect withdrawn, only one application, the second, was actually refused permission, after the prefect's *contrôle de légalité*.

Thus the other potential benefit of a regulatory system, that of the speed of decision-making, also does not appear to have been realised in the case studies and once again the official figures give little idea of the real time involved in getting the development started. Though Le Soleil levant did involve a change of zoning, all the other residential cases involved land on which development had been foreseen in the POS at the time it was prepared. The fact that all, except perhaps Transports Griset, were much delayed in the process, may of course have been no more than an accident of selection. The most that can be said on the experience of the case studies themselves, is that a regulatory system does not preclude lengthy processing. But

even with the official statistics we noted that if perhaps *maximum* processing time appeared to be less, the proportion of decisions taken within three months in France was less than the proportion of applications determined within thirteen weeks in England and Wales.

The final point to make about regulations concerns third parties. We have suggested that a legalistic system casts the objector to a proposal in the role of someone whose proprietary interests have been, or are likely to be, affected by development. That tendency is present in the way that the *enquête* entertains objections; it is equally present in the right to challenge a decision once taken, but not to enter into the decision-making process. The challenge possible through courts emphasises legal correctness at the expense of civic involvement. To some extent this is a reflection of a cultural life in France that lays less stress on group social activities than in Britain, something that expresses Peyrefitte's *mal français*, and only two of the eight cases (Transports Griset and Boulevard de la Croix-Rousse) elicited any public involvement.

Where there is objection, the Transports Griset case demonstrates the difficulties a group may have to make its voice heard. Residents of Le Pellet had only one real possibility of redress, by challenging the decision before the *tribunal administratif*. Not only might the challenge have been difficult to sustain, they appear to have bungled it through a pardonable ineptitude. The only real attempt at redress was through the conciliation being attempted by the prefecture, which cast the objection in terms of a neighbour dispute and not a sensitive environmental issue. Moreover the attempt at conciliation was only initiated after the residents had indulged in some determined lobbying.

The conclusion that has to be drawn from this exploration of cases is that a legalised planning system does not of itself ensure a greater degree of certainty for any of the participants. It may be that the rules have no obvious application to the

site in question, it may be that the mayor seeks a modification to the POS to accommodate a proposal. Or it may be that the major issues connected with a proposal are not susceptible to the process of rule-making; or yet again that the bargaining over the release of land may effectively be beyond the scope of the regulations. The system is not particularly swift. And when policy can no longer be expressed in rules and the adjudication of legality is no longer a possibility, the system appears to offer no alternative means of formulating policy and no way of testing it thereafter. The certainties that do exist are, firstly, the high likelihood of receiving a favourable decision once an application has been lodged, and, secondly, the right of challenge for third parties, but on the basis of their proprietary rights only. It begins to look as though the legalised system breeds uncertainty and limits rights.

7.12 Rules and Discretion

If the conclusion that emerges from the case studies is that a regulatory system of planning does not confer certainty, one interpretation could be that the system in practice offered too much discretion to decision-makers, a view which would sit oddly with the perception that the system is slow, cumbersome and inflexible. The resolution of this apparent paradox requires us to consider yet again the operation of discretion within the French planning system. Here Bull's (1980) analysis is helpful.

Agency discretion is, we have already noted, clearly available within the system. Within the *code de l'urbanisme* many clauses confer specific discretionary freedoms, of which, as the case *Le Soleil levant*, demonstrates, one of the most significant since decentralisation is the power of the mayor to initiate or modify a POS. In practice we have argued that this discretionary power is modified substantially by the willingness of the technical services to embark on the work, but

Le Soleil levant shows that it is by no means an empty power. The use of discretionary clauses in the POS also conforms to Bull's definition of agency discretion, although in effect it is the agency which confers discretion on itself. Thus the Agence d'urbanisme in preparing the URM zoning of the Lyon POS was leaving the ground clear for later action in determining applications for permission to build. There is at least a measure of transparency in that use of discretion, although it looks rather as though it legitimates the technical services' ability to dictate outcomes.

The evidence of officer discretion, in Bull's terms, is rather more prolific than formally conferred discretion, however. We have already commented on the exercise of discretion tactically to interpret and depart from the rules in force and indeed to act in the absence of rules. We saw, too, how the question of interpretation regularly led to conflict between the participants. Indeed, where the participants were prepared to collude in their interpretation of the rules, as at Le Soleil levant, the system did appear responsive to the needs of the developer and of the particular site. Where there was no such agreement, as a Vénissieux or St.-Priest, the process became horrifyingly bogged down. The element of caprice in the judgements made, of exactly the kind that appeared worrying to British critics of discretion in social welfare provision, is thus conspicuous. The temptation to impose the rigour of the law in such circumstances is understandable, but we have already argued such an insistence does not correspond to the nature of the planning process.

The real answer to the problem lies in the nature of the discretion available, not that there are discretionary powers. The discretion conferred by statute is a circumscribed one particularly in relation to specific regulations for development which tend to be couched in terms of clear cut distinctions. By so doing they push the necessary exercise of discretion underground, to become a matter for the individual participants to determine. Particularly where the actors choose to collude in the interpretation of, or departure from, a rule, the control of this kind of officer

discretion becomes harder because there is no established basis for a reasoned justification for its use. More discretion accorded to agencies as a formal part of the system coupled with a requirement to express reasoned justifications would help to eliminate some of the more questionable dealing that the case studies reveal.

This nevertheless raises the question of how the actors account for their exercise of discretion. Adjudication in the *tribunaux administratifs* is clearly a limited option because the accent on legality makes it hard for these courts to deal with formally accorded discretion or indeed the exercise of judgement in the interpretation of rules. And even where he or she must confront such problems, the *juge administratif* is not perhaps best qualified to pronounce on matters of urban policy. Moreover the front line defence against arbitrary and illegal decisions, the *contrôle de légalité*, is highly selective and dependent on the prefect, who as the case of *Le Soleil levant* demonstrates so clearly, is also effectively a discretionary actor. Whereas the courts ensure justice by virtue of the openness of their proceedings and the independence of their adjudicators, the selectivity of prefects is neither fully detached from local pressure nor subject to scrutiny. The need to formalise discretion in the system and to ensure its exercise can be properly accounted for looks as though it is critical to the evolution of the French development control system.

