

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.

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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