**Dual Use Permissions**

**CGCA’s Position**

**Summary:**

1. A permission is not implemented until development takes place. There is no development until permitted building *etc* operations are carried out or a material *change* of use occurs. If a permission is granted subject to a condition that it must be implemented within three years then unless a material *change* of use (or some other permitted development) occurs within three years thereafter any material change of use will be in breach of condition.

**Reasoning:**

1. The Covent Garden Community Association (‘CGCA’) has seen an increasing number of applications to London Borough of Camden for, and grants of, planning permission change of use to ‘alternative’ or ‘flexible’ uses comprising more than one use class. This may involve use class B1 being changed flexibly between use class B1 and C3, on the basis of Part 3, Class V, Schedule 2 to the Town & Country Planning General Permitted Development Order 2015. This provides as follows:

“Class V – changes of use permitted under a permission granted on an applicationPermitted development
V. Development consisting of a change of use of a building or other land from a use permittedby planning permission granted on an application, to another use which that permission wouldhave specifically authorised when it was granted.Development not permitted
V.1 Development is not permitted by Class V if—
(a) the application for planning permission referred to was made before 5th December 1988;
(b) it would be carried out more than 10 years after the grant of planning planning permission (c) the development would consist of a change of use of a building to use as betting office or
pay day loan shop; or
(d) it would result in the breach of any condition, limitation or specification contained in that
planning permission in relation to the use in question”

1. This is a problem for CGCA because landowners sometimes obtain a dual use permission but do not implement it until after planning circumstances have significantly changed. The change of use may no longer be appropriate. If a planning application were made at the later time it might well be refused.
2. The developers assert that they have effectively circumvented the standard condition that

 “development hereby permitted must be begun not later than the end of three years from the date of this permission”.

Since one of the uses is continuing on the first day after permission is granted, they claim that the development has immediately begun, which triggers the start of the 10 year permission enabling change to the other use at any time.

1. That developer’s assertion is based on a misunderstanding of the nature of planning permission and the meaning of development. Planning permission can only be granted for development. Development is defined in the Town and Country Planning Act 1990 as

“**55** (1) Subject to

the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material *change* in the use of any buildings or other land” (my emphasis)

Uses, rather than changes of use, are only in themselves permitted where buildings are constructed.

“75 **Effect of planning permission**.

**E+W**

 (2)Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.

(3)If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.”

Unless therefore the development involved the construction of a new building (in which case uses may be expressly or impliedly permitted by a permission) or a *change* of use has occurred, no development has taken place and the condition has not been satisfied. This inevitably follows from the Court of Appeal decision in Cynon Valley v Secretary of State for Wales (1987) 53 P. & C.R. 68

[76]We have come to the conclusion that Mr. Kelly's submissions are to be preferred to those of Mr. Laws. In particular we accept Mr. Kelly's submission that where the development for which planning permission is required is a material change of use, the permission is to change from use A to use B, and is not merely a permission to use the property for use Bfor the indefinite future. We appreciate that most, if not all, planning permissions are expressed in the latter form, but that is no guide to the true construction of the 1971 Act.” (my emphasis in underlined passage)

1. The importance of the time limitation on planning permissions in the planning system is emphasised by the inclusion within the TCPA 1990 of s 91 and 93 which not only require a time limitation condition on planning permissions but (1) deems such conditions to have been imposed even if they have not been expressly included in a grant of permission and (2) deem any development in breach of such a condition to be unauthorised.

**91.** **General condition limiting duration of planning permission**

**E+W**

(1)Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—

(a) three years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or

(b) such other period (whether longer or shorter) beginning with that date as the authority concerned with the terms of planning permission may direct.

(2)The period mentioned in subsection (1)(b) shall be a period which the authority consider appropriate having regard to the provisions of the development plan and to any other material considerations.

(3)If planning permission is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of three years beginning with the date of the grant.”

**93** (4) “In the case of planning permission (whether outline or other) which has conditions attached to it by or under section 91 or 92—

(a)development carried out after the date by which the conditions require it to be carried out shall be treated as not authorised by the permission”

1. Developers may assert that even where the first change of use occurs after three years there is no breach of a requirement that the permission be implemented within three years because of s 91(4)

**91**(4) **“**Nothing in this section applies—

1. to any planning permission granted by a development order..”

There are two problems with this argument. First: if a permission has been granted with a time limitation condition, the applicability of s 91 is irrelevant. The planning authority has a *power* to impose such a condition even if it has no *duty* under s 91. Second: the breach of condition relates to the original permission granted by the planning authority -- not to one granted later by development order. It is important to distinguish between the time limitation condition on the implementation of the permission which requires *some* change of use within three years of the grant of permission and subsequent changes of use within a ten year period which *may* be able to take advantage of s 91 (4) TCPA 1990.

 **Conclusion:**

1. A permission is not implemented until development takes place. There is no development until permitted building *etc* operations are carried out or a material *change* of use occurs. If a permission is granted subject to a condition that it must be implemented within three years then unless a material *change* of use (or some other permitted development) occurs within three years thereafter any material change of use will be in breach of condition.