

Planning for a better future

Our planning manifesto for the government



Manifesto Background Paper 12

Planning Resources: designing a more efficient system

Planning resources are in short supply: we have seen less graduates choosing planning as a career and increasingly those that do are being attracted into the private sector. There have been great initiatives, such as Public Practice, to attract place making professionals into the public sector, but it remains a challenging landscape. This paper examines the system to see how we can redesign it to make the most of the skills that planning and other place making professions offer, avoid duplication and link the regimes with their core purposes. It explores how we can use new technologies to simplify, digitise and automate both plan making and decision taking, how we can redesign systems and processes to ensure that planning “sticks to the knitting” and matters that are better dealt with through Licensing, Building Regulations or other regimes are clearly taken out of planning. With a system that is more focused on planning and place making, and what can be digitised and automated is simplified, we have a much better chance to successfully operate with the limited resources that we have. It is hoped that the resulting system will be a much more stimulating and attractive place within which to work.

Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to government so we can plan together for a better future.

POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in Planning for a better future: Our planning manifesto for the next government. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: land owners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development.

Other titles in the series can be viewed from our website.

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Summary

Planning resources are in short supply: we have seen less graduates choosing planning as a career and increasingly those that do are being attracted into the private sector. There have been great initiatives, such as Public Practice, to attract place making professionals into the public sector, but it remains a challenging landscape. This paper examines the system to see how we can redesign it to make the most of the skills that planning and other place making professions offer, avoid duplication and link the regimes with their core purposes. It explores how we can use new technologies to simplify, digitise and automate both plan making and decision taking, how we can redesign systems and processes to ensure that planning “sticks to the knitting” and matters that are better dealt with through Licensing, Building Regulations or other regimes are clearly taken out of planning. With a system that is more focused on planning and place making, and what can be digitised and automated is simplified, we have a much better chance to successfully operate with the limited resources that we have. It is hoped that the resulting system will be a much more stimulating and attractive place within which to work.

The proposals set out in this paper have four main areas of focus:

1. Simplifying and digitising spatial planning, especially around the evidence base necessary to support plan making.
2. Reviewing the Use Classes Order (UCO) to update it and examine if there is a better way to deal with the more straightforward change of use decisions.
3. Taking a careful look at what planning is responsible for and whether other regimes (such as the Building Regulations) are better placed to deal with those issues.
4. Considering how the system can best be prepared for the innovations that will be possible from digital and AI technology and how we can optimise the exploitation of those opportunities.

We commend our recommendations to government and look forward to assisting with their delivery.

1 Introduction

- 1.1 There is a consensus that we are in a crisis with respect to resources in the planning sector. Its impacts are felt in the private sector, but the public sector is acutely affected by it. Government is actively looking at ways this capability and capacity challenge can be addressed. Addressing workforce supply and retention issues will take sustained and committed efforts over an extended period as the issue can't and won't be solved overnight. Showing commitment over the medium and long term will be needed to demonstrate a real commitment to professional planning practice.
- 1.2 This paper seeks to contribute to that debate by examining the system to see how we can redesign it around its core purpose of place making to make the most of the skills that planning and other place making professions offer. It explores how we can use new technologies to digitise and automate both plan making and decision taking, how we can redesign systems and processes to ensure that planning “sticks to the knitting” and matters that are better dealt with through Licensing, Building Regulations and other regimes are clearly taken out of planning.

2 A new approach to spatial planning

- 2.1 POS has produced papers in the past¹ that set out our best advice at the time on how the plan-making process could be amended to make it more efficient and effective. We will continue to do that. In this paper we are concentrating on how both digitisation tools and a more automated approach to the evidence base can be used to bring about a seismic change to plan making.
- 2.2 The time it takes and the cost of putting an up-to-date plan in place has increased significantly over the years. It is undoubtedly the case that the task of producing a plan has become increasingly complex and adversarial and the evidence that Councils feel they need to underpin a plan to ensure that it is found sound has increased considerably. Getting sound plans in place in a timely manner is vital for the public to have confidence in the system.
- 2.3 A main reason for this is an unintended consequence of the NPPF. It initially required the plan to be, “the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence”² to pass the “justified” part of the soundness test. Government recognised that demonstrating that a strategy was the “most appropriate” one was both too onerous and unnecessary, and in the 2018 iteration of the Framework reduced the test to, “an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence”. That remains the test in the latest 2021 version of the NPPF.

¹ POS Manifesto 1 Local Plans: an evolutionary approach to improvement (2015) and POS Manifesto 9: Spatial Planning: simplifying the process (2019)

² NPPF 2012 paragraph 182

- 2.4 However the culture was set, and LPAs continue to feel that they need to produce voluminous evidence to be able to defend their plan in the face of adversarial challenges at the Examination in Public. Whilst some of the other changes put forward in this paper should reduce the matters that need to be considered in a local plan (especially the Use Classes Order and sticking to the knitting proposals), the residual requirements would still be a significant challenge. Government has made calls to ensure that evidence bases are proportionate but little real change is evident. Government should take a greater lead and, as part of its digital agenda, curate the formation of a national evidence base. There will of course be a regional aspect to this evidence that we will need to be addressed and captured, as well as that local layer that adds local distinctiveness where necessary.
- 2.5 By using Big Data and nationally enforced data standards, a suite of evidence necessary to support plan making could be produced that can be tapped into when required to support plan-making decisions. Data on the demographics, economy, environment etc should be produced that are decreed to be sufficient for the purposes of plan making and are beyond challenge in the Examination. This data set should automatically be up-to-date enabling planners to dip into it to get an understanding of their area and the processes that are relevant for producing plans.
- 2.6 The strategy should be to optimise this data set so that the need for bespoke evidence is reduced or eliminated. This investment by government will save LPAs across England millions in basically commissioning the same evidence (generally from private consultants) some 333 times. We estimate that the saving could be over £166m based on each LPA spending an average of around £500K on its evidence base, but that figure will be much higher where the process has complications, and the evidence base must be revisited.

