

More changes to the Use Classes Order

Martin Goodall identifies some of the problems

Readers of Planning in London are no doubt well aware by now that the government introduced important amendments to the Use Classes Order in September 2020 by means of the Town and Country Planning (Uses Classes) (Amendment) (England) Regulations 2020 [S.I. 2020 No. 757]. The regulations removed from what is now Schedule 1 of the UCO all the Use Classes formerly in Groups A and D and added a new Schedule 2 to the Order, containing Use Classes E, F.1 and F.2.

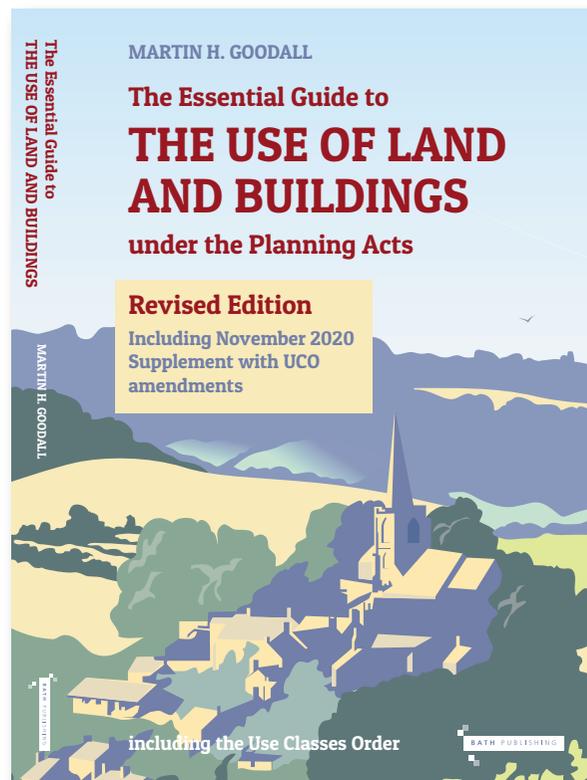
Uses previously within Use Classes A1, A2 and A3 were transferred to the new Class E. Uses that formerly fell within Classes A4 and A5 are now sui generis. Uses previously within Class D1 have been distributed between Classes E and F.1, and most of the uses that formerly fell within Class D2 are now sui generis, with the exception of those in sub-class D2(e), which are now mainly within Class E. As an added complication, a limited category of uses that may in principle fall within Class E might alternatively fall within Class F.2 (as explained below), although the circumstances in which this may occur are as yet not entirely clear.

The amended Use Classes Order sits somewhat awkwardly with the provisions of the General Permitted Development Order. In an effort to reconcile these differences until the GPDO can be brought into line with the amended UCO, the amendment regulations contain transitional provisions that preserve for the purposes of permitted development under the GPDO those Use Classes that ceased to exist after 31 August 2020. These transitional provisions also preserve the effect of Article 4 Directions in the same way.

In order to explain these changes to the Use Classes Order, a Revised Edition (with Supplement) of *The Essential Guide to the Use of Land and Buildings under the Planning Acts* [ISBN 978-0-9935836-5-0] has been produced, which not only sets out these legislative changes, but also contains in its main text a complete revision of all references to the various uses and Use Classes, identifying both the original Use Classes into which these various uses previously fell and also the new classes to which they have now been assigned.

The amendments to the Use Classes Order are not without their problems, and these are discussed in some detail in the Supplement to this book. To quote from paragraph S.4.3 in the supplement:

"There are bound to be some cases where the law of unintended consequences will come into play. For example, not all of the existing uses that are now included within Class E are necessarily located in town centres. A large light industrial unit (formerly within Use Class B1(c)) which may well be located in an out-of-town or edge-of-town location, can now be converted to a supermarket or superstore without constraint, because both uses are now subsumed within Class E (although planning permission might well be required for external building and engineering operations in connection with such a change of use). This



contrasts with development management practice over many years, where any such change of use would have been subject to a sequential test and, if permission had been granted, conditions would probably have been imposed restricting sales to items such as non-food or bulky goods only. The freedom to carry out a development of the type described would not appear to be compatible with the government's stated aim of protecting the vitality and viability of town centres, which are under increasing economic pressure."

