

# **LAW AND DISORDER: PERMITTED DEVELOPMENT RIGHTS AND THE LOSS OF PROPORTIONATE CONTROL**

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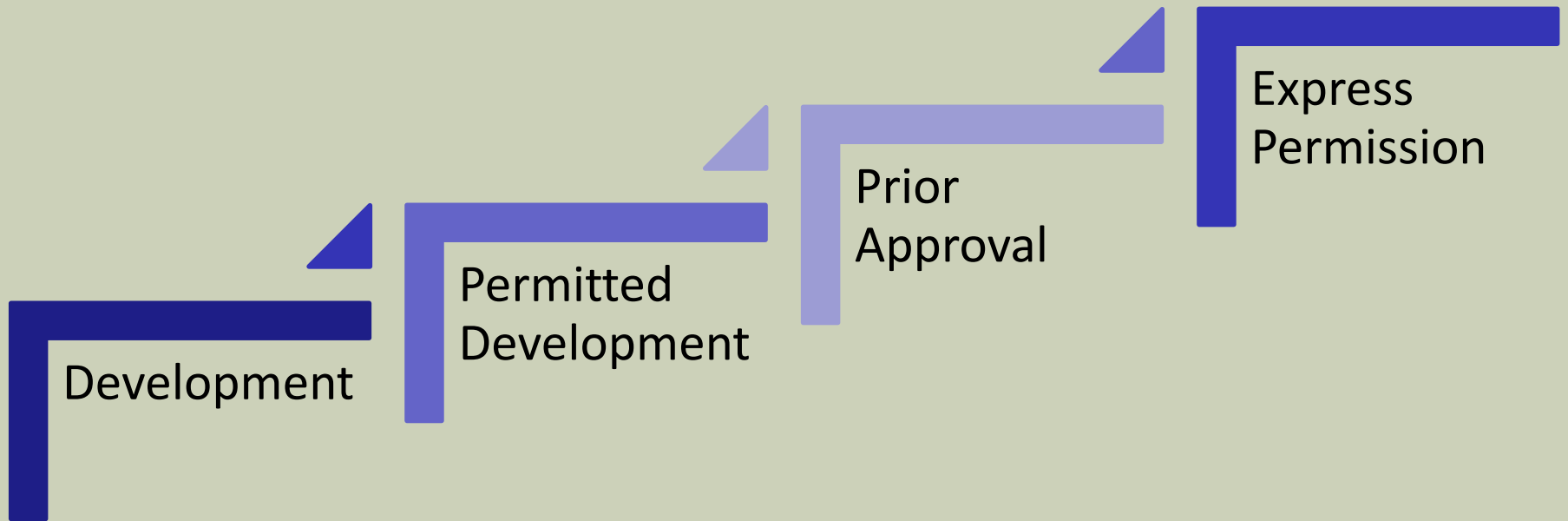
# STRUCTURE

- **First principles**
- **Proportionality**
- **The loss of proportionate control?**
- **Case study: implications**
- **Conclusions**

# FIRST PRINCIPLES

- First principles perspective, state intervention into a market.
- Key phenomenon; necessity.
- The evolution of state intervention was driven by the necessity of responding to events and circumstances that required address and that private arrangements either could not, or would not, respond to adequately alone (Gilg, A. 2005).
- As noted by Cullingworth, B and Nadin, V et al (2015), the environmental, health and social challenges ultimately led to an appreciation and wide acceptance of the necessity of the state interfering into the market and private property rights in the public interest and with regard to social justice.

