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Planning a Way Forward in 2021



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On Wednesday 6 January 2021, England's third national lockdown came into force. The new restrictions will last until the end of March unless the Government decides otherwise in the meantime.

For property investors and developers, this brings opportunities and challenges. For investors already experiencing unpaid rent from tenants and uncertain returns, and developers needing to consider the completion of their projects on site and obtaining supplies, forethought and careful project planning will call for a diligent and structured approach to solving the usual property problems brought once again into starker focus by these emergency measures.

In this article, I look at some new areas of opportunity and some of the issues around these points. It is not intended to capture all of the issues that you may face. However, it will hopefully serve as a reminder that there is still scope for deals and progress and, whatever the circumstances, the New Year brings new opportunities if you know where to look and how to respond.

The government chief planner's advice

This is as good a point as any to start as the chief planner's newsletter to Local Authorities from December 2020 often gives an insight into the key changes in 2021. It of course pre-dates the current lockdown but there are three key topics to be aware of, all of which will be extremely relevant to new opportunities for development and growth:

- New Prior Approval right to move from Use Class E (commercial) to Use Class C3 (residential)
- New Conditions to existing and emerging PD rights
- Assessing local housing need



New PD Rights: Commercial to Residential

The Government released on 3 December 2020 a new Consultation Paper setting out its intention to push forward with a new permitted right allowing buildings to change use from Class E to residential. It will take effect, when passed through Parliament in early 2021, on 1 August 2021 and see the end of Use Class D and many existing Prior Approval rights such as Class O (B1 to C3) and Class M Rights (selected retail uses to C3).

I anticipate that this new PD right could be significant in terms of the possible number of buildings to which it might apply.

Firstly, it will broaden the scope of the existing residential conversion rights. It would not only apply to offices, light industrial and retail, but also to restaurants, gyms, medical facilities and crèches.

Secondly, the new right is intended to apply to ALL Class E buildings, regardless

of the size of the property in question. It is also intended to apply in conservation areas. There may be other uses such as takeaways, betting shops and launderettes, to which these changes might be similarly extended. However, the government is yet to decide on the precise details as there are nearly 50 separate pieces of legislation covering different types of PD and Prior Approval rights.

Thirdly, buildings only need to have been in the relevant uses since 1 September 2020, so this will draw in many more potential buildings.

Finally, unlike the new PD rights for 'air rights' extensions to existing buildings introduced in summer 2020, these new PD rights will be more straightforward and easier to obtain in terms of meeting the conditions for approval.

The likely conditions will include the following:

- ◆ Flood risk
- ◆ Contamination risk
- ◆ Parking, highways and access
- ◆ Noise impact on future occupiers
- ◆ Adequate natural light
- ◆ Suitability of location for housing if in 'an area of heavy industry and waste management'
- ◆ Fire Safety (a fire safety strategy)
- ◆ National Space Standards

MHCLG are proposing a fee of £96 per dwelling, capped at a maximum of £4,800. There is no 'deemed prior approval' right proposed, so applications could take longer than eight weeks to decide, but the majority probably will not take longer given the simplicity of the process.

I would expect greater clarity on the scope of the new law and its requirements by early April 2021 and some councils might be considering how to prepare for these changes several months beforehand.

The law will set out to what extent if at all that any current Article 4 Directions, say for B1 offices to C3 flats, might be carried over to the new law. It might not be possible for such Directions to be automatically carried over given the differences involved and therefore there might be a window of 6-12 months in some cases from when applications can be submitted and when councils are exposed without new Article 4 Directions, until when revised of new Article 4 Directions take effect locally.

I have already seen some property speakers making unwarranted assumptions about how Article 4 Directions might work in this context. You should be careful about following those assumptions at this stage yourself – property trainers do not make the law (and sometimes do not read it properly) – this is for Government or Parliament.

Therefore, my advice is as follows:

DO look for such opportunities and position yourself to take full advantage as soon as the law comes into force.

DO always check on the relevant council website first for news on current and draft Article 4 Directions.

DO NOT be committed to any deal reliant on this new PD right until at least April; the government might include specific exemptions to some geographic areas, such as central London and the City of London, as it did in 2013 when B1 office PD was first introduced.

New Conditions to PD Rights

Two principal new changes to existing PD rights will be introduced and take effect early this year: Nationally Described Space Standards (NDSS) and Fire Safety.

Any new PD or PA (Prior Approval) application submitted to the local authority from 6 April 2021 will need to comply with NDSS. These are summarised for various sizes of flats in the following table:

The NDSS also sets standards relating to the size and width of bedrooms and habitable rooms in roof space.

