



ParalympicsGB



OFFICIAL PARTNER

Recess round-up

A quick reference guide to recent key planning and development changes



Hogan
Lovells

Recess round-up

A quick reference guide to the key recent planning and development changes

It's difficult enough to keep on top of the news at the moment – not to mention the raft of recent changes to the planning system announced by Whitehall over the past couple of months.

With that in mind, and as the Parliamentarians jet off in search of a quarantine-free summer break, we've collated a handy quick reference guide to the key recent planning and development changes – our recess round-up.

Flexibility, flexibility, flexibility

The Business and Planning Act 2020 received Royal Assent on 22 July, introducing a series of (mostly temporary) measures designed to provide some urgent – and much-needed – relief to the development industry.

So what does the Act do? Here are our top three picks:

- It extends the implementation period for planning permissions and reserved matters approvals.

One of the most pressing concerns for the industry was the effect of lockdown on the ability to implement planning permissions before they expired. The government has stepped in – but questions remain as to whether it has gone far enough.

Permissions and listed building consents which have lapsed or are due to lapse between 23 March and 31 December 2020 stand to have their implementation deadline extended to 1 May 2021.

The extension applies automatically for permissions and consents which are extant between the extension coming into force on 19 August and 31 December 2020. Planning permissions which have lapsed since 23

March 2020 can be reinstated subject to an additional environmental approval.

A similar process applies to securing reserved matters approvals.

- It allows the modification of construction hours.

For the majority of developments, developers can apply to temporarily amend controls restricting the hours during which construction activities may be carried out on site.

The Local Planning Authority ("LPA") has 14 days to make a decision on an application – failing which the modifications applied for are deemed to be approved – and any approved altered hours will remain in place until 1 April 2021 at the latest.

- It introduces flexibility for planning appeals.

The Act has introduced measures to enable hybrid appeals, meaning the manner in which a topic is dealt with (inquiry, hearing or written representations) can vary depending on its complexity. This measure has the potential to expedite the appeals process with only the trickiest of topics requiring an inquiry.

Click [here](#) to read our detailed update from 25 June on the Business and Planning Bill (as it then was).

Deferring Community Infrastructure Levy ("CIL")

For those who wanted to start their developments during lockdown – even if just to secure implementation whilst we were waiting for the position on extensions to be clarified – minimising and delaying payment has been a key focus. Whilst there is the scope to agree variations to Section 106 agreements, the CIL regime is much less flexible. Given the potential size of CIL payments, which fall due when planning permissions are first implemented, this was posing a real headache for many.

This has now been addressed in the most recent set of amendments to the CIL Regulations which introduce a statutory right to request the deferral of CIL by up to six months and apply to all unpaid CIL falling due before 31 July 2021.

There are a few points to note:

- Only those with an annual turnover of £45m or less can make a request, and this includes a turnover of all partners or "linked enterprises", such as group companies.
- The request should only be granted if the applicant can show that they are experiencing financial difficulties connected to COVID-19, which result in difficulties paying CIL. This is all quite vague, and it is not yet clear how widely it will be interpreted.
- The LPA has discretion as to whether to grant the deferral so, even where the test is clearly satisfied, no deferral can be guaranteed.

However, the process is pretty simple and whilst the LPA considers the application, no further interest accrues and no surcharges can be imposed. Therefore there doesn't seem to be much to be lost in submitting an application.

The Use Classes Order – all change, please!

On Tuesday 21 July, the government laid before Parliament regulations which will make sweeping changes to the Use Classes Order as we know it. The changes, which come into effect on 1 September 2020, represent a complete overhaul of the Use Classes Order and introduce:

- A new Class E (commercial, business and service use) which incorporates the previous A1 (shops), A2 (financial and professional services), A3 (food and drink) and B1 (offices) classes, and brings within it some existing D1 (non-residential institutions) and D2 (assembly and leisure) uses.

- A new Class F1 (learning and non-residential institutions use) which brings in uses from the existing D1 (non-residential institutions) involving buildings which are in the wider public use such as schools, museums and galleries, and places of worship.
- A new Class F2 (local community use) which groups together uses from the existing D2 (assembly and leisure) which involve physical activities and local community uses.

Notably, existing A4 and A5 uses (drinking establishments and takeaways), cinemas, concert, dance and bingo halls are taken out of the scope of any use class and become sui generis. This means that planning permission will be required for changes to and from these uses.

The existing residential (C), general industrial (B2) and storage and distribution (B8) classes remain the same.

The flexibility brought about by the new classes is to be welcomed, but already the changes are giving rise to some thorny questions. To what extent will planning authorities seek to regain control over changes of use by imposing conditions on fresh consents? On the other hand, will applicants self-regulate and propose restrictions of their own in order to reduce the scope of any environmental impact assessment and limit their exposure to planning obligations required in relation to particular uses? How should fresh planning applications be framed so as to retain as much flexibility as possible?

Please click [here](#) for our detailed review of the forthcoming changes. A quick reference guide to the new use classes is set out below.

