



Planning reforms in 2020 and what they mean for you



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1 Introduction

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1 Introduction

In June 2020, prime minister Boris Johnson announced a “strategy to rebuild Britain and fuel economic recovery across the UK”. The need to tackle decades-long “great unresolved challenges” – including the housing crisis, the decline of high streets, regional inequality and climate change – in the UK had become particularly urgent amid the global Covid-19 pandemic. Just weeks before, the Bank of England warned of the worst recession since the 18th century.

The government announced a raft of policies to kickstart a programme to “build back, better, build back greener, build back faster”. It would launch a new Infrastructure Delivery Taskforce called ‘Project Speed’ to deliver public investment projects; it would release new funding for green investments, projects and R&D; and, crucially, it would reform the planning system to “make it easier to build better homes where people want to live”.

The first changes to what the government called “the most radical planning reform since the Second World War” came into force at the end of August and September, comprising three amendments to permitted development rights (PDR) and use classes:



PDR expansion to allow the construction of new homes on top of certain existing buildings



PDR expansion to allow the demolition of certain buildings, which will be replaced with new homes



The introduction of three new use classes, including a broad commercial, business and service use class

Through figures from EG Radius and insights from EG News and Legal, this paper explores the crucial elements of these amendments. It identifies key themes that are relevant for developers or investors and sheds

light on some of the opinions about these changes within the commercial property industry – crucial for anyone who wants to understand what the industry is thinking.



2 Context

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Economy

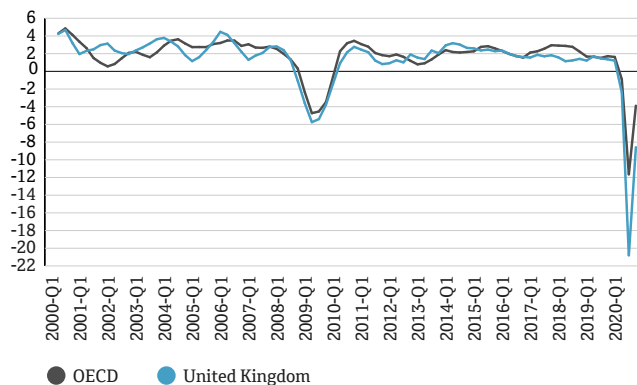
At the time of the government’s announcements, the Bank of England was forecasting the worst contraction since 1706 with an expected 14% decline in GDP in 2020. UK GDP contracted 19.8% in Q2 2020, which was the largest quarterly fall since quarterly records began in 1955. With the end of lockdown in July, the economy rebounded as GDP grew 15.5%, although the year-end forecasts by the OECD put the UK second to last among 37 developed countries for expected GDP growth in 2020 (ahead of only Argentina). The OECD’s forecast, predicting a decline of 11.2% in UK GDP in 2020, was not as severe as the Bank of England’s earlier forecast, but it was stark nonetheless. By comparison, in 2009, at the height of the global financial crisis, the UK’s GDP contracted 4.2%.

Housebuilding

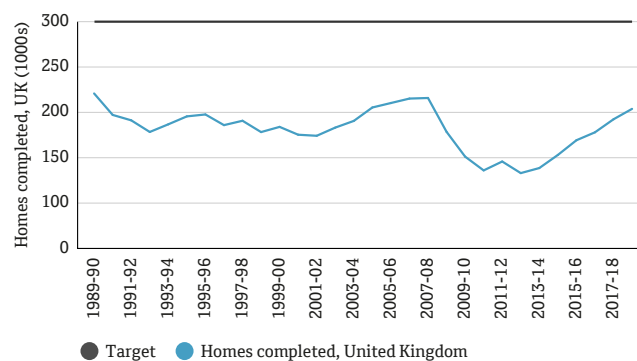
Ever since then-chancellor Philip Hammond set out the government’s plans to build 300,000 new houses per year in 2017, that number has acted as a benchmark for how well the country is meeting its housing need. Figures from the ONS show that, in 2018-19, the UK built 203,870 new homes – the highest number since before the financial crisis, but still only two-thirds of what the country needs to deliver.

Figures from EG Radius also show that planning applications for homes have fallen dramatically this year, with the total number of homes submitted for approval down 39%, year-on-year, between January and October. Meanwhile, the ONS reported that 2.17m people were employed in construction between July and September 2020, lower than at any point since 2013.

