

## Welcome to Bryan Cave Leighton Paisner & Landmark Chambers 'Could zoning work in the UK?' webinar

The recording may be accessed [here](#).

## Your Speakers today are ...



**James Maurici QC**  
Landmark Chambers, Barrister  
(Chair)



**Giles Pink**  
Bryan Cave Leighton Paisner,  
Partner  
Presents: What are the  
Government's proposals for  
Zoning?



**Judith Gallent**  
Bryan Cave Leighton Paisner,  
Partner  
Presents: How does Zoning  
work in New York?



**David Elvin QC**  
Landmark Chambers, Barrister  
Presents: Precedents for  
“zoning” in England and  
Wales



**Jenny Wigley**  
Landmark Chambers, Barrister  
Presents: Zoning –  
Transitional Issues

## What are the Government's proposals for Zoning?



**Giles Pink**  
**Bryan Cave Leighton Paisner**

- White Paper promised this month
- What are the objectives?
- Are there straws in the wind?

## Objectives

- Developer perspective:
  - confidence as to cost for process and planning gain;
  - confidence as to outcome for cost committed; and
  - confidence as to timescale to reach outcome.
- Political perspective:
  - Pre CV-19
  - Since CV-19

## So where does zoning come in?

- Policy Exchange report “Rethinking the Planning System for the 21<sup>st</sup> Century”
- <https://policyexchange.org.uk/news/policy-exchange-sets-out-major-planning-reforms/>
- Co-author’s link to the 10 Downing Street team of special advisors + a reported view that Dominic Cummings shares a view of the need for planning reform

- FT – 10 June 2020
  - Central to the proposals are the introduction of a **zonal planning system** and the creation of special development zones.
  - One proposal is to change England’s design codes so that “**attractive**” buildings can be sped through the planning process. The model for that could be the “**as-of-rights**” system [...] whereby a proposed development that complies with all applicable **zoning codes** does not require any special consideration from the authorities.
  - Ministers are also considering the creation of **new development zones** — in which the **government invests in public infrastructure** to stimulate private development.

## A two-speed approach

- A class of revisions that are easier to implement with more immediate effects e.g. expansion of permitted development rights, funding programmes
- A deeper more substantial change to the system that will take longer to implement and bear fruit – this is where the discussion of zoning comes in

## Limitations on deep-rooted reform?

- Given the headwinds of Brexit and CV19 it might be politically unrealistic to expect the sort of purist reform that the Policy Exchange recommends
- This Government has three and a half years to make a difference to those who voted Conservative for the first time
- But the eagerness for reform appears to remain strong

## So what might Zoning look like?

- A simplified local plan that designates zones with principal land uses and development rules, compliance with which would fast track applications, and special provision for e.g. heritage assets, infrastructure (including social infra) and ecological designations – all set by elected members but with compliance being judged by professional officers
- Less reliance on needs assessment – the intention being that the zones are not sized to fit assessed need, but rather there is a presumption that land can be zoned
- A more focussed approach to environmental assessment?
- A simplified approach to planning gain and CIL – with the emphasis on delivery on infrastructure to mitigate the effects of development rather than diluting the funds across many minor projects