3 Automate the simple stuff

- 3.1 Turning now to DM, we consider how the system can best be prepared for the innovations that will be possible from digital and AI technology and how we can optimise the exploitation of those opportunities. The erection of new buildings and the extension of existing buildings will be examined to illustrate the potential and consider the changes we need to make now to be in the best position to exploit the opportunities that lie ahead.

Erecting new buildings

- 3.2 Two main forces are at play here: off-site manufacture and design codes.

Off-site manufacture

- 3.3 Prefabricated manufacturing is set for a revolution. Its advantage has generally been a higher quality product because of the benefits of factory construction, but it is very expensive to set up. Economies of scale only came from very high production quantities, which tended to restrict variety. However, with BIM design technology linked to computer-controlled machinery, and in some cases 3D printing, the best of all worlds could be possible: high quality, low cost and greater degrees of variety. This makes it a far more attractive product for the building design and construction industry.

Design codes

- 3.4 Design Codes have a long, proven history as most Georgian, Victorian, Edwardian and inter-war housing was built using approaches that were very similar to Design Codes. Design Codes are becoming a much more common feature of the UK planning world.
- 3.5 Not a new concept by any means, but their use declined in recent decades save for a few large-scale developments that utilised them and some parameter-based, outline planning permissions where the need to safeguard the quality of the outline proposals was required. Government is now promoting their use far more extensively and funding research into how best they can be produced in different planning circumstances.

The future

- 3.6 POS has advocated since 2015³ that Permission in Principle should apply to all developments and not be restricted to 10 units or fewer. This as a model can enable a better approach than outline applications because it does not result in a planning permission with all the associated conditions. Without the need to examine the detailed matters raised by conditions at that stage, the process can be simpler, quicker and cheaper. The detailed matters are dealt with in the Technical Details Consent stage and Design Codes can be used to control the quality of the resulting development.
- 3.7 We have also advocated it as a better model for deploying permitted development rights when those rights relate to relatively complex developments, such as changes of use to residential or rebuilding offices as residential. This enables appropriate standards and obligations to be delivered through Design Codes in the Technical Details Consent process.
- 3.8 By making these legislative changes government would pave the way for enabling design codes to be deployed in the Technical Details Consent stage within a 3D mapping environment, with all the elements of the Design Code fully coded and AI used to either create or test layouts. Whilst we may balk at automating or semi-automating such a process, it may well be a possibility that works well as this technology advances. Our point is that we need to think through the possibilities that we may want or need to embrace in the future so we can start to put in place what you could call analogue versions of it now, so the planning system and our communities are ready for the digital version as it becomes possible and acceptable in the near future.

Extending existing buildings

- 3.9 It is possible now to have a 3D fully rendered GIS world that is accurate to 15cm and they are likely to get even more accurate. You could offer a product where you can view your house in 3D and create extensions using CAD or BIM type software and be told when you have exceeded permitted development rights. When you have finished designing your extension you could have a definitive Certificate of Lawful Development produced on the press of a button.

³ When we published our 4th Manifesto, Red line submissions: a proportionate approach

- 3.10 It could however go further. The LPA's residential extension guidelines could be loaded into such a system and after a similar design process where the software tells you when you have exceeded the desired limits you can settle on your final design. If it comes within permitted development, you get your certificate, if it meets the residential extension guidelines you get a planning permission and if it exceeds those parameters you can submit your application for planning permission. All by the press of a button after a self-service process.
- 3.11 Buckinghamshire County Council and the London Boroughs of Lambeth and Southwark, with government support, are already working on apps that start to explore how these types of services could be delivered.⁴

The future

- 3.12 To make this a reality we need to look now at how local residential extension guidelines can become a form of local permitted development. Most Councils will have a set of guidelines geared towards the handful or so of house types that dominate their local vernacular. LPAs have not gone down the Local Development Order route with these because of the complexity of drafting such a document – as government have found over the years with the national version. But a simple checking process for submitted schemes would save resources and time. We envisage a system based on the Prior Approval model that involves a simple check that the design does in fact conform with the local design guidance.
- 3.13 We do not consider that neighbour notification would be necessary in these cases because the residential extension guidelines should have been subject to public consultation and importantly a development that complies with them is very unlikely to be refused. You could argue that seeking neighbours' views is falsely raising their expectations that an extension they object to, but which otherwise complies with the guidelines, could be refused. However, we do consider that both for this procedure and for other (national or local) permitted development there should be a requirement for the developer to notify immediate neighbours that they are going to carry out works and the reason why they think that those works are already permitted – a proforma notice should be produced for this, like the landownership Notice. This avoids the anxiety that neighbours feel when works just start with no prior knowledge or information.
- 3.14 Such an approach could equally apply to all such areas of permitted development and local design guidance, such as industrial areas and shopfronts. In fact, any area where the LPA consider that it can codify what is acceptable by way of an extension or alteration could be dealt with in this way to enable future automation.