Another issue identified in that paragraph in the Supplement arises as a consequence of changes of use within a single Use Class, which do not constitute development due to section 55(2)(f) of the 1990 Act (and Article 3(1) and (1A) of the UCO). Such changes of use within a single Use Class cannot be prevented or constrained by reason of the site comprising or including a listed building or scheduled monument, or being situated in a Conservation Area, an Area of Outstanding Natural Beauty, a National Park, a World Heritage Site or a Site of Special Scientific Interest. This point applies with particular force in light of the very wide scope of the new Class E. Where any changes of use between uses that were previously in different Use Classes were permitted development under the GPDO, but are both uses that are now in one and the same class, those permitted development rights are no longer required, and any restrictions, limitations or conditions that applied to such PD rights no longer have any application where the provision in section 55(2)(f) now operates >>>



Martin Goodall is a planning lawyer and a Consultant Solicitor with KEYSTONE LAW



>>> instead. Not even an Article 4 Direction can prevent these changes of use within what is now a single use class, such as Class E.

A particular difficulty which is identified in the Supplement to this book is that Class F.2 (comprising certain local community uses) has not been 'ring-fenced' to distinguish clearly whether a use that could potentially fall within Class F.2 does in fact do so, or whether in practice it could alternatively fall within one of the other Use Classes in the Second Schedule to the UCO. This new Use Class is intended by the government to recognise the importance of small local shops in meeting the day-to-day shopping needs of local communities, particularly in rural communities and in large residential estates and outside main shopping areas generally. The government hopes that this will provide some protection for such shops (because the scope to change the use of those premises falling within Class F.2 without permission would be more limited) while placing those shops found on high streets and town centres in the new 'commercial' class (Class E), and they also hope that it will provide protection for buildings used by community-based charities and voluntary bodies.

Class F.2(a) (in colloquial terms, 'a community shop') poses a particular problem. A use of the type described would formerly have come within Use Class A1, and so it would seem that, in principle (and possibly also in practice), such a use, even if it comes within the criteria listed in Class F.2, and could therefore come within that Use Class, might equally well be capable of falling within new Use Class E, particularly bearing in mind the provision in Regulation 7 of the amendment regulations (which makes it clear that existing uses that [inter alia] were within Class A1 now fall into Class E). Elsewhere in the UCO, as it existed before 1 September 2020, a clear distinction was made between, for example, A2 and B1(b), so that there was no doubt as to whether a particular office fell into one or into the other. In the same way Class C3(c) clearly excludes a use that falls within C4. However, with one exception [see below], there is no such exclusion from Class E of any use that could alternatively fall within F2. [There are other difficulties arising from the amendment regulations that are also discussed in the Supplement to the book.]

Finally, there appears to be continuing confusion as to the effect of the transitional provisions although, if read carefully, these are quite clear. There is a need to bear in mind the clear distinction between a change of use that is not development (within the same [new] Use Class), and a change of use that is permitted development under the GPDO. During the 'material period' (1 September 2020 to 31 July 2021) references in the GPDO to Uses or Use Classes are to be interpreted as references to pre-September 2020 uses and Use Classes, and prior approval applications under the GPDO are to be made by reference to

those former uses or Use Classes. So permitted development continues to operate under those previous uses and Use Classes.

Existing Article 4 Directions which referred to the previous uses or Use Classes which applied up to 31 August 2020 continue to be interpreted by reference to those former uses or Use Classes, and any new or modified Article 4 Direction is also to be made by reference to the former uses or Use Classes. It is important to note, however, that an Article 4 Direction no longer applies and can no longer be made in respect of a change of use between two uses that are now in the same Use Class (e.g. Class E), because such a change of use is no longer PD – it is not development at all (by virtue of section 55(2)(f) and Article 3(1) and (1A) of the UCO).

Existing but unimplemented planning permissions are governed by the description of the use or reference to the Use Class(es) that applied before 1 September 2020, and an application for approval of reserved matters in accordance with an outline permission granted before that date must be made by reference to the pre-September 2020 use or Use Class that applied to the outline permission. Here again, however, once the planning permission is implemented, section 55(2)(f) (and Article 3(1) and (1A) of the UCO) will allow a change of use within the same new Use Class, although only (I suggest) after an initial period of use that is more than merely nominal. It should also be noted that a condition in a pre-September 2020 planning permission which precludes specific changes of use will continue to operate by reference to the uses or former Use Classes referred to in that condition.