The final reflection must be on whether the kind of certainty that is thought to be offered by a rule-bound system is in fact a desirable goal. There is every evidence from the case studies that developers prefer to argue their way round the rules than be bound by the limitations if they conflict with the optimum use of site. The evidence suggests that the administrators prefer to negotiate, too, where it suits particular ends. Certainty of outcome is one thing; certainty over timing may be a more desirable goal since inordinate delays serve few interests. But there is nothing to suggest that greater formal discretion would slow the control process, even though it is unlikely to speed it. We have also noted that timing probably has as much to do

with the administration than with the rules themselves. In the end, a more fruitful approach is likely to be one that focuses on the parameters of uncertainty rather than trying to define every eventuality. A less detailed document than the POS may offer a greater degree of control by defining which issues cannot be resolved in advance. The emphasis upon transparency and accountability of subsequent decision-making would then overcome potential abuses of the power conferred.

Such a conclusion does not necessarily presuppose a complete overhaul of French planning law. There is some suggestion that the regulations are not alone in carrying the blame for the difficulties; perhaps as much as anything else it is the ethos of a legalistic approach to administration that creates the tensions. One interviewee argued that the POS did not have to be the kind of complicated document that it so often was and that the regulations in the *code de l'urbanisme* permit a simplified POS. In another way, we noted how undogmatic the POS of Lyon is, principally in its zoning URM. Though the two are not quite the same - the former presupposes a limited level of control over development while the latter proposes options for very detailed control - both beg the question as to how decisions taken on the basis of open-ended documents are to be legitimated. To some extent Lyon has begun to develop the answer to that problem, too. The *consultation préalable* does provide the occasion, albeit not a public one, for the basis for decisions to be exposed to the scrutiny of both officers and elected representatives.

Some of the grumbling about the stranglehold of the regulations thus appears to be misplaced. The least charitable view would be that those who complain about the regulations are caught in traps of their own devising. A greater imagination in the form of the POS might usefully extend its scope, provided over-elaboration can be avoided. On the other hand, there is the danger in reaching such a conclusion of taking a mechanistic view of planning of precisely the kind that was rejected at the outset. To talk of an ethos is to presume a body of people who share in it, and while in general terms it characterises much of French public life, in planning the beliefs

are held particularly by the various actors within local government and local administration. It is to these that we much now turn.

7.2 The Power to Decide

If planning in France is an uncertain process, the question about how power to take decisions is distributed in the administrative system becomes rather more acute. We dismissed at the outset the idea of the 'real power' being located in single, identifiable point, in favour of a model of an equilibrium of forces in which each participant in the process is involved with at least two others and that the network may well cut across the formal chains of command. But there is clearly more to be said about the nature of the involvement of participants in this network, and about how and when they influence events.

7.21 Decision-making and democratic control

The first task is to find some kind of explanation for the byzantine complexity of administration and control in Lyon. Many of those interviewed agreed that the administration was unacceptably 'heavy', but we argued earlier that there appeared to be a mutual advantage to the participants maintaining the *status quo*. Two features of French government seem paramount in this explanation. The first is the mistrust of political power. The second is the passionate attachment to the commune as the seat of democracy and the bulwark against central power.

The question of the mutual mistrust of politicians and technical officers is perhaps a direct reflection of the continuities in French government between the state and the local authorities and between political and technical power. Mayors are to be mistrusted because of the dangers of local bias distorting the planning process,

and therefore centrally controlled agencies independent of local politicians (the DDEs) are vital to ensure the proper respect of national priorities. DDEs fear mayors particularly when they have achieved the power through the accumulation of office to circumvent the DDE by appealing direct to higher authority. Mayors fear the DDE and this, we could argue, leads to a search for independent sources of advice: hence the setting up of the Atelier municipal d'urbanisme or the recourse to the *architectes-conseils*. These independent agents quickly cease to maintain their independent purity. They appear to become compromised by the alliances they are bound to form and to create in turn a demand for further independent agencies. The progress of the Agence d'urbanisme at Lyon is instructive. From being a creature of the commune of Lyon it has become successively the planning service of COURLY and then an independent agency albeit one funded from a mixture of local and central sources. And we noted in chapter 5 how now it appears to distance itself from the other actors in the system, by its slightly separate location and by its definition of a special sphere of competence into which, we suggested, it tended to withdraw. This same search for independent advice may be one reason why politicians tolerate the multiplicity of organisations that make an input to the development control process. It allows them to balance the possibly tainted advice of one set of actors against that of another set whose allegiances are likely to be different.

Mistrust of others may in turn lead to self-doubt. One explanation for the apparently surprising fact that two years after it was possible for the communes of COURLY to undertake their own processing of applications in hand, only one had chosen to do so, must be the doubt about their own competence. If in a commune like Vernaison, the mayor and his deputies can imagine no other arrangement, in Vénissieux and Villeurbanne, both of which have long traditions of municipal independence and have the finance and the staff to deal with their own processing, there is a marked reluctance to go it alone. Even Bron, which has ceased to use the services of the DDE, nevertheless relies on the other actors for advice, and thus has

not fully seceded from the network. The administration may be cumbersome but a relationship of mutual mistrust seems preferable to isolation. Mistrust generates a system of dependencies.

There is an apparent paradox in the idea that a profound commitment to local democracy should lead to a system in which democratic control appears to be attenuated. But the commitment to the commune is such that France clearly cannot tolerate any local authority unit which deprives the lowest level in the hierarchy of government of control over its own destiny. Hence where effective government requires the establishment of units of authority that are larger than communes, the preferred form is of syndicates with delegated representation from the communes rather than a directly elected body. Maybe such a system does not affect the principle of local democracy where syndicates manage one or two services. The effect of an urban community with its wide range of responsibilities, acting to all intents and purposes like a local authority, seriously threatens the concept of local democratic control in favour of control by local élites.

