

**Further Changes
to the Planning
Regime**

DLP BRIEFING NOTE 130

Prepared by
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August 2013

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Further Changes to the Planning Regime

Over the recent months there have been significant changes to the Planning Regime. This briefing provides a summary of some of the more important changes and highlights some of the changes to come.

1. Judicial Review

From **1st July 2013**:

- All applications to bring Judicial Review proceedings of planning decisions must be made within six weeks of the decision being made.
- Where a Judge has certified that a case is "totally without merit" when considering the application on the papers, there is no right for the issue of the grant of permission to bring the Judicial Review to be reconsidered at an oral hearing.

2. Town & Village Green (TVG) Applications

From **1 October 2013**:

- The period within which an application to register land as TVG must be submitted will be reduced from two years to one year from the date when the right to use land was first challenged.
- Landowners will be able to deposit a map and statement with the Registration Authority which will stop time running towards a claim based on 20 years' use.

3. Stopping Up of Highways

From **25 June 2013**:

- The Secretary of State can make a draft Stopping Up/Diversion Order under Section 247 of the Town & Country Planning Act 1990 (TCPA).
- A Local Planning Authority (LPA) can make an order for the stopping up of public rights of way under Section 257 of the TCPA prior to the grant of planning permission.

4. Public Rights of Way

From **1 October 2013** landowners depositing a map and statement with the Highways Authority to prevent new public rights of way claims will have to follow a prescribed form.

5. Permitted Development (PD) Rights

From **30 May 2013**, the following changes of use do not require planning permission:

Office (B1) (a) to Residential (C3)

Changes are subject to the prior approval procedure. From **1 October 2013**, this will be subject to an £80 application fee. The LPA has 56 days within which to consider the proposals but may only "refuse" on the grounds of:

- Adverse impact on highways.
- On-site land contamination risks.
- On-site risk of flooding.

The following points are of particular note:

- Planning permission will still be required for any external alterations.
- These conversions will not trigger Affordable Housing and other Section 106 Agreement requirements.
- Community Infrastructure Levy may be triggered if there has been no office use for six out of the last 12 months.
- The new PD rights will not apply to new office buildings which have been erected but never occupied.
- The new rights will remain in force for three years only.

High Street Uses

All Class A uses (shops, financial and professional services, restaurants and cafes, drinking establishments and hot food take-always), businesses (B1), non-residential institutions (D1) and assembly and leisure uses (D2) may now change to flexible uses within A1 (shops), A2 (financial and professional services), A3 (cafes and restaurants) or B1 (business).

The following points are of particular note:

- The temporary uses will apply for two years only. Any uses continuing after that time will require planning permission.
- The use only applies to areas of 150 square metres or less.
- The LPA must be notified when a change occurs.
- Further changes can occur within a two-year period provided that the LPA is notified.

Redundant Agricultural Buildings

Redundant agricultural buildings may now change to Classes A1 to A3, B1, B8 (storage and distribution), C1 (hotels) or D2.

This is intended to revitalise rural areas and to help the farming community to diversify. Again, it remains to be seen how much effect this will have in practice and, as with the other uses highlighted above, there are a number of restrictions:

- This is limited to buildings of 500 square metres or less.
- The new uses are to be treated as sui generis so any further change of use in the future would require planning permission, even if this would not otherwise have been required.
- Residential conversions will still require planning permission.

Schools

Buildings in use as B1, C1 (hotels), C2 and C2A (residential and secure residential institutions) and D2 may now be used for a state-funded school, subject to a prior approval application. The LPA has 56 days to respond but may only consider:

- Transport and highway impacts.
- Noise impacts.
- Contamination risks.

There will be a right to return to the previous lawful use without a need for further planning permission, so if a school outgrows the building or for some reason does not succeed then there will be no need for planning permission to change the building back to its previous use.

Buildings of any sort may be used for up to one year as a state-funded school subject to a number of restrictions:

- The site must be approved by the Secretary of State for Education for a "free school".
- At the end of the academic year, the site must revert back to its previous lawful use unless planning permission has been granted in the meantime.

Extensions to Offices and Industrial and Warehouse Buildings

Offices may now increase in floor space by the lesser of 25% or 100 square metres.

