



COFFEE

IT'S THE LAW:

Meanwhile Uses – what have you got to lose?

A new normal?

We live in interesting times. People talk of a 'new normal'. Looking forward to a new steady state - not necessarily a welcome one, but at least a landscape to get to grips with and within which to operate. But, in reality, after such seismic shocks - reaching a steady state will be years away. For the time being the new normal is going to be one of constant change.

One impact of that will be Registered Providers, and other developers, holding property that, without some thought, will be lying idle. Development sites that were all ready to go may stall for a while. A number of commercial tenants will unfortunately not survive. Many tenants of office premises will have concluded that they can operate from their kitchens and will be looking to hand back their keys to save costs. At the same time, we are likely to see an increase in new small start ups as the economy tries to get back on its feet.

This means a likely increase in meanwhile uses for the foreseeable.

Window of opportunity

At their most basic, meanwhile uses are interim uses of properties whilst they await redevelopment or the finding of the right long-term users. To put it a bit less blandly, they are windows of opportunity for landowners, occupiers and often the community at large to extract value from properties that would otherwise sit vacant.

Meanwhile uses range from the big and glamorous (think your Boxparks and Mercato Metropolitanos) to the small and humble such as (*deep breath*): community spaces, cafes, pop-up shops, restaurants, yoga spaces, youth centres, communal gardens, business hubs, art spaces.... In short, they are extraordinarily varied. Like the proverbial App – “there’s a meanwhile use for that”.

Meanwhile uses will not always be the answer to an unused piece of land. It is something that needs to be considered carefully on a case by case basis. Given the diversity and scope of potential meanwhile uses, and the types of property they affect, a one-size fits all approach is definitely not going to work.



Neil Toner
Partner, Head of Real Estate
020 7065 1823
neil.toner@devonshires.co.uk



David Bullock
Solicitor, Real Estate & Projects
020 7065 1852
david.bullock@devonshires.co.uk



Alexandra Benion
Solicitor, Real Estate & Projects
020 7880 4342
alexandra.benion@devonshires.co.uk

However, there do seem to be some broad benefits and generally accepted drawbacks to meanwhile activity which we describe in a bit more depth below.

In the plus column

Rental Income: Perhaps the most obvious benefit of meanwhile use comes from the obvious fact that empty property is not going to generate any income at all. If the property is occupied, then the landowner may – depending upon the circumstances - agree a rent with the meanwhile user. This is not always the ‘deal’. No rent deals are not uncommon. And often, even where rent is paid, it is far below what might be seen as a ‘market rent’ and/or it only kicks in if the user reaches a certain profit level. But where the alternative is nothing at all – even a low and/or unpredictable rent is an upside.

Cost Mitigation: Whether or not rent is paid, the meanwhile user is typically responsible for paying business rates, utilities and, as appropriate, a contribution to service charges along with a contribution to the building owner’s costs of insurance. These costs can be significant and passing them on can only be good for the bottom line.

Security: Empty property is generally far more difficult to keep secure than occupied property. Having an occupier reduces the risk of squatters, vandals and thieves. A meanwhile user in occupation reduces the risks of having to deal with those headaches. It may also result in a reduction in insurance premiums. And the cost of security is likely to be one that the meanwhile user picks up.

A positive vibe: A carefully selected and managed meanwhile use may be viewed positively by nearby residents and local businesses – particularly where the alternative is a derelict site that could attract more than its fair share of anti-social visitors. Meanwhile uses can be an early step in supporting the building of community services and facilities. The goodwill it can win should not be underestimated. As developers everywhere will be acutely aware, a good relationship with the local community is hugely beneficial and can help reduce typical barriers to development particularly when making planning applications.

Vibe into viability: Whilst not without controversy, meanwhile uses can begin to turn the perception of previously troubled areas. An area that was once only seen as disadvantaged can gain a reputation for being cool and up-and-coming. That can have a significant positive impact on the value of early phases of a regeneration project. And can be the thing that tips the project from unviable to viable.