## How does Zoning work in New York?



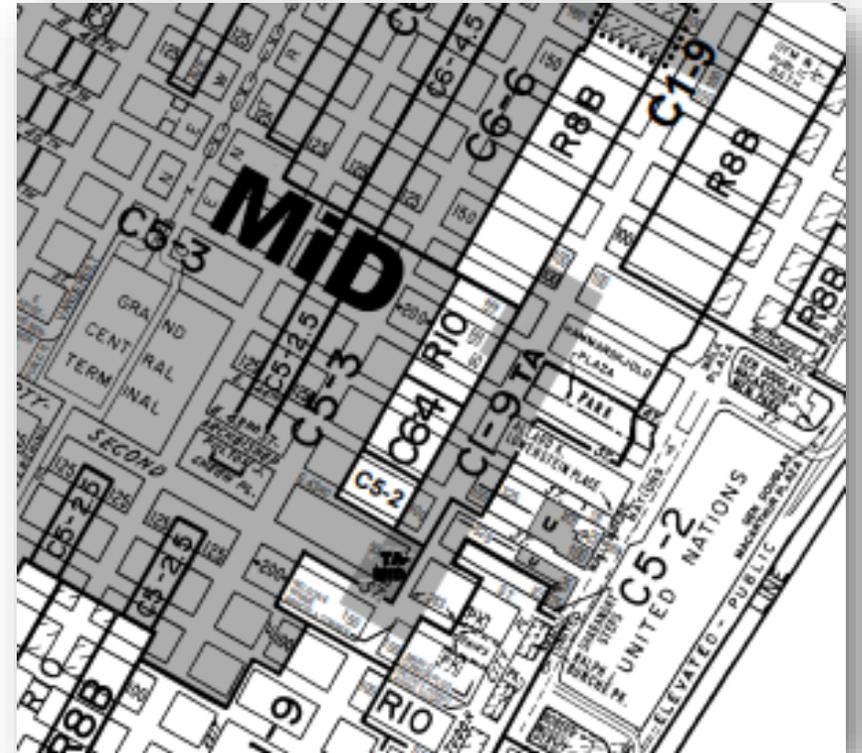
**Judith Gallent**  
**Bryan Cave Leighton Paisner**

## The 1961 Zoning Resolution

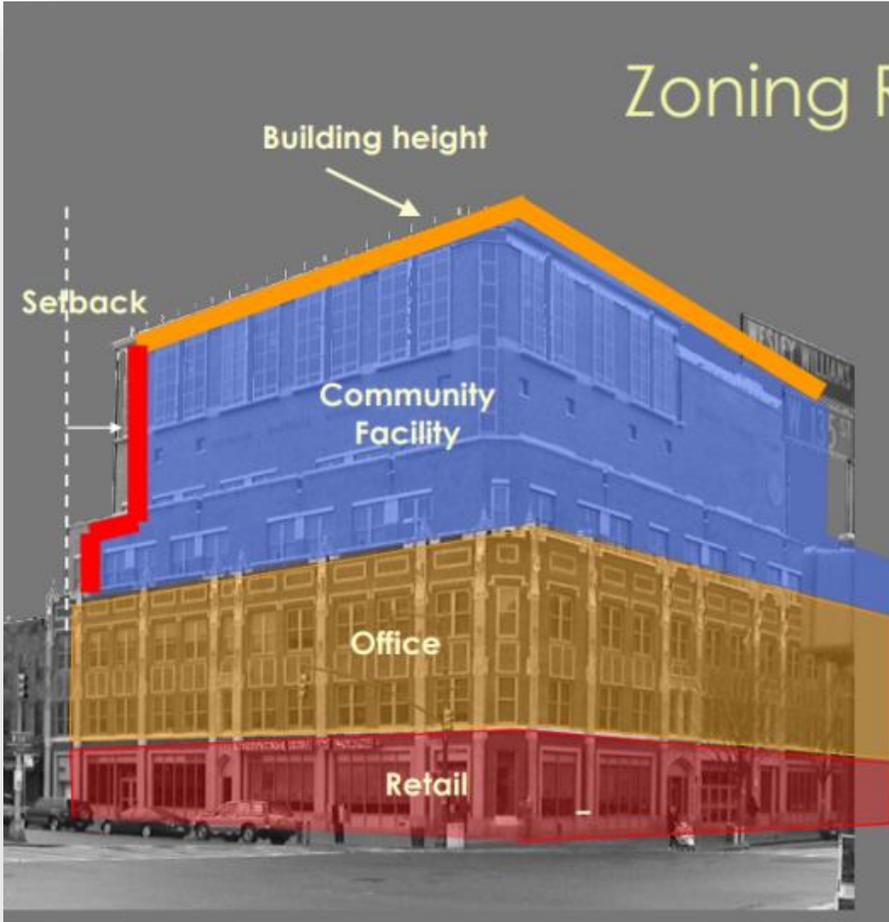
- Divides the City into 3 Broad Use Categories
  - - Residential
  - - Commercial
  - - Manufacturing
- Regulates Building Bulk Through the Concept of Floor Area Ratio (“FAR”)
- Includes Parking and Loading Requirements
- Incentives for Providing Open Space

## Zoning Districts

- Every property in NYC is mapped within an underlying zoning district (R, C or M)
- 64 Special Districts
- 126 Zoning Sectional Maps