4 Fixing the Use Classes Order

- 4.1 This is the largest proposal in this paper, and it has the potential to fundamentally change the planning system into one that is much more focused on place making.

⁴ RIPA: [Reducing invalid planning applications](#)

- 4.2 Over the last decade or so government has been ‘simplifying’ the UCO by making many changes of use between the Use Classes permitted development. In September 2020 they introduced Class E (Commercial, Business and Service), a radical change that combines most of the A Classes, all of Class B1 and some of Classes D1 and D2. The reason for this seems to be twofold: a concern over the state of the high-street, coupled with the belief that less regulation will help.
- 4.3 Our observations are that those high streets and shopping centres that are doing well tend to be quite heavily managed, not necessarily by the local Council, but by the main landowner, BIDS or other such associations. As retail is put under greater pressure the need for town centres to find a new role and reinvent themselves grows. What is not needed is a total absence of regulation that will inevitably result in a race to the bottom.
- 4.4 Where coordinated management by landowners is not possible because of a myriad of ownerships, which is the case with most centres, the local Council must fill that void, or these town centres are likely to terminally decline. The recent changes to the UCO have taken most of the key planning tools away from local councils and made that job much harder. We look at how they can be restored whilst maintaining the advantages of a revised and simplified UCO. We will explore all the class in the UCO, not just those relating to town centres, to ensure that the review is comprehensive.

The Use Classes Order

- 4.5 When you change the use of a building or land you will need planning permission if that change is material⁵. The current Town and Country Planning (Use Classes) Order 1987 (as amended) came into force on 1 June 1987, replacing the previous 1983 version. In fact, UCOs predate the 1947 Planning Act and have their origins in the 1930s.
- 4.6 The Order defines the possible uses of a site, with “site” meaning “the whole area of land within a single unit of occupation.” Although not all potential uses are covered, most of the property in England will have had its permissible use defined by this Order and its predecessors. Changes within a Class are not development for §55 purposes⁶. Those uses that are not assigned a Class under this legislation are known as sui generis, which means “of its own kind; in a class by itself; unique”. Generally changes between those uses and between Classes are material changes of use and constitute development for §55 purposes.
- 4.7 The UCO has been remarkably resilient over the years. It has changed over time, but not fundamentally, until recently. The principle behind Use Classes is to identify and group together the most common land uses so that a statutory decision is made as to what activities are so similar that the need for planning permission to change between them never arises because the change does not constitute a material change of use as a matter of law. The UCO no longer does this with the introduction of Class E. The uses within that Class are clearly materially different from each other in a §55 sense and planning permission should be required as the change is a material change of use. They are grouped together as an act of government policy rather than good law.

⁵ §55 of the Town and Country Planning Act 1990

⁶ §55(2)(f) of the Town and Country Planning Act 1990

- 4.8 The differences between Use Classes, particularly within the main groups, are generally defined by some external impact that the particular use has that is different to another Use Class. This could be the creation of more noise or fumes, significant public activity, increased traffic levels or high levels of heavy vehicles etc. Sometimes the uses are differentiated by their desirability in an area, such as a town centre, compared to other uses. The UCO groups these uses into common classes and that has enabled the planning system to successfully control those externalities for well over 75 years.
- 4.9 POS considers that it is time for a fundamental rethink of the UCO, but one that still ensures that changes between uses that are materially different from a planning point of view do not cause harm to neighbours or neighbourhoods.

Reviewing the Use Classes Order

- 4.10 An increasingly digital world is fundamentally changing the way we live, work, trade and play. It is becoming increasingly difficult to assign Use Classes to what we do, places are often used for a multitude of different purposes. For example, where is the UCO when a person designs and tests a product on a laptop at home, in a café or the local touch-down community space, then markets that product through sites such as eBay or Amazon, which you then purchase and have delivered or collect from your local 3-D printer facility? More importantly, is there a land use planning problem in all that? Probably not, but the UCO needs to keep pace with an ever-changing world if it is to remain a useful land use planning tool.

Planning and Licensing

- 4.11 It is generally accepted that there is a considerable amount of overlap and duplication between planning and licensing. The purpose of the planning system is to ensure the right development in the right place, whereas the purpose of the licensing system is to ensure certain activities are well managed by a person so as not to cause crime, nuisance or disturbance and ensure public safety. The conditions on a planning permission, imposed when the building or use first came into being, are expected to last its whole life. It is probably not the best way to control the externalities of land use activity over time.
- 4.12 It is often the case that some situations (eg allowing a pub to open later) are as much to do with how good the publican is, as to the characteristics of the area. Licensing can do that far better than planning can. The current trend to control takeaways in the context of childhood obesity through new planning policy initiatives, whilst a valiant attempt by some LPAs, is far from ideal as such a policy can do nothing to deal with existing establishments. But just as importantly, what would a LPA with such a policy do if someone like Jamie Oliver created a chain of demonstrably healthy take-aways targeted at children that were universally praised? The policy suggests that they must be refused, whereas an approval would mean we are now controlling the menus in take-aways. Is that what planning is for? Licensing such outlets from a food quality point of view is a more direct and potentially more effective approach, particularly as it would apply to all such outlets.