There is, however, a less savoury interpretation of the facts that demonstrates that the paradox is only a paradox because of the terms used. The genuine democratic concern of many French commentators cannot be doubted and the genuine democratic advantages of small units of authority, as against British districts for example, are real enough. Yet the commitment to the commune also represents a jealous clinging to limited powers, and the powerful leverage that collectively the 36,433 mayors of France exert is as much about power-mongering as about democracy. The ultimate losers in this game are of course, invariably, the electorate. What they may gain from closeness to one set of elected representatives they lose by being unable to exert electoral control over the organisations that take many of the decisions that effect them directly. One distinct possibility is that as the need for decisions to be taken above the level of the commune as a result of decentralisation of power, the system risks becoming less, not more, democratic unless the problem

of the appropriate size of local authority unit is faced.

7.22 The Real Powers offered by the French Planning System

The pattern of prefect, communes, COURLY, the Agence d'urbanisme and the DDE, who all have a stake in the control of development is thus a result of laudable and not so laudable tendencies within French political philosophy. Before we can determine what power these participants actually do wield in development control, we need analyse what power they have at their disposal. These are identifiable as follows:

- 1) The power to initiate the preparation of a POS;
- 2) The power to undertake the technical work for a POS;
- 3) The power to seek the modification of a POS;
- 4) The power to nominate an appropriate technical service for plan preparation and application processing;
- 5) The power to determine the conditions under which land may be brought forward for development;
- 6) The power to sign the decision notice for permissions to build;
- 7) The power to annul or seek the annulment of decisions.

Two general comments on this list need to be made first of all. One is that all but 5) have been directly affected by the laws on decentralisation. The other is that it is necessary to include the first three because of the close relationship between plans and development control decisions although the empirical research only allows us to make general observations about the powers. Indeed the power to initiate plan preparation is hardly an issue in Lyon where there is recent plan coverage for each of the communes of COURLY.

The power to seek the revision or modification of a POS is clearly of considerable significance in Lyon. It was critical in the development of Le Soleil levant at Vernaison. The fact that from 1 April 1984 this was a power that was devolved on mayors of communes may have been particularly significant in ensuring that development went ahead on the site. One can, however, only say 'may'. The ability to seek a revision was hitherto dependent on an order from the prefect, and effectively, on the willingness of the DDE, the Agence and COURLY to undertake the technical studies necessary. Thus there was a double constraint on a wayward mayor. On the other hand much circumstantial evidence exists to suggest that prefects did, and do, not exercise control heavy-handedly, that mayors were listened, if not pandered, to, and the possibility of the mayor circumventing prefectural power always existed. Since decentralisation the prefect has no longer had a bearing in the matter and the mayor in principle has the right to look elsewhere for technical assistance. In practice it will be hard for him to do so. The mayor of a commune like Vernaison may simply not envisage alternatives to the existing services as was suggested by the study of Alpes-Maritimes (Popesco and Zalma, 1986) and it would in any case be hard in practice to avoid COURLY in plan revision, even if the resources were available. But the fact that a commune like Vernaison *could* look elsewhere must lend a certain edge to the relationships between communes and the technical agencies. They are bound to work slightly harder to ensure their credibility as expert technical assistance is retained. The power to initiate a plan revision is thus essentially a factor of the power to choose the technical agency to do the work.

What is true for the revision of POS applies with even greater force to the signing of decision notices, which under the decentralisation acts is done by the mayor in the name of the commune throughout COURLY. As we argued at the end of chapter four, the signature is not more than an act of confirmation that the development is consistent with the regulations. The fact that before decentralisation the mayor signed most of such decisions, albeit in the name of the state, underlines the symbolic rather than the real value of the power. Far more significant is the

power to choose to whom to entrust the processing of applications for in exactly the same way as with POS preparation and revision, there is the possibility of exerting leverage on the process. Most communes in COURLY are not processing applications themselves, but they could, and therein lies the power.

The power to prepare plans and process applications is significant because of the nature of the discretion available in making the decisions. If the mayor is lacking in technical expertise, he or she is bound to accept the advice that the processing agency offers. This remains true whether it concerns the judgement used in interpreting a rule or choosing between the options available in a permissive clause in the code or a POS. An organisation that prepares a POS with permissive clauses and then subsequently processes applications for permission to build is in a position of particular power with respect to the communes it serves.

If the power to initiate and prepare POS and process and determine applications suggests that power is concentrated rather more heavily on administrative agencies than on political representatives, the power to negotiate the conditions under which and zoned NA may be developed appears to accrue to politicians and administrators alike. Thus at Vernaison and St.-Priest mayors achieved a planning gain as the prize for permitting development, as did, in the case of Le Soleil levant, COURLY. The reason for this power being shared is precisely because it is not in the same sense as the others, a statutory power. Art R123-18 which defines the zones into which a POS must or may be divided leaves entirely open what may be required in the way of infrastructure to satisfy the objective of "coherent development" (*aménagement cohérent*) of the zone. Much may evidently be justified under this clause, not least the ceding of land as in the case of Les Long des feuillus at St.-Priest.

Finally, the power to annul or seek the annulment of decisions is a discretionary power which is available to various of the actors. Only the Conseil

d'État, administrative judge and the mayor can cancel the decision of the mayor, and the power in each case is of its very nature, discretionary. The power to seek the annulment by referring the decision to *tribunal administratif* is considerably more significant, because of the leverage it exerts over the mayor's decision-making. The power available to third parties appears to be less significant in general terms than that exercised by the prefects, partly because it is limited to those who can demonstrate a direct involvement in the case. The prefect on the other hand has the duty to inspect all decisions and may refer those to the courts that are illegal. The power is in effect discretionary, partly because the prefect may choose not so to refer a case, partly because a telephone call may be sufficient to persuade the mayor to annul a decision and partly because there are more decisions than can be properly inspected in any given time period. The *contrôle de légalité* is thus frankly a lottery, as was demonstrated by the deputy mayor of Vernaison's surprise at the grounds on which the prefect of Rhône chose to challenge the first permission to subdivide at Le Soleil levant.

