PART FOUR: THE FUTURE OF PLANNING – FLEXIBILITY AND PERMITTED DEVELOPMENT

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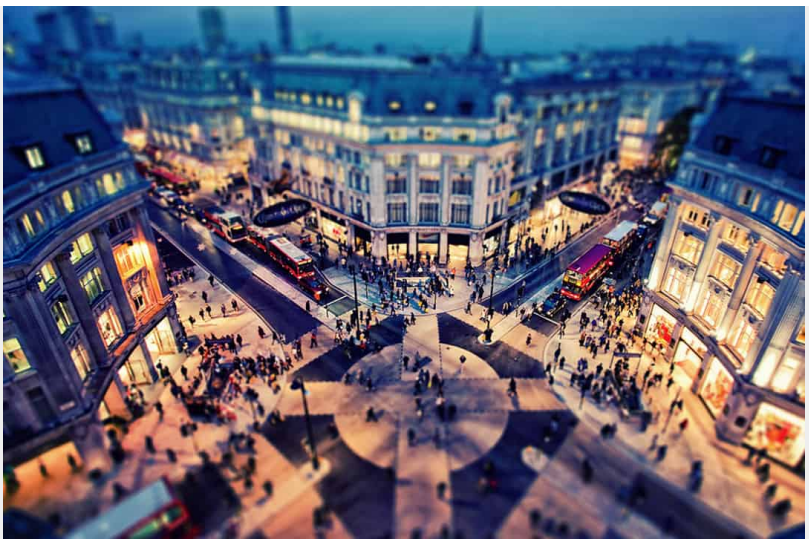

On Tuesday the 30 June 2020, the Prime Minister gave a speech entitled 'Build, Build, Build'. The primary aim of the speech was to set out the PMs vision for getting the UK back on track post Covid19. In a bid to get the country building and to deliver the homes that are very much needed, a raft of new permitted routes would become available to kick start the economy. As well as this, commitments to infrastructure spending are at the heart of Build, Build, Build. The changes are summarised below:

Flexible uses through reforming the Use Class Order.

This would mean that town centre uses, namely retail, would be able to change to other commercial uses without the need for express permission. A lot of these freedoms already exist in the current regulations; however, removal of any consent would certainly go further in delivering 'true' flexibility. Jenrick has stated that a new broad category will be created called *"commercial, business and service"*.

He went on to state that community and learning facilities would be protected through the planning system (read his statement) It does also state that certain uses e.g. local pubs and theatres will not benefit from the new all encompassing use class and will be subject to the planning process, as there are important local considerations in play.

More commercial buildings will be able to change to residential without the

need for planning permission.

The words planning permission are key, no doubt a prior approval process broadening the current possibilities will find its way to legislation. Sustainability of buildings should be a core concern of the Government. Planning policies that require sustainable retrofitting are effective in improving the green credentials of existing buildings. In our view, it is unlikely that such gains will be achieved by the prior approval process.

Normal planning permission not required for the demolition and rebuild of vacant and redundant residential and commercial buildings to deliver home.

This echoes the Permission in Principle process, perhaps a new guise of this established but under-utilised tool. Jenrick has provided further detail, stating that the right will apply to *"free-standing vacant and redundant commercial and residential buildings"*. We have serious concerns over the interpretation of vacant and redundant. Redundant could be very subjective, an initial thought springs to mind, what if a local authority considers a site is not redundant for employment use and see prospects for future such use? Does this prevent prior approval being granted?

Upward extensions subject to local consultation for property owners.

This harks back to the initial consultation carried out in 2016 (read consultation document) opening a broader field for upward extensions. A key aspect to this is neighbour consultation, again indicating some form of prior approval process.

It was announced that the above will be introduced in September 2020. Further substantive changes are expected for the planning system which are to be announced in a policy document later this month. Exciting times.

What might the future hold?

Shredding the Use Class Order, we think will bring about a step change to the approach to policy. Town Centres are subject to protection, particularly in relation to A1 uses, in some instances overly so. We advocate a flexible approach to town centres and a focus on them becoming hubs for social and community activities. We welcome Jenrick's commitment to protect these spaces.