## Zoning Regulations



Building height

Setback

Community Facility

Office

Retail

Ensure harmonious relationship between all the different users of a city

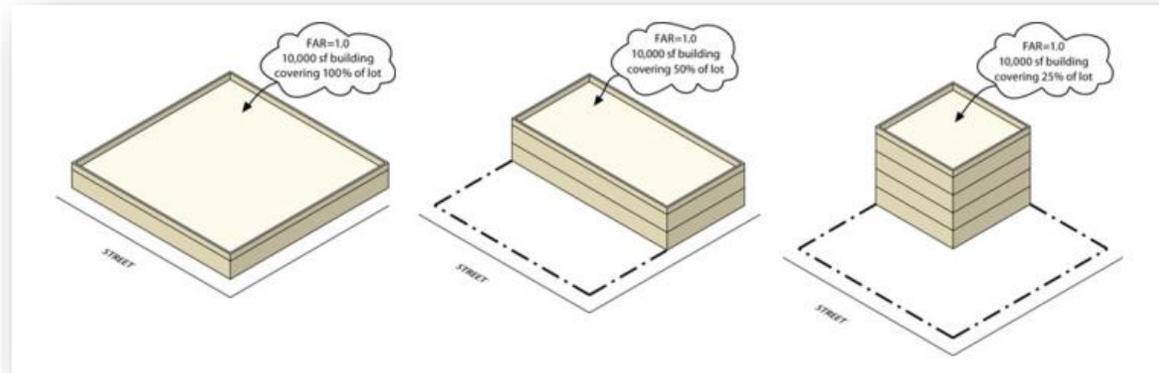
Provides certainty to residents and businesses

Provides framework for appropriate growth

Zoning Controls:

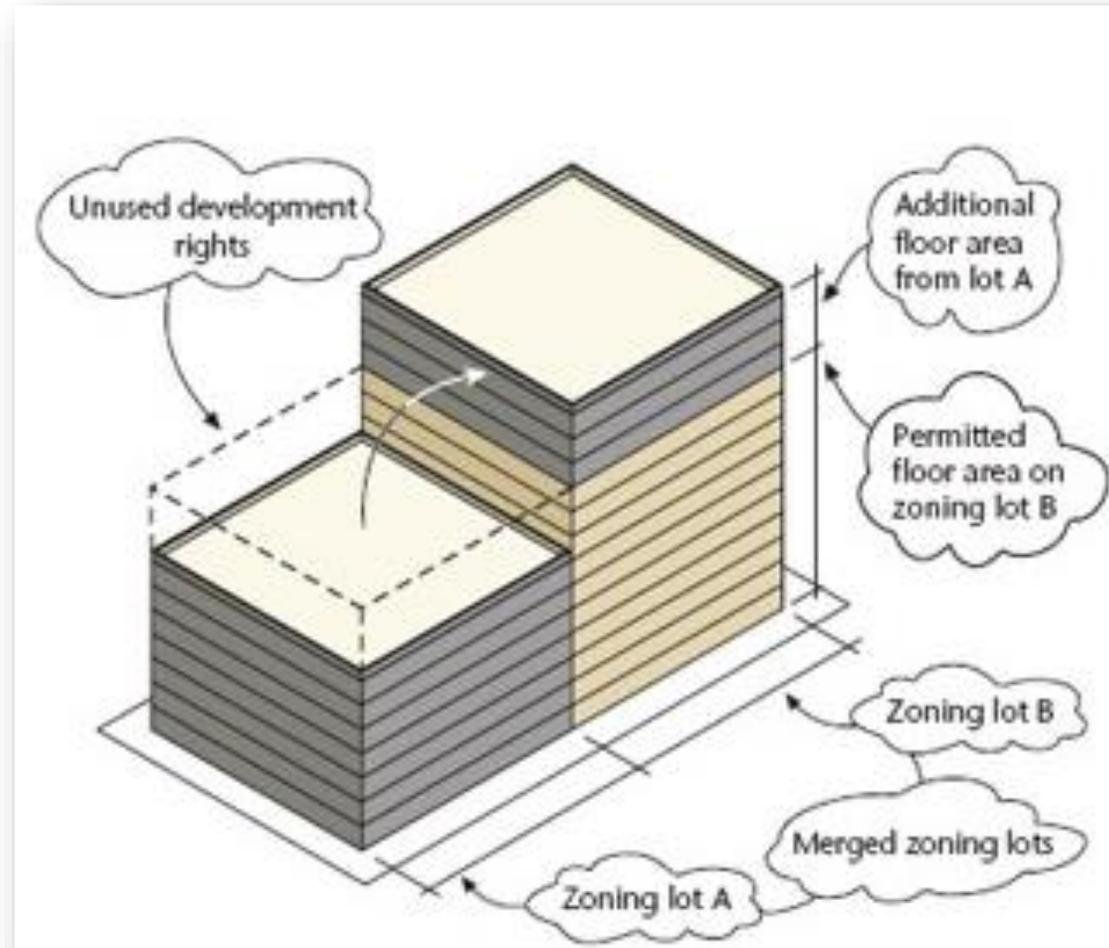
- Land Use
- Density
- Building size
- Parking
- Signage