The government has consulted on their proposed amendments to the GPDO, which include sweeping changes (including the residential conversion of any building used within Class E), but we shall have to await the actual legislation this summer before the precise scope of these changes becomes clear.

The government has now amended the GPDO to permit the residential conversion of all Class E premises (with effect from 1 August 2021), with the sole exception of a swimming pool or skating rink, which have now been removed from Class E, so that these two uses will fall solely within Class F.2(d). ■



Martin Goodall is a specialist planning lawyer and is a Consultant Solicitor with KEYSTONE LAW, 48 Chancery Lane WC2A 1JF. Martin is also the author of a popular and widely read Planning Law Blog at <https://planninglawblog.blogspot.com/>



Planning for cities in love with birds

Tim Beatley, author of *The Bird-Friendly City*, explains his thinking and introduces the book

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All images: Tim Beatley

For many of us during this stressful pandemic nature, and especially birds, have been a saving grace and a soothing balm. We have rediscovered the natural world as a partial antidote to the stress and uncertainty of life. Reports suggest a significant rise in the number of people watching and listening to birds. Visits to bird web sites have gone way up, people are downloading bird ID apps, and more of us are buying bird feeders and bird seed, and reveling in what we see in our backyards and around our homes. Birds have delivered a measure of normalcy in a topsy-turvy world. The urgency of migration remains and the dawn chorus persists even though we are in lockdown and (understandably) fearful of infection by the Covid virus.

Yet, birds are not doing well. The fall of 2019 delivered the shocking news that in North America we had lost a remarkable 30 per cent of our bird abundance just since 1970, a Cornell Lab of Ornithology study that made headlines. Globally some 40 per cent of bird species are in decline. Cities are both a source of danger and cause of death for many birds, but also hold the potential for making room and for positively adding habitat and designing in ways that accommodate birds and bird abundance.

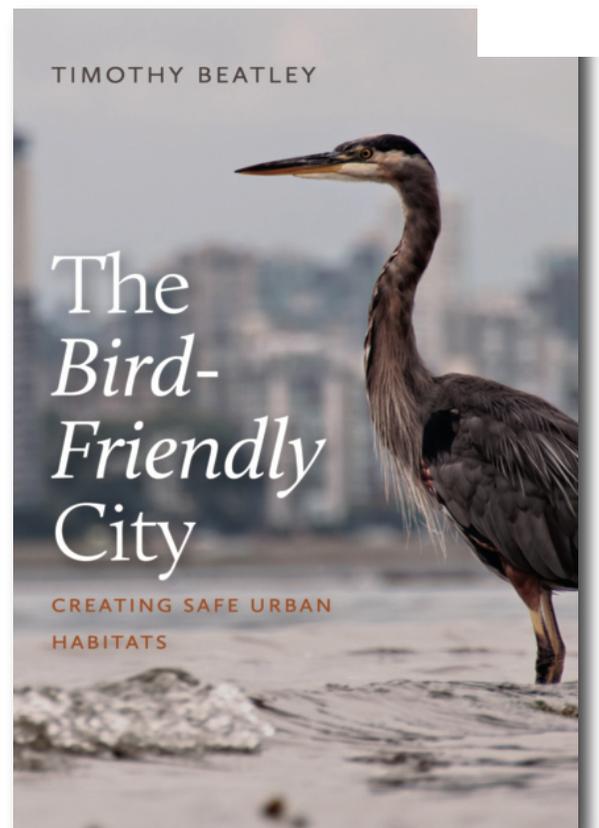
I believe it is time to elevate the importance of birds in any vision of future cities. It is a case I try to make in a new book *The Bird-Friendly City* (Beatley, 2020). I want to live in a city of abundant bird life and also a city that loves birds and works to protect and celebrate them. I start as well from the premise that what is good for birds will be good for human beings. Birds animate and enliven cities. Bird-abundant and bird-friendly cities create the conditions for human health and flourishing as well as for birds and other life.