An ability to convert empty commercial property, that could have been subject to policy protection, will remove any teeth of policy. Indeed, we can consider the 'fall back' position becoming an incredibly powerful tool for applicants. Whilst planning applications may still be required, certain policies will be watered down. As expressed above, we do have concerns about the language being used, such as redundant and we hope there is clear guidance on this rather than a journey through appeals and the courts.

A final thought relates to Article (4) Directions and the ability of local authorities to resist the new raft of PD. These allow a local authority to remove permitted development rights in a defined area, for example Richmond have wide prevention of office to residential conversions. Covid19 has had a devastating effect on the resources of the local authorities. Implementation Article (4)'s and even processing prior applications to enable Britain to Build, Build, Build seems like a tall order, to say the least. Surely investment in the planning process is necessary alongside these wide raining measures.

In the meantime…

Until all these changes come into play, we have prepared the below tables that provides guidance on temporary and permanent changes of land and buildings, along with a short policy 'heads-up'. These tables are intended to be a living document, and therefore we will be updating as and when the legislation is updated alongside detailed analysis in our usual blog format.

The Town and Country Planning (Use Classes) Order 1987 (as amended) classifies land and buildings into categories which are 'Use Classes'. On the surface, this offers a fairly binary approach for each type of use, however as most property people will attest, it can prove pretty complicated, pretty quickly. Use classes define different land use typologies, for example B classes are business uses, in this Use Class there is significant variation, for example B1(a) is offices and B8 is storage and distribution.

Permitted development is seen as deregulation, however it has become ever growingly complicated and even for the most experienced practitioners struggle to keep pace. The below is just a guide and can frame the beginning of a conversation, outlining what could be achievable via the statutory instruments. There are certainly more straight forward changes of use (e.g. A1 to A2), however many involve strict qualifying factors and in some instances the sign off from the Local Authority. We strongly recommend talking to a professional suitably qualified in order to advise you correctly.

Planning Insight's Guide to the Uses

* Means the LPA must be notified prior to the change - STPA Means Subject to Prior Approval, an application must be made and approved by the LPA - Defined Uses means only certain uses within that class.

CLASS AND EXAMPLES	PERMANENT AND TEMPORARY CHANGES	POTENTIAL POLICY IMPLICATIONS AND COMMENTS
A1 – Retail/Shops Retail (shops & warehouses), travel agencies, cold food for consumption elsewhere, internet cafes, hairdressers, dry cleaners	**A2** **A3** (up to 150sqm and STPA) **B1** (a) (up to 500sqm and STPA, building in use on 29th October 2018) **C3** or mixed C3 & A1 (up to 150sqm STPA) **D2** (up to 200sqm STPA, building in use on 5th December 2013) Mixed A1/A2 and up to two flats (subject to conditions) Temporary change of use (up to 3 years) A1, A3, B1, D1 (defined uses) *	Subject to protection in most designated centres and in some boroughs individual units outside of defined centres.
A2 – Professional Services Banks, professional services (aside medical), recruitment agencies, estate agents	**A3** (up to 150sqm STPA) Mixed use A1/A2 and up to 2 flats (subject to conditions) **C3** (up to 150sqm, STPA) **B1(a)** (up to 500sqm and STPA, was in use as A2 29th Oct 2018) From A2 with window display or mixed use – A3 & up to 2 flats to mixed use to mixed use – A1 up to 2 flats or A1 **D2** (up to 200sqm STPA, was in use as A2 on 5th Dec 2013) Temporary change of use (up to 3 years) A1, A3, B1, D1 (defined) *	As above, albeit A2 uses are generally less vehemently protected as A1 uses.
A3 - Food Cafes and Restaurants	**A1 or A2** Temporary change of use (up to 3 years) A1, A3, B1, D1 (defined) * Temporarily to Hot Food Takeaway - subject to notification (24th March 2020 to 23rd March 2021)	Generally focused in town centre locations where concerns relating noise/pollution are less problematic.
A4 - Drinking establishments Pubs, wine bars	**AA** Temporarily to Hot Food Takeaway, subject to notification (24th March 2020 to 23rd March 2021)	Usually deemed appropriate in town centres. Pubs are often afforded protection as a community asset.
AA – Drink & Food Drinking establishment with expanded food provision	**A4** (drinking establishment) Temporarily to Hot Food Takeaway, subject to notification (24th March 2020 to 23rd March 2021)	As above, AA uses would generally be considered more acceptable in town centres.
A5 – Takeaways Hot food takeaway	**A1/A2/A3** **B1(a)** (up to 500sqm STPA, was in use on 29th October 2018) **C3** (up to 150sqm STPA) Temporary change of use (up to 3 years) A1, A3, B1, D1 (defined) *	General resistance, particularly in London on the basis of high-concentration and encouraging healthy lifestyles.
B1 – Employment (a) Offices (b) Research and Development (c) Light Industry	**B8** (up to 500sqm) Temporary change of use (up to 3 years) A1, A3, D1 * **B1(a)** to C3 (STPA) **B1(c)** to C3 (STPA) (expires 30/09/2020) State-funded school or registered nursery (STPA)	Protected as an employment use. Mixed-use with residential encouraged.