## Floor Area Ratio (“FAR”), the Basic Building Block



- The FAR multiplied by the area of the zoning lot indicates the maximum amount of floor area permitted in a building on that lot.
- This example shows a 10,000 square foot lot with an FAR of 1.0.

# Transfer of Development Rights



- Special Purpose Districts to Achieve Localized Use and Design Objectives
- Contextual Zoning to Preserve Local Character
- Special Design Requirements Along the Waterfront
- Floor Area Bonuses for Providing Affordable Housing, Accessible Public Space and Infrastructure Improvements

- **As-of-Right Development**

- Permit issued by the Department of Buildings
- 45-day public challenge period prior to zoning approval
- Appeals of DOB final zoning determinations to the Board of Standards and Appeals and ultimately, the courts.

- **Discretionary Approvals**

- City Planning Commission

- ✓ **ULURP**

- Board of Standards and Appeals

# ULURP Simplified

Department of City Planning	C E R T I F I C A T I O N  U L U R P  B E G I N S	Community Board	Borough President	City Planning Commission	City Council	Mayor
Precertification Phase and Environmental Review (no time limit, 6 to 18 months)			60 Days	30 Days	60 Days	50 Days (Not all actions reviewed by Council)

## Parallel Land Use Regulatory Processes



- Historic Preservation – New York City Landmarks Preservation Commission
- Environmental Regulation – Various City, State and Federal Agencies

## Precedents for “zoning” in England and Wales



**David Elvin QC**  
**Landmark Chambers**

- A number of “zoning” type powers which allow a greater degree of definition than plan allocations and which in many cases substitute for the need for planning permission:
  - Special Development Orders
  - Local Development Orders
  - Neighbourhood Development Orders
  - Enterprise Zones
  - Simplified Planning Zones
  - New Towns Act 1981
- Generally, all underused, though significant degree of central control by government e.g. SDOs, EZs and under New Towns Act. There is considerable scope for use of such powers to bypass regular planning control

- S. 59(3)(b) TCPA 1990: SoS may make special development order applicable only to such land or descriptions of land as is specified. SDO may:
  - itself grant planning permission for specified development or class
  - provide for LPA to grant planning permission in accordance with provisions of order. (Greater freedom from development control)
- Process: made by SI, subject to negative resolution. SoS acting in legislative capacity with absolute discretion: ***Essex CC v MHCLG*** (1967) 18 P&CR 531
- E.g. Town and Country Planning (Cardiff Bay Urban Development Area) Special Development Order 1989/1180, permitting development within Cardiff Bay area in accordance with proposals approved by SoS

- Ss. 61A-C and Sch. 4 TCPA 1990. Encouraged by NPPF 2019 §§51, 68. Procedure in Art 38 DMPO
- Allows LPAs to include grants of planning permission in development plan documents to implement policies in the plan. May grant permission for -
  - specified development
  - development of a specified class (s. 61A(2))
- Very flexible. Permission may be granted unconditionally (so no application for planning permission required) or conditionally, and (if granted for a class) may be disapplied to a specific development or area (s. 61C). LPA can require further approvals (e.g. on matters of detailing) if it so wishes.