7.23 The Use of Power In French Development Control

These are the real powers that are exercised in French development control system, and the analysis above gives some indication of those who are able to exercise them. We need now to look at the actors to see how they use the powers available. First of all mayors of communes are powerful to the extent to which they are knowledgeable of the technical process and understand how they can use their real freedom to best advantage. In once sense the mayor of Lyon and the mayor of Vernaison are equally powerless given the limitations we have already observed on the attainable powers conveyed in the statutes. The mayor of Lyon and his assistants are obviously very considerably more powerful in practical terms, however. The power stems from the resources at their command and the connections they have which ensures that in the relatively trivial process of development control they are

also deferred to. But the assistant mayor, Moulinier, would appear to have strengthened his position by firstly taking a detailed interest and secondly by using all the various technical sources available to him such that he does not have to be dependent on any one. This must have the effect of maintaining a tension between them, in spite of the reportedly harmonious working relationships. A reluctance to move too far too fast is only one of the factors that assured that administrative arrangements remained substantially unaltered after 1984. One suggestion is that by the next local government elections in 1989, a greater confidence in the use of power and a change of personnel may result in streamlining of the system (Testut, personal communication).

The power wielded in Lyon is hardly surprising given the city's size and national importance. Much more instructive is the degree of leverage that the relatively powerless mayors of smaller communes exert. At Décines-Charpieu in the ZAC de Bonneveau it is clear that the mayor had accepted the advice offered by the Agence d'urbanisme reluctantly and against his better judgement. His attitude was of someone who felt trapped by circumstance. His commune so he believed is relatively unattractive and is being bypassed in favour of places further east; as a result it is picking up the racial problems of the whole conurbation. He had accepted the proposals of the Agence, perhaps because he had no alternative source of advice, perhaps because the 'urban identity' that they urged him to accept was a way of bolstering the commune's image.

The cases of Les Longs des feuillus at St.-Priest and Le Soleil levant and Transports Griset at Vernaison put a very different complexion on the question of mayoral control. Here the surprise was how much power the mayors were able to exert. At St.-Priest, it was a straightforward case of the bargaining power that being able to control the release of developable land gives: the mayor achieved the important benefit of land for HLM scheme as well as private development on a suitable site. The power may have been constrained by the regulations, but the

technical services supported the mayor in wanting to find a way round the constraint. At Vernaison, the mayor managed to get what he wanted in more surprising circumstances, in that policy might have dictated a different response. But the attitude appears to have been that these were matters for the mayor to decide and not for the technical services, since their effect was specifically on the commune. The Agence d'urbanisme's credibility was better maintained by not interfering too deeply in such cases which did not strike at the heart of the expertise they had to offer. Perhaps the knowledge that the mayor could now look elsewhere for technical advice has sharpened this attitude.

In each case, however, the discretionary power that the mayors were able to exercise by virtue of the willingness of the other technical services to allow them to, was checked by the prefect's *contrôle de légalité*. The effect of this control does not really seem to have been to increase accountability. There is rather more the feeling in the cases described that the mayors, with the collusion of the technical services, were prepared to try things on, in the knowledge that they might get away with the infringements of the regulations. This may result in an intriguing game of power relationships, but is hardly satisfactory as a means of providing responsible decision-making.

The conclusion that begins to emerge from this analysis of mayoral power in development control decision-making is that the pattern of cross-cutting regulation has developed deeply entrenched dependencies between actors which are hard to shake off. Mayors are quick to seize tactical advantages when they arise and there appears to be much scope for them to do so. They are far more reluctant, as the evidence of Lyon would suggest, to take on the full responsibility for their actions in determining planning applications. Given Lyon's and its suburbs' longstanding tradition of local autonomy and action and its considerable financial and human resources, the conclusion is not a very encouraging one for the future of decentralised development control. If the mayors of COURLY are fearful of new

responsibilities, one wonders what hope there can be for the rest of France.

An analysis of the power of the technical services can do little more than repeat some of the suggestions made earlier. The DDE, COURLY and the Agence all continue to maintain their independence of each other by asserting their particular specialisms. The legal competence of the DDE and the ability to handle the paperwork is, we noted, perceived as an advantage, though the effect of this advantage is scarcely evident from the case studies. There is a suggestion that since decentralisation, the DDE have tended to take a harder line on the regulations for fear of falling foul of the prefect, and by so doing become less helpful to the other actors (Pelletier, personal communication). The case studies suggest rather the reverse, however: there was no DDE opposition to *Le Soleil levant* or *Les Longs des feuillus*, even though both entailed infringement of the regulations. It also has to be recognised that the DDE's power to interpret regulations remains a source of power and we have seen how at *Le Soleil levant*, they were actually able to offer helpful solutions to the problem of the regulations.

The power of the services of COURLY does not come from any of the decision-making powers available from the statutes. Yet they are in a position to bargain over service provision; their unwillingness to widen the *chemin des Ferratières* at Vernaison was an important lever in securing additional gain from the developer. This kind of power is, however, tactical rather than strategic in the same way that power of the mayors is tactical. Their greater claim to power in the system comes from their role as honest broker, coordinating the activities of development control. The creation of the *Département Développement* as part of a more rigorous structuring of the whole of COURLY's management is an important step to consolidating that power.

The Agence d'urbanisme is apparently in the weakest position of the three technical services. In one sense it is judged entirely upon the quality of its services,

and is at the mercy of the communes, for whom it acts as agent, and the council of COURLY, which provides its major source of funding. Yet that underplays the influence that the Agence carries over the control of development through its preparation of plans and of special studies. The case studies reveal some weaknesses in the process, as for example at Vénissieux or Décines. The POS for Lyon, however, is a good example of how the reserving of discretionary powers ensures that the Agence retains control over applications for development because they have to interpret the plan in its specific application. The deployment of an expertise in plan preparation is in itself a source of power.