...and in the minus column

Flexibility: The main perceived risk for developers is that the meanwhile use will somehow clog-up the land and reduce flexibility in the future. One cannot develop occupied property. So what happens if you can’t get the property back when you need it? This is a legitimate concern, but it can be mitigated. Depending on the type of property and the nature of the meanwhile use a short lease (or one with frequent break rights) or a licence or even a Tenancy at Will may be suitable. Most meanwhile users understand that the trade-off they make to secure otherwise favourable terms is the possibility of a short stay. Properly implemented, such arrangements will mean that the developer will be able to get its hands back on its property when it needs to. You need to be wary of the meanwhile user gaining security of tenure under the Landlord and Tenant Act 1954. That’s a potential risk – but it is easy to ‘contract out’ of as long as the right procedures are used. This is where a good agent and a great lawyer (hopefully Devonshires!) are going to be invaluable.

Planning Considerations: The Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 (the **Regulations**) have brought together property that previously fell within Classes A1 (shops), A2 (professional services), A3 (restaurants), B1 (offices) and certain D1 (medical health) and D2 (indoor sports and fitness) into new use Class E. The Regulations also create a new Class F1 (learning and non-residential institutions) and Class F2 (local community uses). From 1 September 2020 a move between these new Use Classes no longer require planning applications because such a move is no longer considered to be “development”. The changes to the Regulations introduce a significant degree of flexibility for those considering changes of use to accommodate meanwhile activity.

However there remain a number of use classes (such as pubs (previously A4), hot food takeaways (previously A5), live music performance venues, cinemas, concert and bingo halls (previously all within D2) which are now all added to the list of sui generis use as well as use class C (residential), B2 (general industrial) and B8 (storage and distribution)) a change to, from or between which may still require planning permission.

The local authority may also use Article 4 Directions to remove permitted development rights or to modify or cancel the impact of the Regulations. It therefore remains important to discuss your plans with a lawyer. If planning permission is required to accommodate a meanwhile activity, even a simple application will take time, money and effort. If the

anticipated lifespan of the meanwhile use is short, one has to question whether it is worth it. Even where getting the required planning is the responsibility of the proposed meanwhile user, the landowner will likely get roped into the process to some degree.

Bad neighbour: Whilst meanwhile uses can be received positively in the community, this isn't always the case. Common sense should prevail when selecting meanwhile uses and meanwhile users. Try to avoid uses that will be frowned upon by neighbours. Consult with them. Existing businesses will not always welcome competition – particularly if they feel that that competition is being given an unfair advantage with cheap rent and flexible terms. A use that looks 'neighbour friendly' on paper can still be a nightmare if poorly managed. Once up and running – don't just forget about the site. Check back regularly to make sure everything is being managed properly. Creating ill-will, with poorly conceived or operated meanwhile activity, is not going to be helpful when it comes to obtaining planning permission for the ultimate intended development. Regardless of tenure, the document dealing with the occupation should contain properly drafted covenants prohibiting the occupier from causing nuisance and/or doing anything that might damage the landowner's reputation within the local community.

Too much of a good thing: On the other side of the same coin, what happens if the meanwhile activity is so well received by the local community that there is a public backlash when the site comes to be developed? Something to think about.

At the end of the day

Ultimately, for every site, the decision of whether or not to pursue meanwhile options will be a balancing act between the potential benefits and the drawbacks at the time. It should be this benefit vs. drawback assessment, and not just concern as to the risks involved, that drive the decision making process.

If, on balance, it would be beneficial to incorporate meanwhile activity on a site, then the risks can almost always be effectively mitigated. So long as the developer has prepared a risk mitigation plan with their lawyers, then there is no reason why they should not be extracting value from their sites pending permanent redevelopment.

And one final thing

Whatever happens and however (and whenever) the world finds a solution to Covid-19, our economy is on its knees just now. Many businesses will likely fail and many people will lose their jobs. The opportunity of a meanwhile use arrangement can be a game changer for a fledgling business. RPs who have significant landholdings can play a significant part in the economic recovery to come by proactively assessing their portfolios and looking for those opportunities where possible.

The tiny print

This is one of a series of leaflets published by Devonshires' Real Estate & Projects Department aimed at our property owning and developing clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

Neil Toner
Partner, Head of Real Estate
020 7065 1823
neil.toner@devonshires.co.uk