4.13 What is and what is not acceptable in these contexts changes over time with differences in public attitudes generally, changes to an area such as a town centre and advances in technology. These externalities need to be controlled by a system that is designed to be flexible and nimble. Planning permissions cannot do that. The current licensing system is too narrow in its scope, but a new comprehensive regime based on a licensing approach of a permit for specified activities or impacts could be the answer. It is also the case that licensing enforcement can be more effective and efficient than planning enforcement, based as the latter is on the protection of property rights rather than protecting the public.

A new approach

4.14 It should go without saying that if these proposals are developed and implemented it is vital that the new licensing permitting regime is properly funded so that it is able to function effectively.

4.15 The intention is that these proposals would result in no greater a level of control than there is now. There should in fact be a reduction, as planning and licensing would be combined so that there is a single efficient system with none of the overlaps that currently exist.

4.16 The controls that are identified as being necessary can be operated more effectively as they can be fine-tuned to target an area's needs and consider empirical evidence. With the advent of Smart Cities and Big Data, Councils will have a new set of tools to guide the way they can manage town centres and make decisions. Our suggested new approach would benefit from this in a way that the current system cannot. A new licensing/permitting system can be adjusted in response to real-time data and enable the management of spaces to be informed by what people want, based on their activities, rather than what we think they want, based on past trends.

4.17 Finally, this new regime should increase the capacity of planning departments and scarce experienced planning officers to tackle the important strategic and place making demands that they face by freeing them up from dealing with the day-to-day management of the externalities of different land use activities. The new licensing/permitting regime that we describe would not need to be operated by post-graduate qualified planners. Most licensing roles do not require degree level qualifications and similarly the new regime that we are setting out in this paper should be attractive to school leavers with an interest in their area and how it functions.

Reviewing the main land uses

4.18 In reviewing the Use Classes for the purposes of this paper we have looked at the version of the Order that preceded the introduction of Class E (see Appendices A and B). There were four groups of Use Classes in Schedule 1 of that Order:

- A. Town Centre Uses
- B. Business Uses
- C. Residential Uses
- D. Institutional, Assembly and Leisure Uses

4.19 We will look at each in turn to appreciate the issues that need to be considered in any modernisation of the Use Classes.

Town centre uses

- 4.20 Here we are referring to the whole range of retail centres; from local to regional and international. Recent years have seen a shift to shopping on-line, but the future is likely to result in us not having to shop at all for most of our everyday needs. With the growth of the Internet of Things our appliances and kitchen cupboards will be automatically refilling themselves without much if any intervention from us. Many predict that this revolution in retailing driven by ubiquitous microprocessors and AI has only just started.
- 4.21 The COVID crisis has mainly accelerated these trends but also caused many businesses, some of them big high-street chains, to cease trading. It has also brought about changes to working practices that may endure and alter the way we attend our place of work. People are predicting a reduction in “attendance” in our Central Business Districts coupled with possible increases in our local smaller town centres as more people work away from the office, but not necessarily at home.
- 4.22 The future is so uncertain that it is even more important that all town centres are carefully curated and managed. Planning is concerned with place making but we need to think about who will be place managing, a quite different process. The UCO Part A uses and the Class D2 uses are generally the dominant ground floor uses in town centres and should be considered together in designing any new system. Spatial planning policies for them are generally focused on optimising their locational advantages and protecting the dilution of their vibrancy and vitality: Town Centre First being the common terminology. The new system should ensure that a Town Centre Management Plan for significant centres is in place to guide decision making in a co-ordinated way so that the health and vitality of the centre is proactively managed.
- 4.23 As town centre uses clearly exist outside of such centres, it will be important to ensure that any new system properly meets their needs as well.

Business uses

- 4.24 The traditional concept of the difference between industry and warehousing was that the former employs relatively high numbers of people and transport impacts are generally not too severe, and the latter employs relatively few people and are generally characterised by high numbers of very large vehicles. Does that still apply to a dark factory mainly operated by robots with few employees or an Amazon type warehouse with very high employee numbers?
- 4.25 It is increasingly hard to confidently place a business or commercial use into the traditional Use Classes. A system that looks to protect the externalities from different uses is likely to be better suited to the modern world. These include:
- Hours of use outside “core” hours (7am-11pm in commercial areas and 7am-7pm elsewhere)
 - Controlling nuisance from noise, vibration, smell, fumes, smoke, soot, ash, dust or grit
 - The operation of large vehicles from a site, potentially linked to an improved Operator’s Licence regime

4.26 Such an approach should cover most of the issues currently considered through planning, where controls exist for planning permission for a change of use between Use Classes. However this new approach would leave some important areas of economic planning potentially not addressed. The principle of uses (often uses within Use Classes) such as office areas that are desirable to protect and industrial areas where office development is discouraged, are legitimate planning policies that currently exist in adopted local plans. There will clearly be a need for planning policies to continue to identify and articulate these issues. However in the new regime those spatial policies will not necessarily be delivered through planning decisions. They will be delivered through licensing/permitting decisions. There is therefore a need to clearly link the plans that will exist in both a new planning system based on these proposals and in any new licensing/permitting regime. In effect the new licensing/permitting regime will be required to produce plans to guide their decision making (as licensing currently does) but those plans will need to be in general conformity with the spatial plans in the planning system so that these important spatial land use policies continue to be delivered.