The power wielded by the prefect through the *contrôle de légalité* is clearly considerable, and we have noted the extent to which it is discretionary. The danger of this power being used in an arbitrary way is great for there is no access to the way in which a decision to challenge a permission to build is actually reached. The case studies confirm that neither the spirit of decentralisation nor a change in title or responsibilities have in fact changed the impact the prefect has on the development control process. Indeed his discretionary power of control appears to have added a new uncertainty to the process.

We have thus identified the ways in which the various participants gain power through the use of discretionary powers available, and how the exercise of discretion may serve to bolster the power of the organisation as in the case of both the Agence and the DDE. Significant authority may thus be derived by using discretion in individual cases. But with the mayors this appears to be less true. They may find they have unimpeded discretion to gain a tactical advantage for the commune, but are still short of strategic power. The strategic power that the technical services wield as do some mayors, comes from their technical competence, their location in the system and their connections with other important authorities. Under these circumstances, and given the tactical control over development control decision-making, the new responsibilities are not going to look particularly attractive to

mayors, and the old order will remain convenient.

7.24 Decentralisation and Power in COURLY

The question must now be answered whether decentralisation has made any difference to the powers of the various participants. We have argued above that the new power to sign permissions or refusals to build in the name of the commune was much less significant than the ability to command the technical expertise to process applications. The ability to choose one's own agency is thus a potentially more important freedom, if the chances were not heavily weighted in favour of the existing agencies. But even if the choice was unconstrained, one can argue that it represents real power only insofar as the mayor is technically competent, because an outside agent is unlikely to be committed to the future of the commune. The possibilities of negotiating for development have always existed and were not modified by decentralisation. The power to initiate the POS or its modification is new and we have suggested potentially important to the extent that technical services can be persuaded to do the work.

If we add to this the lack of structural change and the continuity of existing organisations the claims for decentralisation as a major revolution in local government looks false at least in respect of development control and plan preparation. Local autonomy was thus *no more* a reality in 1986 than it was in 1980. On the other hand, it has not been totally without effect. The new powers have led to shifts in the equilibrium of forces that sustain French administration and there is some suggestion that the shift has been in favour of communes and particularly the non-traditional organisations like COURLY. Decentralisation is thus an important staging post on the evolution of local government and of planning. The LOF of 1967 introduced the concept of partnership between the state and local authorities; the act of 1983 permits a greater degree of equality between partners. Indeed in Lyon it is

likely to be COURLY that is the major beneficiary of the change. For the truth is that the communes of the Lyon conurbation would always find it difficult to go it alone; Bron's independence is symbolic rather than real. None could hope to command technical expertise of the order of COURLY, the DDE and the Agence combined. And even in the exceedingly unlikely event of 55 separate agencies advising each of the communes separately someone would have to coordinate their activities.

The central role of COURLY in the future is evidenced by the slow but steady accretion of competence. Before decentralisation, COURLY was already processing Lyon's applications. It was the one organisation that underwent a major management change to coincide with decentralisation. It has taken on staff with the expertise necessary to cope with the new tasks. Sooner or later someone will observe that the DDE is unnecessary, indeed that the process would be more effective without it. Two possibilities will then exist: either that COURLY undertakes all the processing itself or that the technical vetting of applications is undertaken in the larger communes and the planning advice, coordination and the processing of applications for the small communes will be retained by the services of COURLY. That will leave the role of the Agence much as it has been since 1978, more deferential to mayors perhaps, but still the sole repository of a particular kind of expert knowledge.

In one sense this will result in a greater concentration of power at the local level; in another it will not. It does not represent a greater degree of democratic control, because COURLY's technical services are accountable to a delegated, not a directly elected, body. The inequalities between small and large communes will remain, and the same élites will dominate. COURLY as the main development control authority would be a more effective provider of a service, but it would not ensure a greater degree of control by the electorate. The evidence then supports the view of those who see decentralisation as strengthening the hand of the 'habitual

users' of power while doing nothing for participatory democracy.

7.3 Conclusions and Future Work

The conclusions of this thesis about the impact of a regulatory system on the control of development in a major conurbation have suggested certain inherent weaknesses which represent obstacles for the users of the system to overcome. In the end, however, the rules are less of an obstacle than the spirit that they appear to engender. Moreover, the *code de l'urbanisme* will not simply disappear; it is dependent on a whole system of law that requires town planning to be treated in this way. The tendency to say that rules are a stumbling block to be circumvented either by the adoption of practices of doubtful legality or by ever more refined rule writing does not advance the cause of the proper control of development. The real problem is to discover what the degrees of freedom for the action ought to be for a given location and to draft the POS accordingly. The concern for the minutiae of the regulations must give way to a concern for an overall strategy to be implemented by the accretion of individual decisions to develop. In some places, it will still be appropriate for there to be detailed controls over the form, bulk and density of buildings; in others strategic objectives will permit the possibility of a wide range of alternatives. There is enough evidence from examples in COURLY to suggest that with sufficient ingenuity, all this is possible within the current framework.

If discretionary power to act is increased in this way, it becomes essential that the decisions taken are properly aired, because accountability before the courts will not be enough to ensure that decisions are taken reasonably and responsibly. The practice of the *consultation préalable* for Lyon suggests one way forward and maybe all major proposals should be exposed to this kind of examination. The drawback would be that the public would gain nothing from the use of these informal meetings, which do not even confer procedural rights on them. A more radical proposal which

would ensure the public both procedural and substantive rights would be the extension of the *enquête publique* to deal with contentious development control cases, particularly where the case hinged upon discretionary action and where matters of policy rather than law were at stake. In a case like that of Transports Griset, the use of an *enquête* would have ensured that the facts of the case were properly examined and the dispute did not remain at the level of wild allegation and personal vituperation. It would get round the problem identified by Chabanol (1986) that courts are increasingly having to make judgements on matters that go beyond their traditional competence.

The task for the future does not lie in further tampering with the code or clamouring for deregulation. The code has been modified enough in the past five years. The administrators and politicians of the Lyon conurbation need now to harness the administrative and professional expertise at their disposal to create structures which are effective as providers of a service, responsive to local need and accountable to the local electorate for the decisions taken. The time to act is now, before the momentum of decentralisation is lost and the old inertia reasserts itself.