Change in GDP (% change, year-on-year)

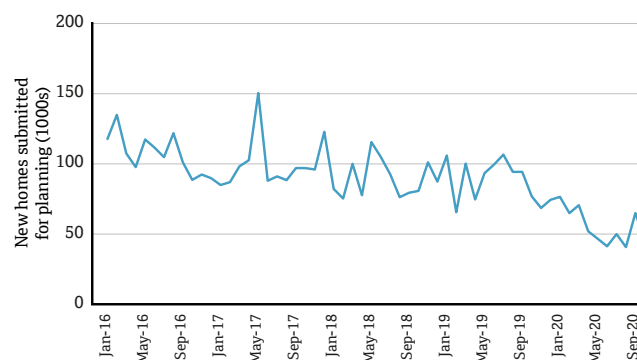


Housing completions in the UK by year



Source: Office for National Statistics

New homes submitted for planning



Source: Radius Data Exchange



Retail

Another ongoing concern is the retail crisis, as the pandemic exacerbates a long-standing trend towards online shopping and the decline of physical shops. Near the end of the year, Debenhams and Arcadia went into administration, leaving 25,000 jobs at risk and releasing up to 16.5m sq ft of retail space back to the market, according to EG data. The team's figures also show that 975m sq ft of retail and food & beverage leases signed since 2015 will expire or have lease breaks between now and 2025, adding more pressure to the future of the sector.

As James Child, head of retail and industrial research at EG, wrote in an [in-depth analysis of the sector at the end of 2020](#):

“Spaces that are no longer fit for purpose act as visual scars on a community, and persistent vacancy can be attributed to local economic distress. Empty retail premises must be retrofitted and transformed into spaces that add social value and generate cultural capital for the communities they serve.”

A number of reports, such as the Grimsey Review (2013), argue for re-thinking the high street, designing it around a larger variety of uses, including culture, leisure and housing.

Existing planning legislation

The changes to planning legislation, which the government initiated with three statutory instruments on 20 July 2020, pertain to PDR and use classes.

PDR allow for certain types of development without the need for planning applications. The introduction of expanded PDR related to change of use to residential in May 2013 allowed for the development of new homes in some former commercial buildings, including offices, storage facilities, light industrial and retail. Various restrictions apply: developers will need to submit an application for prior approval from the local planning authority, which will consider some factors before granting approval. Listed buildings are exempt and local authorities can remove areas subject to PDR through an Article 4 direction.

Use classes refer to the categories that buildings and land are put into, as laid out in [Town and Country Planning \(Use Classes\) Order 1987](#). A change of use from one class to another generally requires planning permission, while a change of use within a class generally does not. PDR give developers the means to bypass planning permission when undertaking a change of use in certain circumstances, as described above.





3 Amendments

3.1 Permitted Development Rights – Upward Construction

Relevant legislation: The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 (Statutory Instrument 2020 No. 755)

URL: <https://www.legislation.gov.uk/uksi/2020/755/made>

In force from: 31 August 2020

The amendment expands PDR, with Part 20 of Schedule 2 introducing four new classes that allow for up to two new storeys to be built above certain existing buildings specifically for use as flats:

- Class AA: new homes ('dwellinghouses') on a detached commercial or mixed-use building
- Class AB: new homes on commercial or mixed-use terrace buildings
- Class AC: new homes on terrace residential buildings
- Class AD: new homes on detached residential buildings

For Classes AB-AD, up to two additional storeys are permitted if the building already consists of two or more storeys. If the building consists of one, only one additional storey is permitted. For Class AA, the building needs to be at least three storeys in height above ground level.

Commercial and mixed-use buildings in the following use classes can take advantage of Class AA and AB PDR:

- Shops (A1)
- Financial and professional services (A2)
- Restaurants and cafes (A3)
- Offices (B1(a))
- A mix of dwellinghouses (C3) and any of the above

This expansion of PDR, however, does come with a range of restrictions that curtail where development is permitted. Restrictions vary between classes and there are some additional restrictions for each specific one, but, in general, development is not permitted if:

- The building was constructed before 1 July 1948 or after 5 March 2018
- The additional storeys are not on the principal part of the building
- The height of the additional storey exceeds either 3 metres or the internal floor-to-ceiling height of the storeys in the existing building (whichever is lower)
- The homes are not flats
- The highest part of the roof, following expansion, is above 18 metres (30 metres in the case of Class AA)
- The highest part of the roof, following expansion, is 3.5 metres (in the case of a one-storey building or 7 metres (in the case of a building) with two or more storeys) above the highest part of the existing roof; in the case of Class AB, the height of the expansion cannot be more than 3.5 metres taller than the highest part of the roof of every other building in the row of terrace buildings

There are also specific places where these expansions cannot take place. These are:

- Article 2(3) land, which comprises:
 - Conservation areas
 - Areas of outstanding natural beauty
 - The Broads
 - National Parks
 - World Heritage Sites

- Sites of special scientific interest
- Listed buildings, or land within it's curtilage
- Scheduled monuments, or land within their curtilage
- Safety hazard areas
- Military explosive storage areas
- Land within 3km of the perimeter of an aerodrome

Developers will also need to apply for prior approval from the local authority, which will take into consideration factors such as (though not limited to) transport and highways impact; air traffic and defence; contamination risks; flooding risks; and natural light.