Residential uses

4.27 The range of residential uses in Part C of Schedule 1 of the UCO comprises both domestic residential and hospitality/institutional residential uses. The proposition is to create two new classes:

- Hospitality and Institutional Residential which would comprise:
 - Class C1 Hotels
 - Class C2 Residential institutions
 - Class C2A Secure residential institutions
- Domestic Residential which would comprise:
 - Class C3 Dwellinghouses
 - Class C4 Houses in multiple occupation

4.28 Potentially use as a hostel (sui generis) could be included in the former if they were licenced. The use/impact issues managed through a revamped and expanded licensing regime would therefore cover the following matters:

- Use as a hotel
- Use as a hostel
- General care issues
- Specialist care issues

4.29 The use/impact issued raised by HMOs could be managed through a revamped and expanded licensing/permitting regime, so that they were no longer a planning issue.

Institutional, assembly and leisure uses

4.30 It is already recommended that assembly and leisure uses should be considered alongside town centre uses. This leaves the institutional uses (Class D1) unaltered by these proposals.

How it could work

- 4.31 The essential thesis behind this recommendation is, if you take all the externalities that we seek to control for uses within the UCO and you examined how the differences between classes could be controlled in a revamped licensing/permitting regime, you could radically reduce the number of different uses that needs to be defined in the UCO and therefore reduce the number of uses that require planning permission. The thinking behind this conclusion is set out in Appendix D.
- 4.32 This has the potential to make the planning system simpler and the control of externalities more responsive. The new UCO would comprise five classes:
- Class A Commercial and Service
 - Class B Employment
 - Class C Hospitality and Institutional Residential
 - Class D Domestic Residential
 - Class E Non-residential Institutions
- 4.33 What could be included in these new classes is set out in Appendix C.
- 4.34 We consider that this shift from the existing system to a new high-level UCO would require the definition of development in §55 to be amended along the lines:
- ... the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a change of use between Use Classes, or the making of any other material change in the use of any buildings or other land.*
- 4.35 It would need to be made clear (as it does now in §55(2)(f)) that making a change between uses within a Use Class does not constitute development.
- 4.36 Under the new system, when a planning permission for a new building is given, the Use Class permitted in that building, or any part of it, should be specified. That would mean that for planning purposes all the uses within that class would be permitted but if a use or activity required a licence/permit it could not be instituted until that permit was granted by the Council. For example a Class D planning permission would allow a dwelling house use to be initiated but a use as a HMO could not occur until the appropriate licence/permit had been granted.
- 4.37 The new licensing/permitting regime would need to be guided by policy, but that policy could change as either areas, society's attitudes generally or technology changes. The new regime can also take into account the operator, as licensing currently does, but planning cannot. The licensing/permitting policy would need to be in general conformity with the spatial policies from planning, so that they are delivered in all subsequent decision taking.

Conclusions

- 4.38 The obvious question is, are these wide-ranging changes worth all the potential effort and upheaval? The outcome of this approach should be that all the necessary safeguards are in place for our town centres and other places to be managed in the challenging times that lie ahead, and be achieved through the most appropriate regulatory regime with no overlaps and consequential confusion. Planning would set the broad land use and place making framework and the new licensing/permitting regime would control detailed activity and its potential externalities – a place managing role. Targeted licensing/permitting has the potential to be more responsive to the ever-changing world that we live in. The planning system would be simpler, more focused and efficient, plan-making should be speeded up and the licensing/permitting regime would develop a new, more comprehensive role in managing our town centres and other important activities that have the potential to cause nuisance or harm but also the potential to do good for our economies and communities. Importantly, all the controls would be exercised through the local democratic institution, the local council.
- 4.39 POS thinks that it would be worth the effort.
- 4.40 Furthermore, once a review of the UCO has been implemented there will be a need to look carefully at the GPDO. The changes recommended in this paper should enable that excessively complex document to be simplified as many of the UCO PDR provisions would be redundant.

5 Sticking to the knitting

- 5.1 Nobody would deny that the modern planning system has become increasingly complex since its introduction in the 1947 Act. Some of that complexity has been necessary, but there is a surprisingly large area that involves planning covering issues dealt with by other legislation because it thinks that it can or should do so. Some of this has come from government policy, but a lot has just emerged from custom and practice in the planning sector. The temptation to do this is understandable because what constitutes a material planning consideration is drawn very widely and matters dealt with by Environmental Health, Building Regulations, Highways, Natural England etc touch on planning. Prior to the NPPF, government advice was expressed in PPGs and PPSs⁷. PPS1: Delivering Sustainable Development clearly stated that we “should not replicate, cut across, or detrimentally affect matters within the scope of other legislative requirements”. The current Framework could be far more explicit in this area, but it is clear that if we duplicate other legislative areas in our decisions, the conditions that safeguard those matters are likely to fail the statutory test of relevant to planning⁸ if tested in the Courts.
- 5.2 Our proposals for changes of use set out above will serve to clarify clearly where responsibility lies between planning and licensing. We are urging government to carry out a far more wide-ranging review of all the areas upon which planning overlaps to make it clear what is a material planning consideration and what must be left to those regimes to deal with. A few common examples are as follows:

⁷ Planning Policy Guidance and Planning Policy Statements

⁸ Town and Country Planning Act 1990 section 100ZA(2)(b) and NPPF 2021 paragraph 56

- Control of pollution legislation⁹ seeks to deal with nuisance from the construction process yet we regularly see planning conditions (even in the GPDO) and obligations controlling this. It is an Environmental Health matter and if that area of legislation is considered inadequate, then government should fix it. Planning should not be involved in it.
 - Similarly, highways legislation¹⁰ makes it an offence to deposit mud on a highway in a manner that causes skidding and is therefore dangerous and a nuisance. There is no need for wheel washing and similar conditions on planning permissions. It is a highways matter and all that should be necessary is an informative that says so and directs the developer to the Highway Authority.
 - The way improvements to the highway network are dealt with has become overly complex with §278 agreements being required to be entered into before planning permission is issued or becoming part of §106 agreements. All that is needed is a simple Grampian condition that prevent an appropriate part of a development commencing before the necessary §278 agreement has been entered into and the works are completed.
 - There is a huge overlap between planning and the Building Regulations with respect to sustainability, delivering zero carbon development, internal space standards etc. Most in the sector agree that it is more logical for this to be incorporated into the Building Regulations not least because the detail that delivers such reductions in carbon emissions are not designed until the later RIBA stages, far beyond the point (RIBA Stage 3) that planning has finished as a design input. Importantly the Building Regulations has a routine series of inspections that can ensure that these measures are properly installed. Such inspections are not part of the planning process.
 - The most recent addition to this compendium is fire safety. After Grenfell the whole process was rightly reviewed. In the Hackitt Review report, she made the point that one of the failures was that it was not clear where responsibility lied and therefore for control to be exerted. Yet shortly after the report was published we saw policy D12 in the London Plan requiring London Planning Authorities to become involved in matters that are clearly the responsibility of the Building Regulations. The approach produced by government shortly after the London Plan was adopted is a much better one: fire safety considerations should be considered early in the design process as an input to that process to ensure that the building that is being designed makes appropriate spatial allowance for the elements that will be necessary to produce a safe building – making it clear that ultimate responsibility always lies with the Building Regulations and not with Planning.
- 5.3 There are many other areas, such as environmental and wildlife protection legislation, where the roles between those regimes and planning would benefit from a clear review, so everyone clearly knows whose responsibility it is with the overall approach being that other regimes should deal with their areas and to not involve planning unless it is essential. Most matters can be dealt with through informatives on planning permissions that signposts the developer to the appropriate legislation and organisation.

⁹ The Control of Pollution Act 1974, Chapter 40 gives Local Authorities powers for controlling noise and vibration from construction sites and other similar works.

¹⁰ Highways Act 1980 Section 161

- 5.4 Getting to a position where it is as clear as possible what can and should be considered and what cannot, would be extremely helpful, especially in those planning committee situations where local residents are pressing the committee members to impose conditions to control matters that are dealt with through other regimes. Such conditions are essentially unenforceable when they fail the statutory tests (which they will do in most circumstances) whereas an informative that reminds the applicant/developer of their responsibilities under other legislative regimes is the right way to deal with these matters.

6 Conclusions

- 6.1 POS recommends the changes set out in this paper because they will deliver the following objectives:
- Simplify the planning regime so that it focuses on its key purpose of place making.
 - Thinking now about what digital and AI technology can deliver in the future will enable those possibilities to be delivered faster.
 - The impacts of different uses are real for local communities and the new change of use regime will ensure that they are properly managed by the local council.
 - The new licensing/permitting regime is a more flexible and nimble system compared to applications for planning permission.
 - The new licensing/permitting regime would be guided by a comprehensive set of licensing policies, as licensing is now, but they will be in general conformity with the spatial planning policies of the planning system.
 - By ensuring that planning “sticks to the knitting”, there will be greater clarity as to who is responsible for matters, plus it will free up considerable resources in planning, especially enforcement.
- 6.2 With a system that is more focused on planning and place making, and what can be digitised and automated is simplified, we have a much better chance to successfully operate with the limited resources that we have. It is hoped that the resulting system will be a much more stimulating and attractive place within which to work.
- 6.3 As always, POS stands ready to work with government to develop these recommendations.

Appendix A: The previous Use Classes Order

In order to carry out this exercise the “old” (ie pre-Class E) UCO is used as the starting point for our proposed amendments. The Use Classes in this Order were:

PART A

Class A1 Shops

Use for all or any of the following purposes:

- a) for the retail sale of goods other than hot food;
- b) as a post office;
- c) for the sale of tickets or as a travel agency;
- d) for the sale of sandwiches or other cold food for consumption off the premises;
- e) for hairdressing;
- f) for the direction of funerals;
- g) for the display of goods for sale;
- h) for the hiring out of domestic or personal goods or articles;
- i) for the washing or cleaning of clothes or fabrics on the premises;
- j) for the reception of goods to be washed, cleaned or repaired; or
- k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet;

where the sale, display or service is to visiting members of the public.