- Must not grant permission for:
  - development affecting listed building
  - Sched 1 EIA Development (Art 38(12) DMPO) (if Sched 2. development, requires screening – see PPG 4-007-20170728)
- Control of LDO by SoS/NAW (s. 61B)
  - SoS can direct LDO be submitted for approval (s. 61B(1)). NAW requires submission (Art 27(10) DMPO (Wales) 2012)
  - May approve or reject LDO or part of it (s. 61B(5))
  - NAW may direct LPA to modify LDO (s. 61B(6))
  - May at any time revoke LDO if expedient to do so (s. 61B(8)). But compensation may be payable by LPA (s. 108)

- S. 61E-Q TCPA 1990. Procedure in Sched 4B TCPA 1990 and Neighbourhood Planning (General) Regulations 2012 Pt 6
- PPG *Neighbourhood planning* (section 41)
- Triggered by “qualifying body” (parish council or body designated as neighbourhood forum by LPA) submits proposal and draft order to LPA
- Scope: NDO may
  - grant permission unconditionally
  - grant conditional permission requiring further approvals. Regulations may make approvals to be sought from Parish Council not LPA
  - make different provision for different cases or circumstances
- Can authorise: building operations, material changes of use, engineering operations

- Limitations:
  - For qualifying bodies only and only covers a specific neighbourhood area and may not cover more than one neighbourhood area (s. 61J(5))
  - cannot be used for development listed in s. 61K TCPA 1990, including
    - county matters (e.g. minerals, waste)
    - Sched 1 EIA Development
    - NSIP development
  - may not grant permission where permission already granted (s. 61J(4))
  - SoS may revoke a NDO, LPA may revoke with SoS consent (s. 61M)
- *Community Right to Build Order* – specific form of NDO – s. 61Q and Sched 4C TCPA obtainable by “community organisations” (Sched 4C §3) - grants planning permission for specified development in relation to a specified site in the specified neighbourhood area within prescribed limits

- S. 179 and Sched 32 LGPLA 1980, s. 88 TCPA 1990. SoS invites body (e.g. Dev Corp) to prepare scheme designating area as EZ. DC prepares and adopts scheme, SoS designates area as EZ and DC as EZ Authority
- Scope:
  - Designating order grants planning permission for specified development or class of development, subject to limitations specified in the scheme.
  - Designations last for 10 years.
  - EZ Authority may direct permission does not apply to specified development, class of development or within specified area
  - Order may designate EZ Authority LPA for EZ
  - EZ scheme does not have to relate to local plan

- Ss. 82-87 TCPA 1990, procedure in Sched 7 TCPA 1990
- LPAs to consider and keep under review in which part of their areas an SPZ scheme is desirable, and prepare SPZ Scheme when desirable.
- Scope:
  - SPZ grants permission for development – specifically or generally
  - Permission conditional or unconditional. Conditions can be case specific but are necessarily general
  - Permission lasts for 10 years
  - Legislation does not tie SPZ schemes to development plan
  - Challenge – akin to a challenge for local plan, not planning permission

- Limitations:
  - Cannot be used to grant permission for what would be a “county matter”
  - Cannot use in National Park, Conservation Areas, AONBs, Green Belt or SSSI
- SoS Control:
  - Any person asking LPA to make or alter SPZ may refer matter to SoS if LPA refuses, save in limited circumstances
  - SoS may call in SPZ scheme prior to adoption
  - SoS may direct LPA to modify proposals
  - SoS may provide further areas where SPZ cannot apply

- New Towns Act 1981 replaced earlier post-war legislation for new towns which was run down, the Commission for the New Towns being replaced in 1985 by English Partnerships, the regeneration functions of which from 2008 were vested in Homes England
- Designation:
  - SoS makes order designating area including “any existing town or other centre of population” to be developed as new town if “expedient in the national interest that any area of land should be developed as a new town by a corporation established under this Act” (s. 1(1))
  - SoS may appoint LA/s to oversee development (s. 1A(1)) (*oversight authority*) which may require OA’s consent to exercise of specific functions
- Development Corporation
  - SoS makes order appointing development corporation (s. 3(1)) to secure layout and development of new town (s. 4(1))