B2 - General Industrial Industrial processes (heavy)	**B1 & B8** (up to 500sqm)	Subject to protection in industrial locations, the loss can at times be justified elsewhere. However, often employment sought as replacement.
B8 – Storage and Distribution	**B1** (up to 500sqm)	As above.
C1 – Hotels Hotels and boarding (absent of significant amount of care)	State-funded school or registered nursery (STPA)	Town Centre approach first usually adopted, can be subject to sequential test if elsewhere.
C2 – Residential Institutions Residential institutions including care, residential schools	State-funded school or registered nursery (STPA)	There can generally be a resistance to care homes in the traditional sense with a focus on alternative care provision going forward.
C3 – Residential defined as: (a) a single person or group of people as a single household (b) up to 6 people receiving care (c) up to 6 people living together (not C4)	**C4** (N.B. check Article 4 Directions)	Often protected across the board i.e. 'no net loss' particularly family sized units.
C4 – HMOs Use of a residential unit by 3 – 6 unrelated people	**C3**	Approach varies from authority to authority; some seek to protect others strongly resist.
D1 – Non-residential institutions Health centres & clinics, nurseries, education, public libraries, places of worship, exhibition halls, courts	Temporary change of use (up to 3 years) A1, A3, B1 *	Community uses subject to protection, often encouraged if need appropriately evidenced.
D2 – Assembly and Leisure Concert venues, cinemas, leisure/sport centres, gymnasiums	State-funded school or registered nursery (STPA) Temporary change of use (up to 3 years) A1, A2, A3, B1, D1 (defined uses) *	Can have amenity implications, appropriate locations critical to success.
Sui Generis – Class of its own Amusement Arcade Betting Shops Casinos Pay Day Loan Shops Laundrette	Pay Day Loan Shop/Betting to A1, A2, D2 (STPA) Pay Day Loan Shop/Casino to A3 – up to 150sqm (STPA) Betting Shop to A3 Casino to D2 Pay Day Loan Shop/Betting/Launderette to B1(a) – up to 500sqm and if the building in use on 29th October 2018 (STPA) Pay Day Loan Shop/Betting/Launderette to C3 – up to 150sqm (STPA) Pay Day Loan Shop or Betting Office to mixed A1 up to 2 flats (with display window) or A2 and up to 2 flats or Pay Day Loan Shop and up to 2 flats Mixed Use Pay Day Loan Shop/Betting Office/Launderette to C3 (STPA) Casinos/ Amusement Arcades to C3 up to 150sqm (STPA) Temporary change of use (up to 3 years) from Pay Day Loan Shop or Betting Office to A1, A3, B1, D1 (defined uses) *	Sui Generis uses, owing to their individual nature are not subject to protection usually. Many are resisted for example betting shops and pay day loan shops, namely in locations with high concentrations (often identified).
Agricultural Buildings	Barns to Flexible A1/A2/A3/B1/B8/C1/D2 (STPA) Barns to C3 (STPA) Barns to State Funded School or Registered Nursery (STPA)	The permitted development route is often the most successful method in achieving development outside of settlement boundaries, due to restrictions on encroachment into the countryside.

If you would like to discuss the temporary or permanent changes in more detail, or you are simply looking for guidance with your own project, contact a member of our team today on 020 7993 4539.