Less relevant to the commercial property industry, though still notable, is the amendment to Part 1 of Schedule 2 in this statutory instrument, which extends PDR to the expansion of homes with up to two additional storeys (as opposed to the construction of new homes, which is covered by Classes AA-AD). As above, these rights come with similar restrictions.



3.2 Permitted Development Rights – Demolition

Relevant legislation: The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 (Statutory Instrument 2020 No. 756)

URL: <https://www.legislation.gov.uk/ukxi/2020/756/made>

In force from: 31 August 2020

The second PDR amendment introduces Class ZA, which allows for the demolition of a detached block of flats or a detached commercial building if it is replaced with purpose-built detached homes (either a block of flats or a detached dwellinghouse).

Commercial buildings that can be demolished have to fall under the following use classes (as defined by the 1987 Use Classes Order as it was in force on 12 March 2020, i.e. before the changes detailed in the next section):

- Offices – Class B1(a)
- Research and development – Class B1(b)
- Premises for industrial processes – Class B1(c)

As above, several restrictions are in place that limit where development is permitted. Development is not permitted if:

- The old building was constructed after 31 December 1989
- The footprint of the old building is more than 1,000 sq m (10,764 sq ft)
- The height of the highest part of the roof of the old building is above 18 metres at any point (above ground, and not including plant, radio masts or antennae)
- The building has been occupied at any point in the 6 months before an application is made for prior approval

- The old building was rendered unsafe or uninhabitable by the action or inaction of an owner but repairs are possible
- The demolition is classed as “relevant demolition” (i.e. demolition of an unlisted building in a conservation area)
- The footprint of the new building falls outside the footprint of the old one
- Any part of the exterior wall of the new building that is closest to a highway is closer than the closest wall to a highway in the old building
- The height of the new building is either 7 metres above the height of the old building or 18 metres above ground level (whichever is lower)
- The new building has more than two storeys more than the old building
- The new building has more storeys than the old building, and the new storeys have a floor-to-ceiling height greater than 3 metres or greater than the floor-to-ceiling height of any storey in the old building (whichever is lower)
- The height of any plant on the roof of the new building exceeds the height of any existing plant on the principal part of the old building

Development is restricted on land in the same way as Classes AA-AD in the previous section. In addition to those restrictions, development is not permitted if the land covered by the old building is occupied in any part by an agricultural tenancy, unless both the landlord and tenant give their consent.

Prior approval is similarly required, and in addition to the considerations listed in the previous section, local authorities will also consider the method of demolition.

3.3 Change in Use Classes

Relevant legislation: The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Statutory Instrument 2020 No. 757)

URL: <https://www.legislation.gov.uk/ukxi/2020/757/made>

In force from: 1 September 2020

This amendment introduced three new use classes: E (commercial, business and service), F1 (learning and non-residential institutions) and F2 (local community). Class E is the most significant change, incorporating retail, food, offices, gyms, healthcare, some services and light industrial uses. The full list of changes is shown in the table below (uses that no longer fall within the definition of the new or existing use classes are reclassified as sui generis):

Use class	Use	Previous use class
E (Commercial, Business and Service)	Shop	A1
	Financial and professional services	A2
	Café or restaurant	A3
	Office (other than those previously in A2)	B1a
	R&D	B1b
	Light industrial	B1c
	Clinics, health centres, creches, day nurseries, day centres	D1
	Gyms, indoor recreation (excluding motorised vehicles, firearms)	D2
F1 (Learning and non-residential institutions)	Schools, non-residential education and training centres, museums, public libraries/reading rooms/halls, exhibition halls, places of worship, courts	D1

continued over...



Use class	Use	Previous use class
F2 (Local community)	Shop (no more than 280 sq m and where there is no other such facility within a 1,000 metre radius of the shop's location)	A1
	Hall/meeting place for principal use of the local community	D2
	Place for outdoor recreation (excluding motorised vehicles, firearms); indoor or outdoor swimming baths, skating rinks	D2
Sui generis	Pub or drinking establishment	A4
	Takeaway	A5
	Cinemas, concert halls, bingo halls and dance halls	D2

The following use classes have been left unchanged:

- Industrial (B2)
- Storage or distribution (B8)
- Hotels, boarding and guest houses (C1)
- Residential institutions (C2)
- Dwelling houses (C3)
- House in multiple occupation with 3-6 residents (C4)

A property that fell under one of the previous use classes is now treated as if it is being used for its new use class, as of 1 September 2020. There are transitional provisions, however, allowing the retention of PDR based on a property's previous use class. That property will be subject to the same PDR that applied to it before 1 September 2020 until 31 July 2021 when PDR regulations will once again be revised.