What precisely can cities do? And what must they do if they can be truly said to love birds? While climate change and global deforestation and habitat destruction seem to many, something difficult to effectively address at the local level, there are many tangible steps that cities can immediately make cities safer for birds. Mandating bird-safe design standards, and the use of fritted and bird-safe windows that birds can see, would be a big step. Birds don't see windows as barriers, and may try to fly in or through interior spaces; often what they see are reflections of clouds or trees. Upwards of a billion birds are killed in this way each year in the US (some believe this is a conservative estimate).

North American cities including Toronto, San Francisco, and most recently New York City, have enacted design standards that require bird-safe windows and facades. And it turns out that when you design or retrofit buildings to be bird safe there are also benefits in the form of lower energy consumption and carbon emissions. This was the experience with the Jacob Javits Center, in New York City, which changed out all of its glass panels for bird-safe fritted glass, resulting in more than a 90 per cent reduction in bird mortality but also a 26 per cent reduction in energy consumption. It also installed a green roof that serves as a nesting site for birds.



Timothy Beatley PhD is Teresa Heinz Professor of Sustainable Communities School of Architecture University of Virginia <http://timbeatley.org/>



There are many other steps cities can take. We need to protect the mature trees and tree canopy that exist and sustain birds and other urban wildlife, and we need to plant new urban trees and forests where we can. Adopting Dark-sky lighting codes, and shifting municipal landscaping away from pesticide/herbicide/ use and plants that require large amounts of water towards more native species plants and trees will do much for birds, and will likely make the urban landscape more resilient in the face of heat and a changing climate.

Birds rarely make an appearance in the comprehensive or general plans that guide our growth and development decisions. We need to include them, as well as other flora and fauna, as essential urban assets. And we must plan urban land use to ensure ecological connections and connectivity. Some cities described in the book, such as Edmonton, Canada, have developed plans that embrace ecological connectivity a central planning goal, building wildlife passages, and designing

Every new development project in cities should be designed for birds, not just to reduce the dangers but to actively accommodate birds and add to their habitat and abundance. In writing this book I had the chance to visit one pomenine example if a bird-friendly and wildlife-friendly development in the UK Called Kingsbrook, it reflects a commitment of the developer (Barratt Homes) to build only wildlife-friendly neighborhoods from now >>>

RIGHT:
Glass windows represent a major threat to birds and in many cities there is a push to adopt bird-safe design requirements. Shown here is the Aqua Tower in Chicago, designed to be bird-friendly, with fritted glass and wavy terraces.



on. There are many features including (impressively) bricks pre-formed with nesting spaces for common swifts. Residents of this new development don't seem just to tolerate the presence of birds but many are quite supportive and enthusiastic and are drawn to the homes because of these features. Kingsbrook is illustrative of what a new UK government policy requiring net-biodiversity gain will likely mean in practice.

Rethinking the landscapes around our homes and urban buildings is another essential task, working to replace biologically with native species of plants and trees that support more birds.

There are obstacles in many communities to doing this, including local codes that make such wildlife- and bird- friendly native gardens essentially illegal. A prominent recent example from Toronto, a city with otherwise stellar efforts to protect and celebrate biodiversity. Here planning professor Nina-Marie Lister, who teaches at Ryerson, was told her beautiful (and quite intentional) native yard violated the city's Tall Grass and Weeds Bylaw. While a provision exists for homeowners to receive an exemption, Lister argues strongly (and correctly) that a native garden should be something she is entitled to plant by-right. Reforming our codes to not only make such gardens legal but to encourage them, would be a good step everywhere. Lister's story (and her own advocacy) has started a conversation in Toronto and will likely lead to changes in the code. As a story in the *Globe and Mail* cleverly started, her garden was a "challenge to lawn order" (Bozickovic, 2020). Overcoming the prevailing "lawn order" may require us to cultivate (literally) a new kind of aesthetics that aligns beauty more with wildness and biodiversity than perhaps with cut grass and clean lines.

The emphasis given to xeriscaping and low-water plants in western US cities especially is a good precedent to follow as cities should begin to incentivize the planting of yards and gardens that generate ecological services that benefit the larger community, including those that support birds.

A common love of birds is a wonderful way to build community and to grow social capital, something that will also pay health and resilience dividends. I have been impressed by the number of local birding groups and dedicated birders and advocates I have encountered. They are a force to be reckoned with, but also a locus for sharing common passions and cultivating friendships. We need more points of connection in cities, between people, and between people and nature, and such groups can play a crucial role here.