Class A2 Financial and professional services

Use for the provision of:

- a) financial services;
- b) professional services (other than health or medical services); or
- c) any other services which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

Class A3 Restaurants and cafes

Use for the sale of food and drink for consumption on the premises.

Class A4 Drinking establishments

Use as a public house, wine-bar or other drinking establishment.

Class A5 Hot food takeaways

Use for the sale of hot food for consumption off the premises.

PART B

Class B1 Business

Use for all or any of the following purposes:

- a) as an office other than a use within class A2 (financial and professional services);
- b) for research and development of products or processes; or
- c) for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2 General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above.

Class B8 Storage or distribution

Use for storage or as a distribution centre.

PART C

Class C1 Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2 Residential institutions

- a) Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses));
- b) Use as a hospital or nursing home; or
- c) Use as a residential school, college or training centre.

Class C2A Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders' institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3 Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by:

- a) a single person or by people to be regarded as forming a single household;
- b) not more than six residents living together as a single household where care is provided for residents; or
- c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4 Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

PART D

Class D1 Non-residential institutions

Any use not including a residential use:

- a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner;
- b) as a crèche, day nursery or day centre;
- c) for the provision of education;
- d) for the display of works of art (otherwise than for sale or hire);
- e) as a museum;
- f) as a public library or public reading room;
- g) as a public hall or exhibition hall; or
- h) for, or in connection with, public worship or religious instruction.

Class D2 Assembly and leisure

Use as:

- a) a cinema;
- b) a concert hall;
- c) a bingo hall;
- d) a dance hall; or
- e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

SUI GENERIS USES

The UCO at Article 3(6) states that no class specified in the Schedule to the Order includes use:

- a) as a theatre;
- b) as an amusement arcade or centre, or a funfair;
- c) as a launderette;
- d) for the sale of fuel for motor vehicles;
- e) for the sale or display for sale of motor vehicles;
- f) for a taxi business or business for the hire of motor vehicles;
- g) as a scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles;
- h) for any work registrable under the Alkali, etc. Works Regulation Act 1906;
- i) as a hostel;
- j) as a waste disposal installation for the incineration, chemical treatment or landfill of hazardous waste
- k) as a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club;
- l) as a night-club;
- m) as a casino;
- n) as a betting office; or
- o) as a pay day loan shop.

These are commonly known as sui generis uses, which means a use "of its own kind; in a class by itself; unique".

Appendix B: The current Use Classes Order

The current UCO is:

Class B2 General industrial

Use for the carrying on of an industrial process other than one falling within the uses described in Class E.

Class B8 Storage or distribution

Use for storage or as a distribution centre.

Class C1 Hotels

Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

Class C2 Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwellinghouses)).

Use as a hospital or nursing home Use as a residential school, college or training centre.

Class C2A Secure residential institutions

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

Class C3 Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by:

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4 House in multiple occupation

Use of a dwellinghouse by not more than six residents as a HMO.

Class E Commercial, business and service

Use, or part use, for all or any of the following purposes:

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public;
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises;
- (c) for the provision of the following kinds of services principally to visiting members of the public:
 - (i) financial services;
 - (ii) professional services (other than health or medical services); or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality;

- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public;
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner;
- (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public;
- (g) for:
 - (i) an office to carry out any operational or administrative functions;
 - (ii) the research and development of products or processes; or
 - (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class F.1 Learning and non-residential institutions

Any use, not including residential use:

- (a) for the provision of education;
- (b) for the display of works of art (otherwise than for sale or hire);
- (c) as a museum;
- (d) as a public library or public reading room;
- (e) as a public hall or exhibition hall;
- (f) for, or in connection with, public worship or religious instruction;
- (g) as a law court.

Class F.2 Local community

Use as:

- (a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where:
 - (i) the shop's premises cover an area not more than 280 metres square; and
 - (ii) there is no other such facility within 1000 metre radius of the shop's location;
- (b) a hall or meeting place for the principal use of the local community;
- (c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms; or
- (d) an indoor or outdoor swimming pool or skating rink.

Sui generis uses

The UCO at Article 3(6) sets out the uses that are prescribed as sui generis. This includes uses (a) to (o) from the previous UCO, plus the following uses:

- (p) as a public house, wine bar, or drinking establishment;
- (q) as a drinking establishment with expanded food provision;
- (r) as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises;
- (s) as a venue for live music performance;
- (t) a cinema;
- (u) a concert hall;
- (v) a bingo hall;
- (x) a dance hall.

Sui generis means a use "of its own kind; in a class by itself; unique".

Appendix C: A new Use Classes Order

POS believes that from a place making standpoint, alongside our place managing licensing/permitting proposals, the UCO could be reduced to five Use Classes as follows:

Class A Commercial and Service comprising the following old Use Classes:

- Class A1 Shops
- Class A2 Financial and professional services
- Class A3 Restaurants and cafes
- Class A4 Drinking establishments
- Class A5 Hot food takeaways
- Class D2 Assembly and leisure

Class B Employment comprising the following old Use Classes:

- Class B1 Business
- Class B2 General industrial
- Class B8 Storage or distribution

Class C Hospitality and Institutional Residential comprising the following old Use Classes:

- Class C1 Hotels
- Class C2 Residential institutions
- Class C2A Secure residential institutions

Class D Domestic Residential comprising the following old Use Classes:

- Class C3 Dwellinghouses
- Class C4 Houses in multiple occupation

Class E Non-residential Institutions comprising the following old Use Class:

- Class D1 Non-residential institutions

Appendix D: How a new Use Classes Order could operate alongside Licensing

This appendix sets out a potential way that the new system could operate. It is more in the way of a starting point for discussion than a set of firm proposals.