Permitted development rights ("PDRs")

The government has gone full speed ahead to bring its planning reforms into effect by September, starting with the introduction of the

following PDRs, removing the need to obtain express planning permission in the usual way:

Upward extensions

There are six new PDRs governing the extension of buildings upwards. The first of these comes into force on 1 August 2020 and allows the construction of up to two additional storeys of new flats above a detached block of flats – more detail on this PDR can be found in our Bulletin [here](#). A second PDR allows the enlargement of a dwellinghouse by either one or two extra storeys depending on the existing storey height. The remaining four PDRs permit the construction of new flats above certain commercial or mixed use (including an element of residential use) buildings, or dwellinghouses. These final five PDRs come into force on 31 August 2020.

Don't think this is open season, however – the rights are subject to a large number of limitations and exclusions – ranging from height restrictions to only applying to buildings built within a certain period – which will dramatically restrict their use.

Demolition and rebuilding of vacant buildings for new homes

This new PDR allows:

- the demolition of either a purpose-built detached block of flats, or a detached building used for offices (Class B1(a)), research and development (Class B1(b)), and/or light industrial processes (Class B1(c)); and
- the replacement of this with a purpose-built detached block of flats or dwellinghouse (Class C3) – this can be up to two storeys higher than the original building, provided that other height restrictions aren't exceeded.

This PDR will come into force on 31 August 2020. However, again, it's not a *carte blanche*. There's a long list of exclusions and limitations, including that the footprint of the new building may not fall outside that of the old building, and that the old building must have been vacant for

at least six months before submission of the prior approval application.

All the new PDRs are subject to conditions designed to maintain standards, including the need to obtain the LPA's prior approval for matters including external appearance and the impact on neighbouring amenity. Given these constraints and the rigour to which applications for prior approval are likely to be subjected – not to mention a forthcoming increase in the fees for such applications – many developers are likely to stick with the tried and tested planning application process.

Temporary uses in response to COVID-19

Once again, the government turned to the planning system to help stimulate economic activity in the face of the pandemic, introducing the following PDRs:

- The change of use from restaurants, cafés and drinking establishments (including those with expanded food provision) to the delivery and takeaway of food between 24 March 2020 and 23 March 2021. In case you missed it, our [blog](#) looks at the details of this temporary PDR. This PDR was relied upon at the height of the national lockdown and is likely to prove useful again in the event of localised lockdowns.
- Emergency development carried out by or on behalf of a local authority or health service body on land owned, leased, occupied or maintained by it. This PDR enables the private sector to release land (e.g. empty car parks, unoccupied hotel rooms) to the relevant authority/body under a lease or licence for use as temporary health facilities, accommodation, storage and distribution etc. – find out more detail about this [here](#).
- The temporary use of land for any purpose (save for a few exceptions) for no more than 56 days a year, 28 days of which must fall

between 1 July and 31 December 2020 – although these time periods are halved for markets and car and motorcycle racing (see our [bulletin](#) for extra information).

- Markets held by or on behalf of a local authority can be held for an unlimited amount of time between 25 June 2020 and 23 March 2021.

Virtual planning committees – here to stay?

Many developers will have experienced first-hand the effects of a slowdown in the planning process during the COVID-19 outbreak. As such the news that, until 7 May 2021, LPAs can hold planning committees and other meetings virtually was welcomed by the industry.

There have been some practical issues – not to mention one or two unwelcome attendees – to grapple with along the way, but the overall success of these measures suggests they may be here to stay.



Hannah Quarterman
Partner, Head of Planning
T +44 20 7296 2287
hannah.quarterman@hoganlovells.com

Reforms to the Use Classes Order

A quick reference guide

Use	Current use class	Use class from 1 September 2020	Use	Current use class	Use class from 1 September 2020
Shop (< 280m ² selling essential goods and at least 1km from another Class E retail shop)	A1	F2	Hotels, boarding and guest houses	C1	C1
Shop	A1	E	Residential institutions	C2	C2
Financial and professional services (not medical)	A2	E	Secure residential institutions	C2a	C2a
Café or restaurant	A3	E	Dwelling houses	C3	C3
Pub or drinking establishment	A4	Sui generis	Use of a dwelling house by 3 – 6 residents as a house in multiple occupation (HMO)	C4	C4
Takeaway	A5	Sui generis	Clinics, health centres, crèches, day nurseries, day centres	D1	E
Office (other than a use within A2)	B1a	E	Schools, non-residential education and training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts	D1	F1
Research and development or product or processes	B1b	E	Cinemas, concert, bingo and dance halls	D2	Sui generis
Industrial processes (suitable for residential areas without causing detriment to amenity)	B1c	E	Gyms, indoor recreations not involving motorised vehicles or firearms	D2	E
Industrial	B2	B2	Hall or meeting place for the principal use of the local community	D2	F2
Storage or distribution	B8	B8	Swimming baths, skating rinks and outdoor sports or recreations not involving motorised vehicles or firearms	D2	F2

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta*
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Riyadh*
Rome
San Francisco
São Paulo
Shanghai
Shanghai FTZ*
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar*
Warsaw
Washington, D.C.
Zagreb*

*Our associated offices
Legal Services Center: Berlin

www.hoganlovells.com

Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639 and is authorised and regulated by the Solicitors Regulation Authority of England and Wales (SRA ID 449616). Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

©Hogan Lovells 2020. All rights reserved.