There are a number of key points to note about this:

Market resilience – even if you can still get planning approval for smaller units under PD or PA, some agents in some areas would still strongly recommend compliance with NDSS in order to maintain competitiveness with other developments locally; unless the relative price point or level of mortgage required is low enough to entice buyers anyway. You need to check this and test with agents and mortgage providers that a planning-approved but non-NDSS compliant scheme would (a) still be competitive in the local market (ask agents) and (b) the smaller size of units would not hinder lending as long as the development has planning approval (ask lenders).

Obtaining funding – this point is likely to depend on the first point, but it is not unusual in our experience to see funders and their lawyers fail to understand how the planning system works and then putting up further obstacles to the release of funds for completion. Early engagement with your funders on these points to understand their

criteria and reassure them on planning and saleability is critical. Do not leave it until the last minute before checking these points with them.

A space compliant backstop? This point is perhaps more relevant to those looking to prepare and submit their applications much closer to the deadline. However, if there is the possibility that the deadline may be missed because not all key consultancy reports will be ready in time, then you may need to consider if the deal will stack on fewer NDSS-compliant units.

Easter Bank Holiday weekend – the effective date of last submission for these purposes is Thursday 1 April. If the application is submitted and the fee paid by 5 April, then the scheme will have to comply with NDSS. This is because the planning portal and most councils do not process payments over a weekend or a Bank Holiday, so any applications sent on the 2 April onwards will not be formally submitted to the council until the law has already come into force.

As long as the application is submitted to the council before 6 April 2021, the NDSS will not apply to the application – even if the deemed approval date, the decision date or any dates in relation to a subsequent appeal might occur long after.

With respect to Fire Safety, legislation was laid on 9 December 2020 to introduce a new matter for prior approval to two existing national permitted development rights to extend buildings upwards: on detached blocks of flats (Class A) and detached buildings in commercial or mixed use (Class AA). ▶

Table 1 - Minimum gross internal floor areas and storage (m²)

Number of bedrooms(b)	Number of bed spaces (persons)	1 storey dwellings	2 storey dwellings	3 storey dwellings	Built-in storage
1b	1p	39 (37) *			1.0
	2p	50	58		1.5
2b	3p	61	70		2.0
	4p	70	79		
3b	4p	74	84	90	2.5
	5p	86	93	99	
	6p	95	102	108	
4b	5p	90	97	103	3.0
	6p	99	106	112	
	7p	108	115	121	
	8p	117	124	130	
5b	6p	103	110	116	3.5
	7p	112	119	125	
	8p	121	128	134	
6b	7p	116	123	129	4.0
	8p	125	132	138	

From 30 December 2020, where the existing building is 18 metres high or more, the application for prior approval under these two rights:

Must be supported by a report confirming that the external wall construction of the existing building meets the building regulations requirement for resisting fire spread (requirement B4).

The report must be provided by a chartered engineer or other competent professional. If the report is not provided the local planning authority must refuse prior approval. Guidance will be provided in the form of a Building Safety Circular published on the MHCLG website prior to the legislation coming into force.

Assessing local housing need

On 16 December 2020, the Government published its response to the local housing need proposals in the Planning White Paper. This sets out important changes to the standard method, which has been amended so that the 20 most populated cities and

urban centres in England see their need uplifted by 35%.

These cities and urban centres are: London, Birmingham, Liverpool, Bristol, Manchester, Sheffield, Leeds, Leicester, Coventry, Bradford, Nottingham, Kingston upon Hull, Newcastle upon Tyne, Stoke-on-Trent, Southampton, Plymouth, Derby, Reading, Wolverhampton, and Brighton and Hove.

All other local authorities in England will continue to use the current standard method to calculate their local housing need. The planning practice guidance on housing and economic needs assessment has now been updated to reflect these changes.

The Secretary of State made a Written Ministerial Statement, which set out these changes to local housing need and also announced further support for local areas in delivering these homes. The government will publish a response in the Spring setting out its decisions on the proposed way forward, including to prepare for legislation, should

the government so decide, in the Autumn.

Light at the end of the tunnel

Throughout this pandemic and currently, we have experienced in our practice a surge in planning and property activity. With the renewed sense of optimism that the delivery of the new COVID vaccines will bring, 2021 should hopefully be a brighter, healthier and stronger year. It remains to be seen how the UK economy will cope post-Brexit and during the course of Government transition from emergency business support in order to rebalance the books, and how this will impact on the housing market and the cost of borrowing.

In any event, we at DRK Planning remain optimistic and see some great planning opportunities ahead, especially once we have steered our way through the challenging start to 2021 that we all currently face.

Happy New Year to you all and wishing you all good health and great success for the year ahead.