It is hard to understate the mental health benefits of birds. Their color and beauty and movement fill the vertical spaces of our lives. We watch them, they watch us, and they bring immediate delight and joy and They deliver countless moments of awe to urban life (we mostly lack the vocabulary to explain the physics-defying antics of and layers A natureful, biophilic city is one that seeks to maximize moments of awe and wonder and

birds are an unusually potent key part of this.

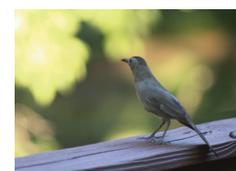
Utilizing more bio- and bird-centric metrics to judge our progress in cities would be another wonderful change. We should judge the goodness of a city by the extent and quality of its birdsong. Every resident should be able to hear and enjoy native birdsong wherever they live, whatever neighborhood they reside in. Unfortunately our urban plans and planning systems while addressing the health impacts and undesirability of noise rarely consider the importance of natural sounds and soundscapes. I look forward to future efforts to map and analyse these natural sounds and the chance to give them more attention in planning decisions.

Increasingly I feel that cities can and must do even more for biodiversity and birds especially. With the global rise in city diplomacy there is the opportunity for cities to collaborate around habitat protection and restoration, and perhaps cities along common migratory flyways can join forces to ensure birds are fully protected throughout their life cycles. A city that loves birds should extend the application of this love beyond its boundaries to help protect more distant birds and bird habitats. EO Wilson and others have advocated for a bold idea, that of Half Earth--working to set at least half the earth aside for nature (Wilson, 2017). There are many potential levers to pull: cities could financially support habitat protection in other parts of the world, could work to reduce their ecological footprints and work to source (through municipal procurement) goods and materials in ways that support bird conservation (e.g. think bird-friendly coffee, wood and paper from FSC-certified forests), and divestment from fossil fuels would also be a positive step. Spending even a

BELOW:

Domestic and feral cats are a major threat to birds. One idea promoted in Portland, Oregon, is the "catio" (or cat patio), which allows cats to spend time outside but also prevents them from hunting and killing birds. Each year Portland Audubon and the Feral Cat Coalition of Oregon sponsor a "catio tour" to profile innovative designs.





ABOVE:
It is hard to understate the joy, delight and mental uplift that birds deliver to residents in cities. They are the perfect response to the stresses of the pandemic and an important investment in the mental health of urban populations

LEFT:
The pandemic has seen a heightened interest in birds—more people are watching and listening to birds, and more people are installing bird feeders. Birds animate cities and deliver immense mental health benefits to urban populations. Here, a Ruby-Throated Hummingbird visits one of the author's feeders.

small percent of the annual budget of cities like New York City (exceeding \$88 Billion USD in FY 2021) in support of global conservation for birds and biodiversity would yield significant benefits. Bird-friendly cities have substantial economic and political power that could be exercised globally on behalf of birds.

COVID-19 has created unusual personal and societal disruption, and for many high levels of stress, anxiety and depression. If there is any silver lining it has been the rediscovery of nature, birds especially. They have been (as they always are) all around us; and we have seen and heard them in ways we didn't before the pandemic. The beauty, resilience and kinship of birds have been a sav-

ing grace. As the nightmare of the pandemic recedes (soon we hope), we must make sure we remember birds, as we reinvent our cities and return to our urban lives, and make them a centerpiece in our future design and planning. ■

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LEFT:
Simple and relatively inexpensive retrofits are also possible to make building bird-safe. Shown here is the Frick Environmental Center in Pittsburgh, PA, where do-it-yourself parachute cords ("paracords") have been applied to the exterior of the windows.

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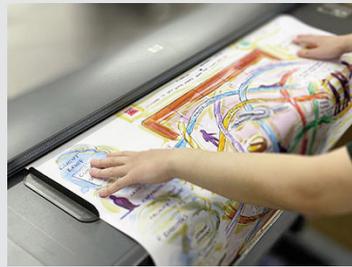
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Cathedrals of Light and Life

Images of inspiration and heritage from the 42 Anglican Cathedrals of England. This is a brief visual essay of the cathedrals of England arranged in alphabetical order by the Revd Len Abrams and reviewed by Deon Lombard

The churches and cathedrals of England are the most visible testament to the rich historical and cultural tapestry of the English people. They are located at the heart of our communities, the church tower or spire often being the first thing that comes to mind when thinking of the traditional English town or village. They have become a part of our natural landscape, such as a much-loved tree, park or river. What would our towns and cities be without them?

