

The planning response to COVID-19

March 2020



Published by
Robin Barnes

The Government has announced that it has relaxed planning laws so that premises such as pubs and restaurants can temporarily operate as hot food takeaways.

The Government's plan to slow the transmission of COVID-19 has, of course, included the requirement for self-isolation and the shutdown of social establishments such as pubs and restaurants. The impact of shutting these establishments is that takeaway delivery is hugely in demand.

Under normal circumstances, planning permission is required to carry out a change from a pub (A4 use) or restaurant and cafes (A3 use) to a hot-food take away (A5 use). Last week, Communities Secretary, Robert Jenrick confirmed that this will be relaxed, by way of amendment to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO 2015"), so that businesses can provide a takeaway service without having to seek planning permission. This means that not only will the increased need for takeaway food be met, but also businesses that would otherwise be shut will be able to operate, albeit under different circumstances. The order was made effective from 10AM on the 24th March, and the permitted development right will last for 12 months.

However, before businesses rush to do this it is important that they first consider whether they are barred from exercising this permitted development right through other means:

(1) Firstly, the business must check that the use of the property as a takeaway isn't constrained by restrictive covenants on the title.

(2) A business may also be constrained from operating their premises for takeaway purposes by obligations agreed in their lease.

(3) Permitted development rights under the GPDO 2015 will not override any condition imposed by a planning permission. It is common to see a planning condition that a restaurant or cafe cannot be used for an A5 takeaway use.

(4) The use of business premises may also be controlled by planning obligations in a s.106 agreement. Using the new permitted development right could potentially amount to a breach of a covenant in the agreement.

(5) Finally, the Local Planning Authority ("LPA") can expressly stop certain permitted development rights from applying in certain areas by way of an Article 4 direction under the GPDO 2015. These measures are used by LPAs to control undesirable development in certain areas. This will be less of an immediate concern, given that these permitted development rights are freshly established and will not have been removed by LPAs.

In related news, Mr Jenrick has also sought to ease restrictions on the time and number of deliveries from lorries and other delivery vehicles to supermarkets in England. Given the extra strain placed on supermarkets in recent days, it is vital that deliveries of food, sanitary and other essential products can be made as quickly and safely as possible over the coming weeks. To achieve this, Mr Jenrick has called on LPAs to ensure planning controls are not a barrier to food delivery over the period of disruption caused by COVID-19. This would appear to suggest that they overlook any breaches of planning conditions or obligations that might be caused by deliveries taking place outside of specified hours or by using particular types of delivery vehicles.

For any advice please get in touch with your usual Maples Teesdale contact or

John Bosworth

E: jbosworth@maplesteesdale.co.uk

T: 020 3465 4303

M: 07843265351

Robin Barnes

E: rbarnes@maplesteesdale.co.uk

T: 020 3465 4323