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# Planning Reform: Opportunity Knocks



Planning consultant **David Kemp** BSc (Hons) MRICS Barrister\* (\*non-practising) and Director at DRK Planning Ltd, comments

It has been a very busy year for proposed changes to the Planning system. With a General Election on the horizon, the enactment of the Levelling Up and Regeneration Act 2023 and a number of new changes proposed to existing permitted development rights, there is a lot to bring together and there will be opportunities - and challenges - arising for developers.

As this year draws to a close, we bring together a brief outline of the main changes and try to highlight some areas for new opportunities for the SME developer market.

## Class MA and 'larger buildings'

The Government signalled via a White Paper consultation in July 2023 its willingness to open Class MA permitted development to buildings of over the current 1,500sqm (16,000sqft) limit. It would also look to remove the current 3-month vacancy restriction on this PD right.

The latter will open up easier and more obvious advantages to SMEs than the former, through enabling PD applications to be submitted earlier and without having to lose a tenant first, ensuring the continuation of a possible source of short-term income from the current tenant whilst having to invest in the planning process.

Proposals to double or abolish the current size restrictions, whilst grabbing the headlines, will not be instantly as advantageous as it may sound. Firstly, savvy agents and owners that are aware of this change, will undoubtedly guide unfeasibly high prices on their land, perhaps 'supported' by architects' plans showing a proposed full PD conversion scheme. Secondly, some of these buildings are likely to be rather deep in parts, leading to the potential for large areas of 'dead' residential



space. Often, before submitting bids on such sites, a quick 'once-over' by a Daylight and Sunlight consultant will confirm that the numbers will not 'stack' on the basis of a residential conversion on such buildings.

Unless such larger buildings can comprise significant building works to create lightwells and courtyards (i.e. structural work), then it is expected that the winning strategies for such buildings are likely to be based on some form of commercial use, multi-lets, co-living or possibly hotel and leisure use. Knowledge of the costs involved and the local market for such uses will likely dictate the strength of future bids for such opportunities.

Similar changes to size thresholds (either doubling to 300sqm or abolishing the size limit) and introducing a rolling two year 'date stamp' to qualify new properties are likely to be introduced to betting shops and pay day

loan shops (Class M rights) and casinos and amusement arcades (Class N rights).

## Combining Class G with commercial PD rights?

Class G rights currently have several advantages over Class MA rights in that they are rarely excluded by Councils under Article 4 Directions, can be applied for whilst the premises are occupied and rented out, and can be sought on listed buildings. In the case of the latter, developers might nonetheless still need to apply for listed building consent as a change of use will still affect the character of the listed building in some way, either through the use or changes to plan form or to fabric.

The upper parts to many Class E buildings in town centres have the potential for more than just two units - the current limit under Class G rights. Hence the

Government's proposal to double this limit to up to four new flats could be a 'game-changer' for the viability of many schemes. However, internal changes of use are not the only way to unlock value and physical extensions to property can also do so, especially if done under PD rights.

Commercial buildings already benefit from PD rights to be extended; GPDO Part 7 Class A (buildings in Use Class E). The Government indicates it might permit a doubling of these PD tolerances to allow physical extensions of 100% or 200sqm (whichever is less).

Extensions to Class E buildings cannot be converted to residential use under Class MA until they have been lawfully erected for at least two years. However, the same restriction does not apply to Class G permitted development rights. Therefore, this opens up the possibility of combining Part 7 rights to extend commercial buildings first, build them out, and then apply for Class G rights across the whole floor space (making use of a possible maximum of four flats if this is changed) all under the PD rights and without having to wait two years. A note of caution though: this is a very 'creative strategy' (i.e. untested) and might come up against severe resistance from most Councils, so should probably be accompanied by Legal Advice on the point first, by a top planning barrister.

Both changes are expected in February/March 2024.

#### **New PD for houses to two flats**

In the Autumn Budget, the Chancellor made an unexpected announcement that caught everyone by surprise - a new PD right to change the use of Class C3 family dwellings to two flats.

In many of areas of the country, where local authorities have sought to preserve the housing stock for larger family dwelling needs (i.e. 3-bedrooms or larger), subdivision of properties is either not allowed or only allowed if above a certain minimum size. Furthermore, these rules cause considerable confusion as they vary greatly from one local authority to another. Some set the bar at 150sqm, some at 130sqm or another size. Some base the threshold size on the 'original house', ignoring the capacity to enlarge the property through PD, whilst some will take the possibility of enlargement into account.

The Chancellor has indicated only that this is likely to be subject to some form of

prior approval, like Class MA (i.e. cannot be sought retrospectively) and must comply with national minimum size, daylight and sunlight and other key requirements, and that consultation will start in January 2024. As consultations last at least six weeks and that one normally expects about a month at the very least before changes can be drafted and introduced, this PD right is unlikely to be in before May/ June time.