Under the amendment, properties classed as sui generis will require planning permission for a change of use.



3.4 Industry reaction and analysis

These changes to PDR and use classes is part of the government's efforts to streamline planning, encourage more development and introduce flexibility. Use Class E, with its significant scope, gives landlords (in theory) a new level of flexibility since a change of use within a use class does not require a planning application. It also opens up the possibility for expanding PDR even further and creating new opportunities for commercial-to-residential change of use.

The response from the industry has been mixed, with some welcoming the push for greater flexibility, while others raise concerns about the quality, location and use variance of the resulting developments. PDR, after all, allows development to bypass local authority planning scrutiny (to an extent), developer levies and affordable housing contributions.

PDR: a problem or a blessing?

Although the industry expects the latest expansion of PDR to lead to opportunities for more housing development, the amendments in July coincided with the release of a critical independent report into PDR. The UCL and University of Liverpool report found that just 22.1% of homes created through PD met the national space standards (compared to 73.4% of homes that went through planning permission). Since the expansion of PDR in 2013, there have been cases of homes as small as 8.3 sq m (far below the national minimum of 37 sq m) and homes without windows being approved via PDR.

These cases are extreme, but an EG News investigation in 2019 found that in London alone, developers had built and marketed £1bn of 'micro-flats' – homes that do not meet the minimum space standards – with PDR contributing 92% of micro-flats developed since 2015.

However, following an outcry into the standard of homes developed through PDR, housing secretary Robert Jenrick announced a ban on micro-homes that will come into force in April 2021, meaning homes developed through PDR will have to be at least 37 sq m. He had previously addressed the issue of windowless homes by ensuring that a provision of adequate natural light was included under requirements for prior approval as of September 2020. Critics argue the idea of "adequate natural light" is vague, and these measures fail to address other issues such as access to outdoor space or amenities (although the UCL/University of Liverpool report found little overall difference in access to services, transport and green space or in the level of deprivation between PD and planning permission schemes).

Some also question how the introduction of Class ZA (allowing the demolition of detached buildings for residential development) aligns with the government's commitment for the UK to be carbon neutral by 2050 and for Project Speed to address climate change. Hew Edgar, head of RICS UK government relations and city strategy, said it was "bizarre" that this legislation would make it easier to demolish existing buildings rather than retrofitting them with the latest technology. Edgar said: "It isn't green or sustainable for our planet and something ministers have been repeatedly told."

The government, however, points to the fact that in the five years to March 2020, change of use through PDR resulted in 72,687 new homes, which it says makes the best use of existing buildings, supports brownfield development and avoids the need to build on greenfield sites.



Change of Use Classes: As flexible as it seems?

This amendment is a clear response to the needs of the high street and the mix of uses it will need in the future. Giving landlords the ability to change uses more easily allows them to respond more quickly to changes, to update their spaces to whatever is profitable and attractive to customers wherever they are. It removes some of the bureaucracy that would be involved in creating mixed-use high streets.

At the same time, moving certain uses, including pubs, cinemas and concert halls into the sui generis class restricts these community and cultural establishments from redeveloping into other uses. The goal, partly, is to ensure that these spaces don't disappear from our high streets and communities.

The reality might be less straightforward. Because this is an overarching change to use classes, it does not take into consideration spatial policies. The National Planning Policy Framework, for example, says planning policies and decisions "should support the role that town centres play at the heart of local communities", including by making clear the range of permitted uses. It also says authorities should "apply a sequential test to planning applications for main town centre uses". Those uses should, first, be allocated to town centres,

then to edge-of-centre locations and only then to out-of-centre sites, thereby protecting town centres and keeping them attractive.

Having an overarching commercial use class effectively takes that control and responsibility out of the hands of planning authorities. The question becomes if and how planning authorities can ensure an appropriate mix of uses comes forward or, in the case of town centres, how competing uses don't appear in out-of-town locations.

Another concern is whether leases will hinder the flexibility these use classes ostensibly promise. In an article for EG Legal, Dinah Patel, Kate Lias and Leah Morgan from Fieldfisher LLP write: "Despite the government's intention to introduce greater flexibility for commercial tenants through the new regulations, for many the terms of their existing lease will stifle that flexibility." Because leases traditionally limit the use of premises to a specific use within the Use Class Order, a retail space, for instance, will be restricted to its former A1(a) use. As a result, those leases will be stuck in a past use class unless the landlord agrees.

