

The new Use Classes Order's impact on existing planning conditions and what the White Paper means for very special circumstances



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Mark Howells

Planning for Housing Conference

9 December 2020

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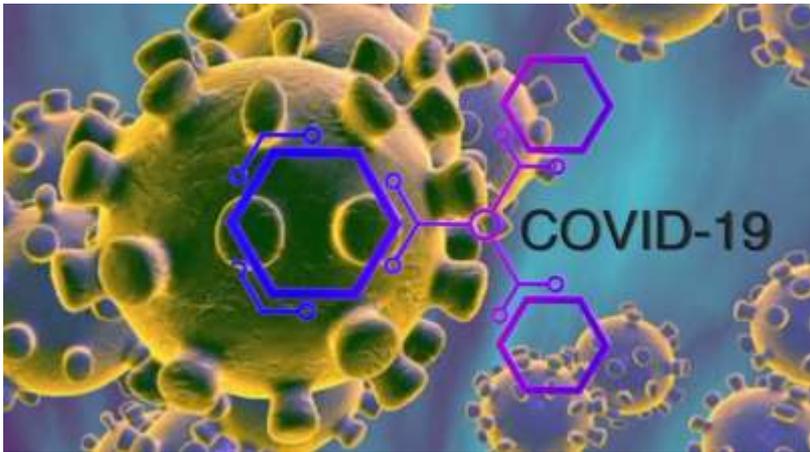
UCO 2020

Green Belt Exceptional Circumstances, Housing and the White Paper



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Article 7 of the UCO 2020 confirms that the use Classes A1 and A3, as defined by UCO 1987, now fall within the same use class, Class E. It states:

‘For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as—

(a) Class A1 (Shops),

(b) Class A2 (Financial and professional services),

(c) Class A3 (Restaurants and cafes), or

(d) Class B1 (Business),

that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order.’



Section 55(f) of the Town and Country Planning Act 1990 ('TCPA') excludes a change of use within the same class from the definition of 'development'. It confirms the following does not constitute a 'development' and does not require planning permission:

'in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class'



Article 3(1) of the GDPO confirms the same by stating:

‘Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land’





Yes, BUT...

Condition:

'The café on the first floor shall be operated as an ancillary use to the retail unit on the ground floor and shall not be an independent café or restaurant use'



Question:

Can this stop the UCO or any pre-existing PD rights from operating?

Answer:

Dunnett Investments Limited v Secretary of State for Communities and Local Government [2017] J.P.L. 848

At paragraph 37, Lord Justice Hickinbottom stated that to oust the normal operation of the GDPO:

“the words used in the relevant condition, taken in their full context, must clearly evince an intention on the part of the local planning authority to make such an exclusion”

The condition there stated:

‘This use of this building shall be for purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained.’

- i. Sets the scope of the permission by reference to relevant use classes*
- ii. ‘for no other purpose whatsoever’ – clear and specific exclusion*
- iii. ‘without express planning’ – automatic rights are excluded.*



Condition:

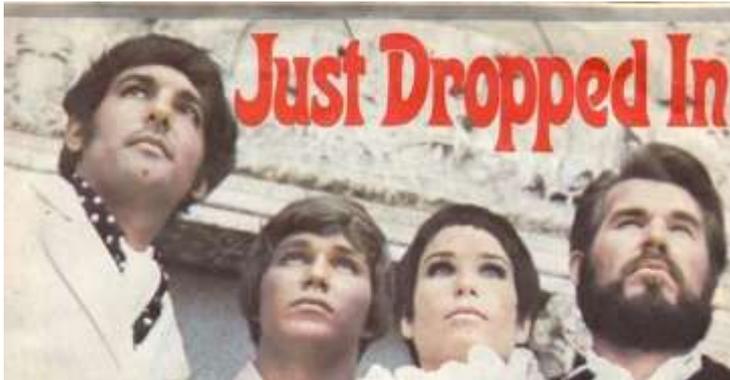
‘The café on the first floor shall be operated as an ancillary use to the retail unit on the ground floor and shall not be an independent café or restaurant use’

- i. No reference to permitted development is wishes to restrict
- ii. Given its ordinary meaning, the main effect is to keep the cafe ancillary i.e. prevents a mixed-use site
- iii. It does not explicitly say the main retail use cannot become wholly a café – this would preserve a single use site and still give effect to the condition.



Conclusion:

Check out what condition your condition is in!