## New Towns: planning

- Development corporation to submit proposals for development of land to SoS for approval (with or without modifications) (s. 7(1)). Under old circulars, this was generally in the form of a masterplan (e.g. DOE 18/84)
- Duty to have regard to desirability of good design (s. 4(1B))
- SoS may make SDO under s. 59 TCPA 1990 granting permission (conditionally or unconditionally) (s. 7(2))
  - Town and Country Planning (New Towns) Special Development Order 1977/665 grants permission for DC to carry out development in accordance with approved and submitted plans, subject to restrictions (e.g. consultation requirements, other consents)
  - Imports flexibility of s. 59 powers
- SoS must direct DC to secure the preservation of any features of special architectural or historic interest and in particular of listed buildings (s. 8)

## Zoning -Transitional Issues



**Jenny Wigley**  
**Landmark Chambers**

## Could a troubling transition dent or destroy the zoning utopia?

- Extent of transitional issues obviously depends on the degree of change proposed – if just a tinkering overlay then little transition to think about;
- Government paper (Robert Jenrick) “Planning for the Future” suggested increased use of zoning tools (tinkering) rather than fundamental reform;
- Since then the mood music has changed: ‘radical re-think from first principles’, ‘fundamental shake-up’, ‘root and branch review’, ‘overhaul’;
- Zoning framed as a utopia by David Rudlin in the recent selection of essays (Planning Anew) produced by the favoured think tank Policy Exchange

## What might 'utopia' mean for extent of change?

- Radical shake-up envisaged for the 'utopia' would effectively need to be a replacement of the current system;
- Presumably would involve seeking to replace wholesale the current development plan regime and development control - unchartered territory – no international examples;
- Departure from current zoning type tools which are generally purely permissive and additive to existing rights;
- Instead codified scheme of rules to dictate both what is, and what is not, permissible in each zone – potentially overriding existing rights.

- Consider how long it has taken to get modern development plans in place!
- Comprehensive zoning schemes likely to take much longer if as radical as indicated;
- If continue to comply with environmental assessment regime, granular EIA and AA of sites rather than just overall SEA likely to be necessary;
- Consider public consultation required and heightened incentive to litigate;
- Length of transition quite conceivably will be decades rather than years.

## Transition consequences – effects on existing rights

- How will the zoning code affect existing rights and looser entitlements on which investment decisions have been based?
- Preserve existing planning permissions or provide compensation (consider 1947 regime)? Potential Human Rights implications;
- Effect on permitted development rights? Article 4 type scheme?
- How will existing use rights be treated – preserved or deleted and compensated?
- What will be needed to prove existing use rights – actual CLEUD or simply the ability to evidence 10 years and no abandonment?

## Transition consequences – effects on existing rights (2)

- What about extant and emerging development plans and investment decisions made on the basis of allocations – preserve or compensate?
- Difficulty heightened by different stage development plans (inc. Neighbourhood Plans)– still progress some (or all) while zoning pending?
- Any presumption that existing / emerging allocations will be carried through to zoning?
- Will there be a presumption that existing Green Belt / AONB / National Parks etc will be zoned ‘no development’ – what about undefined settings of heritage assets, what about areas beyond current settlement boundaries ?
- Any compensation for loss of hope value in those areas?

- Chilling effect on investment?
- Dampening effect on innovation – ossification of a snap shot in time?
- Loss of morale and motivation – “*what’s the point in working hard to get this local plan in place....?*”
- Scramble to establish and protect existing rights;
- Rush of CLEUD applications?
- Acceleration of planning applications in ‘hope value’ areas?
- Could cause massive planning expertise resource gap;
- Increase in litigation;
- Pressure on Parliamentary time.

- How will all this dovetail with the Environment Bill?
- What about effects on climate change and air quality; settings of heritage assets?
- Will there be a swift departure from the rigour of existing EU law (habitats assessment and environmental assessment regimes) as soon next year?
- And/or will such issues be hived off into another layer – maybe an environmental permitting regime, recreating development control by another name?

## Any Solutions?

- Abandon radical overhaul and instead encourage/incentivise use of existing zoning type tools;
- Reconsider whether supposed utopian *certainty* delivered by zoning may be entirely undermined by the *uncertainty* of the likely extended transition;
- If intent on the radical – take time to consider all implications and design certain and transparent transitional arrangements from the outset;
- Seek to avoid scramble to establish existing rights and entitlements;
- Invest heavily in planning personnel and expertise which might need to include bringing in from overseas.

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.**

# Thank you for listening

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