In this new system planning should deal with the main place making issues raised by the five new use classes, however planning decisions should be explicitly prevented from taking into account or controlling the matters that would be controlled by licensing/permitting in order to avoid any overlap between the two regimes: place making and place managing. In order to ensure that the externalities from the different activities within the new use classes do not cause harm, our proposals are that a new licensing/permitting regime would deal with that from a place managing perspective.

Class A Commercial and Service

Planning would consider issues such as:

- Retail policy (eg Town Centre First)
- Principle of these uses outside town centres (eg loss of residential)
- Impact on the character of the area
- Noise and disturbance from extra-curtilage activity (eg deliveries or customer activity)
- Accessibility issues: cycling, parking, public transport capacity etc
- Impact on highway network: road safety or capacity issues
- Overall amenity impact issues (generally outside town centres)
- Other site-specific issues

The use/impact issues managed through a revamped and expanded licensing/permitting regime would cover matters like the following:

- Hours of use outside “core” hours (7am-11pm in town centres or commercial areas and 7am-7pm elsewhere)
- Use for financial and professional services
- Use as a restaurant or café
- Public House Licensing should pick up all issues (eg principle, hours of opening, over-concentration, ASB etc)
- Food hygiene and safety extended to consider covering preparation, fume extraction and (potentially) obesity issues
- Assembly and leisure licence
- The issue of “dead” retail frontages and nuisance could also be included by limiting certain licences in specified areas (eg too many old A2 uses, take aways, pubs or night clubs, pay day loan shops, bookmakers etc)

Many of the sui generis retail/town centre type uses could be included in the new Class A if they were appropriately controlled through licensing, for example:

- b) an amusement arcade or centre, or a funfair
- d) the sale of fuel for motor vehicles
- e) the sale or display for sale of motor vehicles
- f) a taxi business or business for the hire of motor vehicles
- k) a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club
- l) a night-club

- m) a casino
- n) a betting office
- o) a pay day loan shop

The current protection given to use as a theatre or as a launderette by being defined as sui generis could stay within planning control as sui generis or their continued protection could be dealt with through licensing/permitting.

Class B Employment

Planning would consider issues such as:

- Employment policy (eg protection of employment land)
- Principle of use
- Impact on the character of the area
- Noise and disturbance from extra-curtilage activity (eg deliveries)
- Accessibility issues: cycling, parking, public transport capacity etc
- Impact on highway network: road safety or capacity issues
- Overall amenity impact issues (generally outside commercial areas)
- Other site-specific issues

The use/impact issues managed through a revamped and expanded licensing/permitting regime would cover matters like the following:

- Hours of use outside “core” hours (7am-11pm in town centres or commercial areas and 7am-7pm elsewhere)
- Use as offices
- Use for research and development
- Use for industrial purposes
- Use for warehousing purposes
- B2 type noise, vibration, smell, fumes, smoke, soot, ash, dust or grit issues
- The operation of large vehicles from a site, potentially linked to the Operators Licence regime

The current sui generis employment type uses could be included in the new Class B if they were appropriately controlled through licensing/permitting, for example:

- g) as a scrapyards, or a yard for the storage or distribution of minerals or the breaking of motor vehicles
- h) for any work registrable under the Alkali, etc. Works Regulation Act 1906
- j) as a waste disposal installation for the incineration, chemical treatment or landfill of hazardous waste

Class C Hospitality and Institutional Residential

Planning would consider issues such as:

- Principle of use
- Impact on the character of the area
- Noise and disturbance from extra-curtilage activity (eg deliveries)
- Accessibility issues: cycling, parking, public transport capacity etc
- Impact on highway network: road safety or capacity issues
- Overall amenity impact issues
- Other site-specific issues

Potentially use as a hostel (sui generis) could be included in the new Class C if they were licenced. The use/impact issues managed through a revamped and expanded licensing/permitting regime would therefore cover matters like the following:

- Use as a hostel
- Use as a hotel
- General care issues
- Specialist care issues

Class D Domestic Residential

Planning would consider issues such as:

- Principle of use
- Suitability of the area for residential
- Noise and disturbance from extra-curtilage activity (eg deliveries)
- Accessibility issues: cycling, parking, public transport capacity etc
- Impact on highway network: road safety or capacity issues
- Overall amenity impact issues
- Other site-specific issues

The use/impact issued raised by HMOs would be managed through the revamped and expanded licensing/permitting regime.

Class E Non-residential Institutions

Planning would consider issues such as:

- Principle of use
- Impact on the character of the area
- Noise and disturbance from extra-curtilage activity (eg deliveries)
- Accessibility issues: cycling, parking, public transport capacity etc
- Impact on highway network: road safety or capacity issues
- Overall amenity impact issues
- Other site-specific issues

The use/impact issues managed through a revamped and expanded licensing/permitting regime would mainly cover hours of use outside “core” hours (7am-11pm in town centres or commercial areas and 7am-7pm elsewhere).