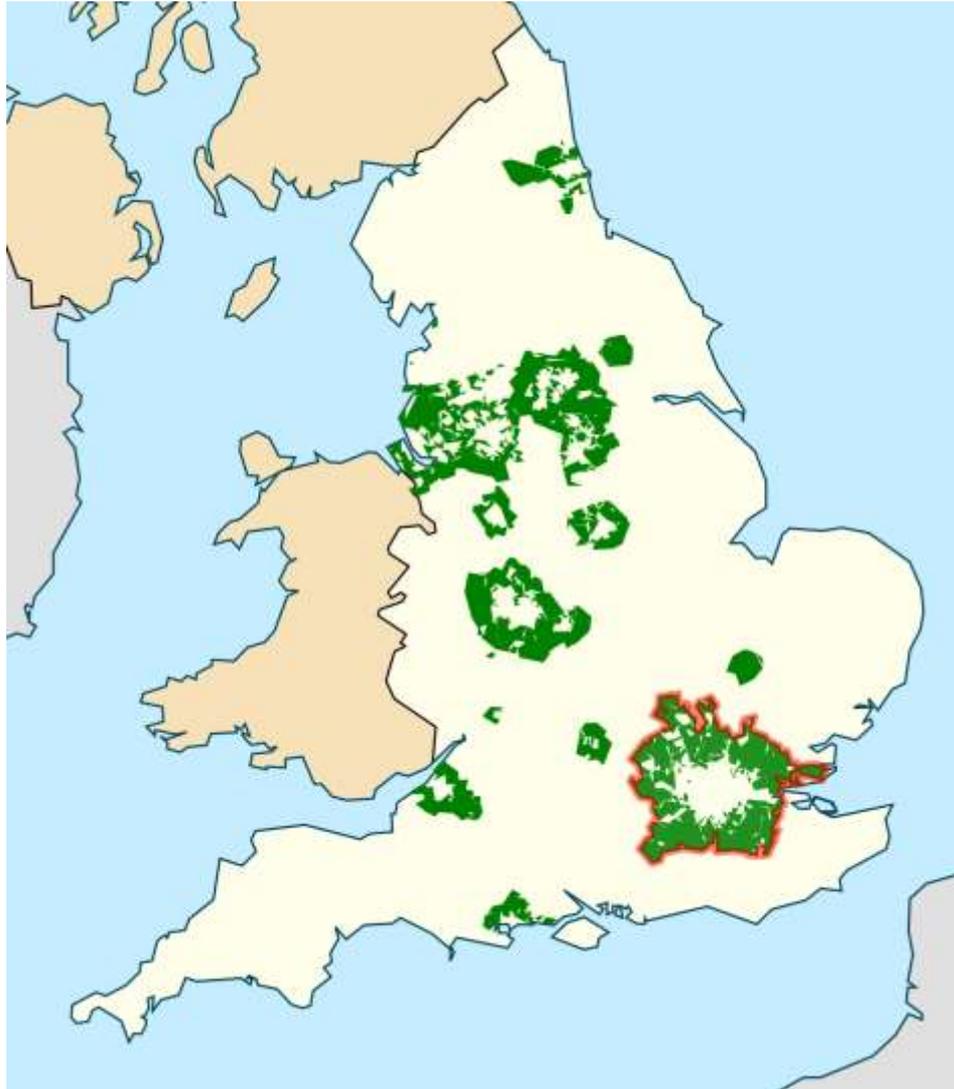
If client want to take advantage of the UCO – advise them to make an application for a certificate of lawfulness of proposed use under s192 TCPA.

Will the Government’s proposed changes to the planning system ease the economic and social pressures on urban and rural areas?

Yes, the ability for business to adapt is a positive step, but the rate determining step will be the success of those adaptations.



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NPPF Paragraph 136

*“Once established, Green Belt boundaries should only be altered where **exceptional circumstances** are fully evidenced and justified, through the preparation or updating of plans”*





For housing, Hunston Properties 2013 endorsed a **two-stage approach**

(a) to reach a conclusion as to the "full objectively assessed needs for market and affordable housing"; and

NB: Calverton 2015: Para 50: This alone is not enough

(b) to exercise planning judgment in order to assess if this gives rise to 'exceptional circumstances'

NB: Calverton 2015: Need this second stage which is a matter of planning judgment: Five Factors



In the Guildford 2019 judgment, Sir Duncan Ouseley confirmed that:

- 1) There is no definition of the policy concept of "exceptional circumstances" – matter of planning judgement.
- 2) The "*exceptional circumstances*" can be found in the accumulation or combination of circumstances
- 3) General planning needs, such as ordinary housing, are not precluded from its scope
 - meeting such needs is often part of the judgment that "exceptional circumstances" exist;
 - the **phrase is not limited to some unusual form of housing**, nor to a particular intensity of need.

Keep Bourne End Green 2020



The overall package of considerations on which the inspector relied was plainly capable of amounting to "exceptional circumstances" justifying altering the green belt boundary so as to remove the site. The inspector's judgment was within the range of decisions which **a reasonable inspector could reach and was not irrational.**



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The Story so far.....

LPAs can alter Green Belt Boundary provided they have sufficient evidence to demonstrate exception circumstances exist – of which housing need can be included.

White Paper.....

The government's White Paper promises to

“Promote the stewardship and improvement of our precious countryside and environment, ensuring important natural assets are preserved, the development potential of brownfield land is maximised, that we support net gains for biodiversity and the wider environment and actively address the challenges of climate change”.



So, what is new? Not a lot.

Except.....

A new **nationally-determined**, binding housing requirement that local planning authorities would have to deliver through their Local Plans. This would be focused on areas where affordability pressure is highest to stop land supply being a barrier to enough homes being built. **We propose that this would factor in land constraints, including the Green Belt**, and would be consistent with our aspirations of creating a housing market that is capable of delivering 300,000 homes annually, and one million homes over this Parliament.



Compare to: Paragraph 11 NPPF
- **Same except nationally determined!**

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NORTHERN POWERHOUSE

1) No change to policy on Green Belt

“development on Green Belt land will continue to be restricted as it is now with policy remaining a decision for local authorities as they prepare their plan”

2) But housing requirements are nationally determined AND binding AND greater – how will the figures account for Green Belt constraints?

A number of LPAs have extremely limited non-Green Belt land (Sevenoaks and Tandridge are 90+% Green Belt)

No longer down to LPAs to argue their case

3) Housing figures are implemented locally – will LPA be forced to consider re-drawing green belt boundaries under ‘exceptional circumstances’ or will this have already been factored in at a national level making this argument less convincing?

4) If it is factored in at national level – where will the land come from and what role will the LPA play?

Thank you

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