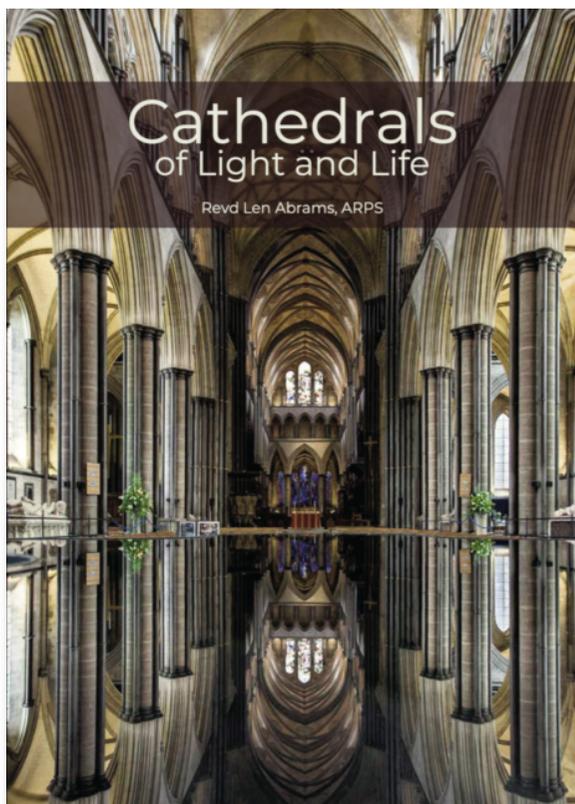
It is worth reflecting on this question. When one thinks of a representation of London, St. Pauls immediately comes to mind. One thinks of the iconic photograph of that magnificent church surrounded by burning buildings during the Blitz. The destruction of Coventry Cathedral tore the heart from that city. But out of the abyss grew the masterpiece that stands there now - the peak of Basil Spence's creations - elected as the nation's favourite 20th century building, and a centre of international reconciliation and peace-building.

Over a period of nine years Len Abrams visited the 42 cathedrals of England, in a number of cases going back again and again to capture that indefinable quality of what constitutes a 'good' photograph. He has clearly succeeded, producing a range of breathtaking images that move from the vast to the intimate. Although each cathedral is limited to a relatively small number of photographs, he has nevertheless managed to go beneath the surface to capture something of their essence.

We are reminded again of the wonder of the Gothic cathedral - the ingenuity of those early architect master builders, stonemasons, artists and craftsmen who achieved so much with so little. As Bishop John Inge says in his Foreword, 'the stone columns rise up to a dizzying height where the ribs of the vaulted ceiling branch across to form a canopy . . . as in a forest clearing.' And what a canopy! - an elegant light-filled synthesis of form, function, structure and beauty. Cathedrals such as Ely, Chester, Lincoln, Salisbury, Worcester and Wells represent a high point in our architecture which is surely unmatched.

This handsome book is first and foremost a visual essay of the cathedrals of England arranged in alphabetical order, each accompanied by a brief description. It is a homily to these magnificent buildings, old friends who we may take for granted, brought together and presented in a new light. It is not an academic treatise, nor a study of the architecture, history or politics that gave rise to these buildings - and should not be judged on these criteria. Nevertheless, a plan of each of the cathedrals would have been a useful addition in identifying the various forms and showing the viewpoints and locations of the many artifacts in the photographs.

Len Abrams has produced and published this book on a not-for-profit basis, with all proceeds after expenses used to fund the Central Diocese of Zimbabwe in their work assisting with educational, health, ministry and income generating projects for the people of Zimbabwe.



The Author: Len Abrams is a priest in the Diocese of Southwark. He is a Civil Engineer and has worked all his life in water development in Africa, travelling and working in 26 African countries in all. He was born in Kenya, and has lived in South Africa and the United States. He has worked as a freelance photographer and is an Associate of the Royal Photographic Society (ARPS)

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Deon Lombard is an architect and urban designer, principal of Deon Lombard Architects based in Twickenham, south-west London