The conclusions of this thesis about decentralisation have of necessity to be more tentative because Lyon is untypical of the country as a whole and because, as we suggested at the outset, the full impact of the new powers may still have to be realised. There remains an important doubt, however, about whether decentralisation can ever be effective without the amalgamation of communes into larger administrative units. At Lyon we could foresee a locally constructed organisation, COURLY, taking control because it had the resources to coordinate services for the whole conurbation. It can act on an equal footing with the services of the state. For the vast majority of communes the same is not true, whatever tactical advantages mayors may be able to secure for themselves in negotiations with the DDE. There may indeed have been a shift in the balance of power as a result of decentralisation, but effective policy making and implementation must always be difficult in units as

small as French communes. The hypothesis that decentralisation has helped those urban areas which were already on the road to cooperation and local control, but has left small rural communes in their old position of dependency looks correct.

As yet, however, there has been no comprehensive research to examine what has been happening in predominantly rural *départements* where many communes still lack POS, or if they have a plan, rely entirely on the DDE for technical assistance. In particular, there needs to be a detailed examination of the way in which agreements between communes and the DDE on how the national regulations should apply (*modalité d'application de la réglementation nationale urbaine: MARNU*). This would reveal the extent to which the rule of limited constructability has affected communes and whether MARNU have effectively increased the communes' role in decision-making even if they cannot exercise the full powers available under the decentralisation acts. Such a study would complement the current work on Lyon and could draw on a growing body of published examples of the effects of decentralisation in various parts of France.

This thesis started with a reflection on the value and difficulties of studying planning in other cultures, and in the dangers of making facile comparisons. The real worth of such studies, we argued, came from understanding the relationship between the planning system and the context within which it operates. We also pointed to the problem of approaching a foreign planning system armed with the prejudices and expectations bred from close involvement with the British system. Against this was set the major advantage of being an outsider: the ability to observe the system dispassionately. The lessons then to be learned from a study of this kind relate essentially to method of doing research that emphasises the participants in the system and the use they make of the planning instruments at their disposal. Regulations, plans and discretionary powers are all part of the armoury that define the rules of the game these participants play out, but the use of the rules depends on the roles these participants are assigned by the culture in which they operate. The French planning

system has certain inherent constraints which affect the ability to plan for, and control, development. At least as much of what we observe in Lyon depends on a process that goes well beyond the formal possibilities of the planning machinery.

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Appendix 1 List of Persons Interviewed

Agence d'urbanisme de la Communauté urbaine de Lyon

Jean DELLUS	Directeur-adjoint
Patrice BERGER	Responsable du Secteur Centre-Villeurbanne
Pierre BUISSON	Responsable du Secteur Centre-Lyon
Giuseppe BONACORSI	Responsable du Secteur Est
Bogdan MILENKOVIC	Responsable des Secteurs Nord/Nord-Ouest
Philippe ROUX	Responsable du Secteur Sud-Ouest
Dominique PRUD'HON	Chargé d'Études Architecte-Urbaniste
Bernard GUINET	Adjoint technique
Jean-Claude VERT	Adjoint technique
Jean PELLETIER	Professeur d'urbanisme Université Lumière - Lyon 2
Charles DELFANTE	Architecte-urbaniste

Communauté urbaine de Lyon

Michel IDÉ	Service de l'aménagement urbain
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Direction départementale de l'Équipement du Rhône

M. HUGON	Directeur du Service de l'application du Droit des sols
M. TESTUT	Service de l'application du Droit des sols chef de la zone I (ville de Lyon)

Agence intercommunale d'Urbanisme de l'Agglomération dijonnaise

M. BURDIN	Directeur du Service du Droit des sols
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Direction départementale de l'Équipement de la Côte-d'Or

M. BRIAND	Urbanisme opérationnel et Construction
M. DESPIERRES	Directeur du Service de l'urbanisme opérationnel et Construction

Tribunal administratif de Lyon

Daniel CHABANOL	Vice-président
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Commune de Bron

Laurent DESCHAMPS	Maire-adjoint
Mlle. POISSON	Services techniques

Commune de Décines-Charpieu

Pierre MOUTIN	Maire
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Commune de St.-Priest

Mme COUTURIER	Services techniques
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Commune de Vénissieux

Guy FISCHER	Maire-adjoint
Christiane KOBIALKA	Direction de l'économie et de l'urbanisme
M. TEYSSANDIER	Direction de l'économie et de l'urbanisme