"Given how wide the new Use Class E is," the article says, "a balance will need to be reached between a landlord's need to retain control and protect its interest in the property and tenants' desire for flexibility."

Expert commentary from EG Legal

Hannah Quarterman, partner and head of planning, and David Wood, senior associate at Hogan Lovells International

The impact of Covid-19 on the economy is inescapable for anyone walking down the country's deserted high streets and around its empty offices. What is perhaps more worrying for the real estate industry is that the current lack of activity is seen not as a temporary blip resulting from the pandemic, but as an acceleration of existing market trends. The increase in internet shopping and home working, for example, was already having a visible impact. On the other hand, irrespective of the pandemic, the housing need in many areas of the country remains acute and needs continued attention.

It is therefore completely understandable – and entirely correct – that the government wants to be seen as taking decisive action. And take action it has, with a raft of recent changes announced by Whitehall over the past couple of months aimed at introducing flexibility to the planning system, speeding up decision making, and even removing the need for consent in certain circumstances. But fundamental questions exist as to whether this is the right action or if, instead, we are running the risk of long-term place-making pain in exchange for short term gains in economic activity.



4 Next steps

Given the scope and ambition of the government's planning reforms, these initial changes simply mark the beginning of much wider radical changes for the industry. Indeed, some of the criticism of the changes so far has been due to a lack of detail in how the government will implement Project Speed, and it needs to fill in the blanks.

4.1 Further changes to PDR

Current PDR regulations will end on 31 July 2021. Ahead of this, the government launched a consultation on 3 December 2020 into further expanding PDR off the back of the change to use classes. Under its new proposals, PDR would be extended to allow a change of use from any use (or mix of uses) within Class E to residential. This would replace current rights for the change of use from office to residential (Part 3, Class O of Schedule 2 to the General Permitted Development Order) and from retail to residential (Part 3, Class M of the General Permitted Development Order).

This change substantially increases the number of properties that can be turned into homes without the need for a planning application, including restaurants, creches, gyms, cafes and health centres. Given how broad Class E is, some conservation areas will include properties with these uses. As a result, the consultation proposes allowing PDR in conservation areas, though it would not apply in other article 2(3) land (see Section 3.1).



4.2 Planning White Paper

The most substantial changes to the planning system will become evident from the outcome of proposals set out in the government's planning white paper, the consultation for which finished in October.

Though at times light on detail, the white paper sets out a far-reaching overhaul of the planning system, from the introduction of space designations in local plans – Growth, Renewal and Protected – to a replacement of infrastructure levies and Section 106. Responses to the white paper have ranged from welcoming – a potential remedy for an overly complicated and time-consuming system – to sceptical – can it ensure the right mix of uses and space? – to wary – are planning authorities pushed even further out of the planning process? Often, it is a mix of the three.

The full detail of the government's proposals is far beyond the scope of this paper, but we will assess both the initial proposals and any developments following the consultation later in the year. In the meantime, the EG News and Legal teams have covered initial reactions to the white paper in depth, and these can be found on the [EG website](#).

The coming months will shed more and more light on how the UK's planning system will evolve and how the industry perceives that evolution. More amendments are on the way, more consultations will be launched, more questions will be asked and – if all goes to plan – more answers will be given. Project Speed is ambitious, and we will soon find out how much of that ambition translates to practical changes in the industry.

Analysis from EG News and Legal

Slump in PD homes as 'build, build, build' rally cry falls short

12.11.20

By Emma Rosser, residential reporter at EG
<https://www.egi.co.uk/news/slump-in-pd-homes-as-build-build-build-rally-cry-falls-short/>

Resi planning plummets amid developer uncertainty

07.01.21

By Emma Rosser, residential reporter at EG
<https://www.egi.co.uk/news/resi-planning-plummets-amid-developer-uncertainty/>

The reasons we need more planning legislation

16.11.20

By Simon Ricketts, partner at Town Legal LLP
<https://www.egi.co.uk/legal/the-reasons-we-need-more-planning-legislation/>

Making use of resi PDRs: top 10 questions answered

12.01.21

By Caroline Stares, associate at Hogan Lovells International LLP
<https://www.egi.co.uk/legal/making-use-of-resi-pdrs-top-10-questions-answered/>

Retail disrupted: The pain and the potential

10.12.20

By James Child, head of retail & industrial research, EG
<https://www.egi.co.uk/news/retail-disrupted-the-pain-and-the-potential/>