# PROPORTIONALITY



# THE PROPORTIONALITY CHALLENGE

- Where impact upon amenities may occur state intervention is justified in the public interest
- Parallel need to ensure that the system is able to operate effectively and efficiently; ensuring that the system is response, manageable, and does not represent an administrative burden.
- The above two drivers can be seen to be operating in conflict to one another from some perspectives

# THE PROPORTIONALITY CHALLENGE

- Primacy of economic growth
- The presentation of planning as a ‘barrier’ to implementation and delivery and as a ‘burden’ (1980) has become particularly commonplace since the 2010 General Election:

‘One of the most significant burdens highlighted consistently during the Growth Review has been the UK’s overly slow and bureaucratic planning system’

(HM Treasury, 2011, pg. 21)

# THE LOSS OF PROPORTIONATE CONTROL?

- The Plan for Growth (2011, pg. 23) stated an intention ‘To reform the planning system radically and fundamentally...’ including an intention to ‘bring forward proposals to extend Permitted Development rights...’
- The extension of the GPDO (Permitted Development rights) continues to be presented as solution to planning as a barrier because it is a way to remove some developments from requiring an express planning permission.
- This intention presumes that the extant balance of necessity of state intervention is incorrect and inappropriate.

# THE LOSS OF PROPORTIONATE CONTROL?

- Change did not take place in a single measured step, instead a series of amendments were introduced in 2010, 2011, 2012, 2013, 2014 and 2015.
- Through the attempts to extend Permitted Development rights and remove developments from the requirement for express planning permission it is suggested that a paradox has emerged however; the more the Government attempts to simplify the decision making system and facilitate development, the more complex and flawed the system has become (Sheppard, A. 2014).



# THE LOSS OF PROPORTIONATE CONTROL?

- We now find ourselves in an environment where regulation density and complexity is a real issue to the extent that the system is becoming dysfunctional.
- It is also argued that in some cases the changes have failed to consider the important question of the necessity of state intervention and the system emerging does not necessarily represent a proportionate model based upon impact and controls existing where justified on the basis of social justice and the public interest

# CASE STUDY: IMPLICATIONS

- On the 30<sup>th</sup> May 2013 the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 came into force. Included in this amendment was the right for a period of three years to permanently change the use of a building from an office use to dwellings.
- The system employs the 'Prior Approval' model whereby it is necessary apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to the acceptability of the proposal upon:
  - transport and highways impacts
  - contamination risks on the site;
  - flooding risks on the site.

# CASE STUDY: IMPLICATIONS

## Positives:

- 1.** Research undertaken by planning consultancy GVA suggests that nationally over 11m sq ft of office space has left the market for alternative and 17,500 homes could ultimately be provided through the policy (Morris, M. 2015).
- 2.** A report from planning consultancy Nathaniel Lichfield and Partners (NLP) in May 2015 noted that some poor quality office space has been removed and replaced with much needed residential accommodation and that removing office space from the market has driven up rental values to the extent that new office development that was otherwise stalled were becoming viable again (NLP, 2015).

# CASE STUDY: IMPLICATIONS

Issues (supply and demand management):

- 1.** In London, Westminster City Council is seeking to further protect its declining office supply because they have estimated 1.8million sq ft of space has been lost driving undersupply and higher rents (Estates Gazette, 2015).
- 2.** The NLP report highlights problems in areas with a housing shortage because this is placing significant pressure upon vacant office space to the extent that the fastest decline in the availability of office space was being witnessed since 1998 and that this could lead to a potential supply crunch and unsustainable rising rental levels (NLP, 2015).

# CASE STUDY: IMPLICATIONS

Issues (resources and infrastructure):

3. Conversions are not normally required to make cost recovery based contributions.
4. Affordable housing is primarily delivered via planning gain in the UK.
5. The planning fee for a Prior Approval application £80. In contrast, the fee for a change of use full planning application can be significant:
  - Not more than 50 dwellings £385 for each
  - More than 50 dwellings £19,049 + £115 for each in excess of 50 up to a maximum of £250,000
6. The absence of planning gain and fees means important resources are not provided to the local planning authority to support physical and social infrastructure provisions.

# CASE STUDY: IMPLICATIONS

Issues at the extreme:

7. Inability to manage amenity impact
8. Strategic management of office supply lost
9. Strategic management of housing supply lost, including affordable housing
10. Strategic management of infrastructure lost

# CONCLUSIONS

- Reneges on first principles
- Control and management of space is compromised.
- Balance and proportionality are lost.
- Piecemeal change
- The economic growth motivation has primacy
- The planning system is compromised and dysfunctional
- The saga continues...





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