Commune de Vernaison

M. DUPRÉ-LATOUR	Maire-adjoint
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Commune de Villeurbanne

M. SELIGNAC	Directeur général des services techniques
Odile PELLAS	Services techniques

Groupe Maison Familiale

M. SÉGUY

STOK-France

Henri PAYET-MORICE

Décines-Immobilier

M. BRIGNAIS

Transports Griset

M. GRISET

Association pour le Respect de l'environnement et des Résidents du Pellet

M. et Mme MAGNAN Président et adhérent

Mme DESBOS Secrétaire

M. BALLANDRAS Architecte

Dudier MANHÉS Architecte

Appendix 2 Population of COURLY by commune 1968-1982

SECTEUR	COMMUNE	POPULATION (1)			VARIATION
		1968	1975	1982	% 75 82
		*	*	*	*
COURLY.....		1048080	1119013	1106055	-1,16%
CENTRE.....		647679	573251	529055	-7,71%
	LYON	527800	456716	413095	-9,55%
	VILLEURBANNE	119879	116535	115960	-0,49%
EST.....		186873	273022	268953	5,84%
	CHASSIEU	2867	3599	6882	91,22%
	DECINES	15297	20031	22832	13,98%
	JONAGE	1445	2206	2938	33,18%
	MEYZIEU	10012	19435	26776	37,77%
	VAULX EN VELIN	20726	37866	44160	16,62%
	DRON	41619	44563	40638	-8,81%
	CORBAS	2208	3225	6375	97,67%
	FEYZIN	5604	7346	7753	5,54%
	MIONS	2848	5081	6044	18,95%
	SAINT FONS	15096	17144	15291	-10,81%
	SAINT FRIEST	20419	36734	42677	16,18%
	SOLAIZE	1119	1445	1783	23,39%
	VENISSIEUX	47613	74347	64804	-12,84%
SUD OUEST.....		96502	121137	126109	4,12%
	CHARLY	1643	2392	2864	19,73%
	CRAPONNE	3423	4592	5536	20,56%
	FRANCHEVILLE	4932	8099	9500	17,30%
	IRIGNY	3679	5226	6828	30,65%
	MULATIERE LA	8073	7886	7716	-2,16%
	OULLINS	26604	27772	27168	-2,17%
	PIERRE BENITE	8030	10019	9468	-5,78%
	SAINTE FOY	16583	21698	21521	-0,82%
	SAINT GENIS LAVAL	7128	13162	14353	9,05%
	SAINT GENIS LES OLLIERES	1429	2125	2781	30,87%
	TASSIN	12983	14886	15001	0,91%
	VERNAISON	1995	3250	3373	3,78%
NORD OUEST.....		40392	53340	58743	10,13%
	ALBIGNY	2506	2405	2653	10,31%
	CHAMPAGNE	3932	4516	4763	5,47%
	CHARBONNIERES	2448	3086	3973	28,74%
	COI LONGES	2662	2786	2824	1,36%
	COUZON	1928	2434	2421	-0,53%
	CURIS	581	575	622	8,17%
	DARDILLY	2010	2743	4668	70,18%
	ECULLY	10077	17944	17865	-0,44%
	LIMONEST	1751	1941	2131	9,79%
	MARCY L'ETOILE	484	683	1033	51,24%
	SAINT CYR	4075	4763	4800	0,78%
	SAINT DIDIER	3872	4648	5115	10,05%
	SAINT GERMAIN	1971	2170	2129	-1,89%
	SAINT ROMAIN	728	742	919	23,85%
	TOUR DE SALVAGNY LA	1367	1904	2827	48,48%
NORD.....		77434	98263	103195	5,02%
	CAILLOUX	751	863	1015	17,61%
	CALUIRE	37603	43041	41931	-2,58%
	FLEURIEU	797	867	898	3,58%
	FONTAINES ST MARTIN	1306	1826	2056	12,60%
	FONTAINES SUR SARDNE	5313	6276	7062	12,52%
	GENAY	1825	2359	3544	50,23%
	MONTANAY	742	961	1257	30,80%
	NEUVILLE	5413	5663	6982	23,29%
	POLEYMIEUX	366	576	709	23,09%
	RILLIEUX	18292	30894	31799	2,93%
	ROCHETAILEE	723	764	779	1,96%
	SATHONAY CAMP	3798	3498	4113	17,58%
	SATHONAY VILLAGE	505	675	1050	55,56%

Source: INSEE reproduced by COURLY

Appendix 3

Decisions on applications for Permis de Construire in

COURLY by commune in 1986

COMMUNES	(a) ALL DECISIONS	PERMISSIONS NOT GRANTED			(e) APPROVALS	% percent	
		(b) annulments	(c) refusals	(d) deferred decisions			
LYON arrondissements	1	24	2	-	-	22	93.7
	2	1	-	-	-	23	
	3	117	4	3	-	110	
	4	27	1	-	1	25	
	5	74	-	2	-	72	
	6	23	-	1	-	22	
	7	81	1	1	-	79	
	8	65	2	3	-	60	
	9	43	3	5	-	35	
VILLEURBANNE		187	8	3	-	176	94.1
TOTAL: CENTRAL SECTOR		666	22	18	1	624	93.8
CHASSIEU		146	8	12	1	125	
DÉCINES-CHARPIEU		123	4	6	-	113	
JONAGE		103	6	9	-	88	
MEYZIEU		182	17	17	-	146	
VAULX-en-VELIN		140	6	11	-	123	
BERON		96	10	10	-	76	
CORBAS		88	3	3	-	82	
FETZIN		98	7	12	-	79	
MIONS		86	3	4	-	79	
ST-FONS		41	-	1	-	40	
ST-PRIEST		156	4	19	-	133	
SOLAIZE		39	2	3	-	34	
VÉNISSIEUX		127	12	5	-	110	
TOTAL: EASTERN SECTOR		1425	84	112	1	1228	86.2
CHARLY		46	2	3	-	41	
CRAPONNE		77	1	2	1	73	
FRANCHEYILLE		79	8	6	-	65	
IBIGNY		58	2	5	-	51	
LAMULATÈRE		7	-	3	-	4	
OULLINS		45	2	3	-	40	
PIERRE-BÉNITE		52	4	-	-	48	
ST-FOY-LES-LYON		76	4	1	-	71	
ST-GENIS-LAYAL		175	10	10	-	155	
ST-GENIS-LES-OLLÈRES		75	4	3	-	68	
TASSIN-1A-DÉMI-LUNE		79	9	3	-	67	
VERNAISON		78	2	2	-	74	
TOTAL: SOUTH-WESTERN SECTOR		847	48	41	1	757	89.4
ALBIQNY-sur-SAÔNE		27	1	1	-	25	
CHAMPAGNE-au-MONT-D'OR		19	3	-	-	16	
CHARBONNIÈRES-LES-BAINS		49	4	5	-	40	
COLLONGES-au-MONT-D'OR		65	1	5	-	59	
COUDON-au-MONT-D'OR		12	2	-	-	10	
CURIS-au-MONT-D'OR		5	-	-	-	5	
DARDILLY		93	9	7	-	77	
ÉCULLY		69	3	6	-	60	
LIMONEST		29	3	1	-	25	
MARCY-L'ÉTOILE		42	1	2	-	39	
ST-CYR-au-MONT-D'OR		60	1	5	-	54	
ST-DIDIER-au-MONT-D'OR		77	5	2	-	70	
ST-GERMAIN-au-MONT-D'OR		30	6	2	-	22	
ST-ROMAIN-au-MONT-D'OR		20	-	1	-	19	
LA-TOUR-de-SALVAGNY		45	2	-	-	43	
DOLBYMIEUX-au-MONT-D'OR		11	-	-	-	11	
TOTAL: NORTH-WESTERN SECTOR		653	41	37	-	576	88.1
CAILLOUX-sur-FONTAINBS		29	2	-	-	27	
CALVIRE-et-CUIRE		134	8	8	-	118	
FLEURIEU-sur-SAÔNE		17	1	-	-	16	
FONTAINBS-ST-MARTIN		48	5	-	-	43	
FONTAINBS-sur-SAÔNE		24	3	-	-	21	
GENAY		40	4	1	-	35	
MONTANAY		55	6	2	-	47	
NEUVILLE-sur-SAÔNE		37	-	3	-	33	
RILLIUX-1A-PAPE		147	10	10	1	127	
ROCHETAILLÉE-sur-SAÔNE		10	-	1	-	9	
SATHONAY-CAMP		12	-	1	-	11	
SATHONAY-VILLAGE		42	1	2	-	39	
TOTAL: NORTHERN SECTOR		595	40	28	1	526	88.4
TOTAL: COURLY		4185	235	236	4	3710	88.6