Industrial and warehouse buildings may increase in floor space by the lesser of 50% or 1,000 square metres.

The following points are of particular note:

- The new PD rights are temporary, for three-years only.
- Smaller increases are permitted in Conservation Areas, AONBs etc.
- All alterations and extensions are subject to a number of conditions and restrictions

Greater Flexibility for Change of Use Consultation

The consultation, *Greater flexibilities for change of use*, which closes on the 15th October 2013, seeks the views on five proposals for permitted development rights to allow:

- Shops and financial and professional services to change use to a dwelling house.
- Existing buildings used for agricultural purposes of up to 150 square metres to change to residential use.
- Retail uses to change to banks and building societies
- Premises used as offices, hotels, residential and non-residential institutions, and for leisure and assembly, to be able to change use to nurseries providing childcare
- A building used for agricultural purposes of up to 500 square metres to be used as a new state funded school or a nursery providing childcare

The document also proposes that the new rights would:

- Apply to A1 (shops) and A2 (financial and professional services);
- Have an upper threshold of 150 square metres
- Allow conversion to a single dwelling house or a maximum of four flats, but not a small HMO
- Enable the external modifications sufficient to allow for the conversion to residential use
- Not apply in article 1(5) land as set out in the General Permitted Development Order (i.e. conservation areas, National Parks, Areas of Outstanding Natural Beauty, the Broads and World Heritage sites).

There will be an requirement of prior approval in respect of design, the potential impact of the loss of the retail unit on the economic health of the town centre, the need to maintain an adequate provision of essential local services such as post offices, and the potential impact of the change of use on the character of the local area.

6. Planning Application Requirements

A number of new requirements for planning applications came in from **25 June 2013**:

- Design and Access Statements (DASs) are no longer required except for:
 - Major development.
 - Residential development or development of more than 100 square metres floor space in Conservation Areas, World Heritage Sites etc.
- Requirements for DAS as part of a listed building application are to be simplified.
- Local requirements for planning applications must be:
 - Reasonable having regard to the nature and scale of the application.
 - Concerned with a matter which it is reasonable to think will be a material consideration.
- There will be the ability to appeal for non-determination where the LPA has refused to register an application for non-compliance with local requirements.
- LPAs will no longer be required to give a summary of reasons for granting planning permission nor a summary of development plan policies.

In **October 2013**, the first designation of "failing LPAs" is expected, allowing planning applications to be made direct to the Planning Inspectorate. Designation will be based on:

- Speed of determination of major applications (at least 70% within the statutory period).
- Quality of the decision taking (less than 20% overturned at appeal)

7. Electronic Communications

From **27 June 2013**, broadband street cabinets, new poles and overhead lines can now be installed in any location, other than Sites of Special Scientific Interest (SSSI), without prior approval notification.

However:

- The relevant provisions last for five years only.
- In protected areas other than SSSIs, operators must notify and consult with LPAs.

8. Listed Buildings

On **25 June 2013**, the restrictions relating to when an application for a certificate for immunity from listing can be made were removed.

9. Planning Fees

From **1 October 2013**, applicants will be able to obtain a full refund of their planning fees for planning applications and for applications for reserved matter approvals if the LPA has failed to determine the application within 26 weeks.

This is intended to speed up determination of applications, but could, in practice, lead to LPAs refusing an application when the 26 week time limit is approaching. This has particular implications where complex Section 106 Agreements have to be negotiated and it may be that there will be an increase in the use of Planning Performance Agreements (PPAs), something else which the Government is encouraging, as applications subject to a PPA will be exempt from these provisions.

DLP Planning has considerable knowledge of the national planning system. If you require any further advice regarding the further changes to the planning regime and how it may affect you and your property or land, please do not hesitate to contact an office listed below. Senior staff within the practice would be very happy to help you with this process and explain its potential implications for you. If you wish to utilise DLP's considerable planning expertise to maximise your opportunity, please contact us.

If you require more information or would like to discuss the issues mentioned in further detail please contact:

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A summary of matters that the DLP Consulting Group provide services for follows:

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DLP Environment Ltd

Strategic Environmental Assessments
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If you would like to receive a brochure providing more detail of the service provided by the DLP Consulting Group, please contact any of the offices listed on the left of this page.

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