Article 4 Directions are an inevitable risk with any new PD right, and we expect that many Councils will look to close this PD right down as soon as possible. However, there is usually a 'window of opportunity' of some 9-12 months before such Directions can take effect. Even then, the Government will be closely scrutinising new Directions to ensure that they are not too broad, are robustly justified and targeted to specific parts of any Borough and will be prepared to block the implementation of any Article 4 Directions that would be applied Borough-wide.

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#### **More opportunity in tourist destinations?**

The Government has already consulted on a possible new Use Class C5, for 'short-term lets' and 'holiday lets'; albeit that these terms of reference will no doubt become areas for future dispute with local planning authorities given their fluid use by developers. It is possible that this might include 'serviced accommodation' of some types and will be accompanied by a new PD right to change from C3 to C5 use and vice-versa. The Government is yet to conclude on this consultation, but change is expected 'some time' in the 'New Year'. This might encourage and facilitate a move toward such accommodation from C3 use in areas where these business models are viable.

Furthermore, where SME developers and investors fall foul of planning policies or Article 4 Directions that prevent the establishment of a lawful HMO operation, this can provide a useful alternative option

for investment with more upside than planning risk, at least while no Article 4 Directions are in force and as long as the proposed use can be proven to fall within the uses permitted under the GPDO.

Along similar lines are the more recent proposals to allow hotels and guesthouses (Class C1 use) to change to flats. This is likely to be limited in size, to protect the seaside and local tourist economies from the loss of very large hotels whose loss might harm the local economy. It will be a 'prior approval right', similar to Class MA, and will not permit a change on to other uses after the change to C3 use has been implemented (e.g. not to HMOs, serviced accommodation or short lets). However, it would still be possible, subject to local plan policy constraints, to move from C1 use to serviced accommodation/short-let or holiday let, by way of planning permission and then (subject to whether the PD right for C5 to C3 use allows it - to be confirmed) change to C3 use, and then on to C4 HMO use if there are no PD conditions or limitations against this.

#### **Countryside and Green Belt residential development**

Subject to access to local services and amenities, the market for residential development in the countryside carries significant attraction in terms of the price of land as well as the opportunity to add value through residential development.

However, local countryside or Green Belt policies will often stand in the way of such proposals, preferring new houses to be built within established town or village settlements.

The Government's intention, announced in the July White Paper, to significantly broaden the types of uses that can be converted to residential in the countryside under Class Q rights, simplifies PD rules around this that undermined its potential for opportunity. The suggestion of allowing up to 10 new homes (set-off against a proposed limit on the size of each new home to smaller 2-bedroom and 3-bedroom properties) instead of the current limit of five new homes, also might improve the commercial viability of this opportunity.

Green Belt designations are not always accompanied by Article 4 Directions on PD rights and the changes announced can therefore help to circumvent the restriction placed on residential development in the Green Belt where existing buildings ▶

can be adapted, whether they are storage, agricultural, livery, equestrian or similar in character of use.

Longer term plays might be possible if the Government goes ahead with its suggestion to allow new buildings to benefit from Class Q rights after 10 years (if not withdrawn in the meantime by planning conditions or an Article 4 Direction). Some developers might look to see how far this might be tested by seeking permission now for farm buildings in different parts of the land, establishing a viable farm or livery business for instance, and then in 10 years seeking residential use under Class Q rights for these buildings. This could in turn provide a fall-back for a wider and more comprehensive housing development of the site with planning permission, or at least create the opportunity to sell the land with an Option and Overage to a housebuilder.

Changes to Class Q rights might be introduced by March 2024.

**Biodiversity Net Gain**

For quite a while now, since the Environment Act 2021, the Government has been preparing the property

development market for the concept of Biodiversity Net Gain (BNG). This will place on developers of all future residential and commercial schemes a requirement (subject to exemptions) to achieve a 10% BNG. If this cannot be achieved on-site or off-site, then a system of environmental statutory credits will help to create an 'off-set market' to enable schemes to proceed. BNG would have to be delivered through pre-commencement conditions, which would add to front-end costs in a development and would need to be accounted for in terms of cash flow and funding.

The proposed changes will be introduced by the new Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024, expected to be introduced in early 2024 when Parliamentary time allows. The National Planning Practice Guidance has already been amended in draft to set out very detailed advice around these regulations.

**Conclusion**

Keeping on top of the changing planning regime and ensuring that you employ specialist, well-informed and experienced

teams of professionals has never been more important, to ensure that you maximise the wealth of new opportunities as and when they arise, but are also aware of the potential costs, conditions and challenges.

Other changes noted in the Autumn Budget and the Levelling Up and Regeneration Act 2023 include a potential single 10-year rule across all planning enforcement cases, Community Land Auctions, Street Votes and the greater use of planning premium services to 'fast track' major planning applications. No specific dates have been announced for these reforms and some will not be rolled-out nationally for several years yet, subject to a voluntary 'test and learn' process and also whether some proposals might survive a possible change of Government following next year's General Election. Watch this space!

For a summary of all of the main changes, please visit our website at <https://drkplanning.co.uk/resources/> and select the Summary of PD Changes.

Wishing you all a relaxing time over the Festive Period and a happy, healthy and wealthy 2024!



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