Source: Direction régionale de l'Équipement, Région Rhône-Alpes: Statistiques

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Appendix 4

Decisions on applications for Permis de construire by category

of development in COURLY by commune in 1986

COMMUNES	(a) ALL APPROVALS	(b) SMALL APPLICATIONS	(c) DÉCLARATIONS PRÉALABLES	(d) PERMISSIONS w/o HIGH FLOODRISK [included in (b)]	b+c /a per cent	d/a per cent
LYON arrondissements 1	21	17	-	8		
2	23	16	-	13		
3	110	51	-	28		
4	25	15	-	7		
5	71	49	-	32		
6	22	8	-	8	55.4	35.5
7	79	42	-	30		
8	60	35	-	19		
9	35	21	-	14		
VILLEURBANNE	176	107	-	73	60.8	41.5
TOTAL: CENTRAL SECTOR	624	355	-	232	56.9	37.2
CHASSIEU	125	34	14	13		
DÉCINES-CHARPIEU	113	44	9	16		
TONAGE	88	26	7	14		
MOTZIEU	146	56	14	21		
VAULX-au-VELIN	123	63	12	27		
BRON	76	52	2	33		
CORBAS	82	46	9	24		
FETZIN	79	14	-	7		
MIONS	79	32	-	15		
ST-FONS	40	23	1	8		
ST-FRIEST	133	54	-	24		
SOLAIZE	34	15	6	12		
VENISSIEUX	110	60	9	22		
TOTAL: EASTERN SECTOR	1228	519	83	236	49.0	19.2
CHIRLEY	41	22	5	12		
CRAPONNE	73	36	3	18		
FRANCHEVILLE	65	19	1	12		
IRIGNY	51	15	-	7		
LA MULATIERE	4	3	-	-		
OULLINS	40	21	1	9		
PIERRE-BÉNITE	48	20	5	11		
ST-FAY-les-LYON	71	39	-	29		
ST-GENIS-LAVAL	155	36	-	20		
ST-GENIS-les-OLLIERES	68	23	8	14		
TASSIN-la-DEMI-LUNE	67	40	10	24		
VERNAYSON	74	27	6	20		
TOTAL: SOUTH-WESTERN SECTOR	757	301	39	176	44.9	23.2
ALBIGNY-sur-SAONE	25	15	1	10		
CHAMPAGNE-au-MONT-D'OR	16	7	-	5		
CHARBONNIERES-les-BAINS	40	18	8	12		
COLLONGES-au-MONT-D'OR	59	24	7	18		
COUZON-au-MONT-D'OR	10	6	1	4		
CURIS-au-MONT-D'OR	5	2	1	1		
DARDILLY	77	32	10	17		
ÉCULLY	60	23	-	11		
LIMONEST	25	10	-	2		
MARCY-L'ÉTOILE	39	14	1	9		
ST-CTR-au-MONT-D'OR	54	20	1	10		
ST-DIDIER-au-MONT-D'OR	70	39	4	23		
ST-GERMAIN-au-MONT-D'OR	22	12	3	8		
ST-ROMAIN-au-MONT-D'OR	19	9	6	3		
LA-TOUR-de-SALVAGNY	43	19	4	12		
POLEYMIEUX-au-MONT-D'OR	11	8	1	3		
TOTAL: NORTH-WESTERN SECTOR	575	258	48	148	53.2	25.7
CAILLOUX-sur-FONTAINES	27	9	-	4		
CALVIRE-et-CUIRE	118	69	14	47		
FLEURIEU-sur-SAONE	16	7	7	1		
FONTAINES-ST-MARTIN	43	16	4	10		
FONTAINES-sur-SAONE	21	12	5	8		
GENAY	85	13	2	5		
MONTANAY	47	12	2	6		
NEUVILLE-sur-SAONE	33	11	4	6		
RILLIEUX-la-PAPE	127	49	16	30		
ROCHETAILLÉ-sur-SAONE	9	4	2	1		
SATHONAY-CAMP	11	7	1	3		
SATHONAY-VILLAGE	39	13	3	9		
TOTAL: NORTHERN SECTOR	526	222	60	130	53.6	24.7
TOTAL: COURLY	3710	1655	230	922	50.8	24.9

Source: Direction régionale de l'Équipement, Région Rhône-Alps: Statistiques

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The following abbreviations are used in the text:

Agence d'urbanisme	Agence d'urbanisme de la Communauté urbaine de Lyon
COURLY	Communauté urbaine de Lyon
GMF	Groupe Maison Familiale
MULT	Ministère de l'Urbanisme, du Logement et des Transports
<i>Moniteur</i>	<i>Le Moniteur des travaux publics</i>

All references to legal texts preceded by the abbreviation Art. are taken from the *Code de l'urbanisme* 1986 except where otherwise noted.

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