

**Dark stores, city centres’ new business model**



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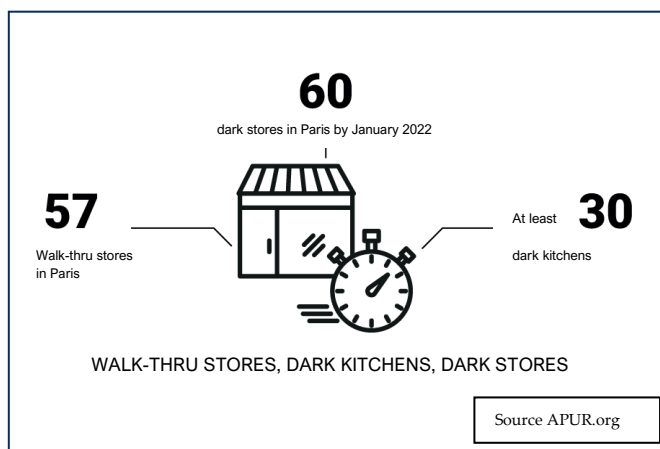
In the wake of the health crisis and new purchasing habits, "quick commerce", i.e. the delivery of orders placed online within an extremely short time, has strongly developed in French main cities.

This model requires dedicated storage and preparation facilities located in densely populated areas. These warehouses, known as "dark stores", have notably been set up in place of former inner-city shops that did not survive the pandemic.

While drive-thru stores, defined by [Article L. 752-1, 7° of the French Commercial Code](#) as "permanent collection points for retail purchases ordered by telematic means" are subject to a commercial operating permit ("autorisation d'exploitation commerciale"), dark stores, which do not admit customers, are exempt<sup>1</sup>.

However, the opening of dark stores must be carried out in compliance with town planning regulations, failing which penalties may be imposed<sup>2</sup>.

The construction of a new building intended to accommodate such a warehouse<sup>3</sup> or the conversion of an existing shop into a dark store, which constitutes a



<sup>1</sup> [French Constitutional Council \(Conseil constitutionnel\), decision no. 2021-825 DC](#)

<sup>2</sup> [Article L. 480-4 of the French Town Planning Code \(Code de l'urbanisme\)](#)

<sup>3</sup> [Article R. 421-1 of the French Town Planning Code](#)

"change of use" pursuant to [Article R. 421-17 of the French Town Planning Code](#)<sup>4</sup>, is subject to building permit ("permis de construire") when it involves a modification of the supporting structures or the façade of the building<sup>5</sup> or, otherwise, to prior declaration ("déclaration préalable")<sup>6</sup>.

Local authorities ("collectivités territoriales") and public bodies for inter-municipal cooperation ("Etablissements publics de coopération intercommunale" or "EPCI") may also include in their town planning documents (local town planning plan ("Plan local d'urbanisme" or "PLU"), inter-municipal local town planning plan ("Plan local d'urbanisme intercommunal" or "PLUi"), territorial coherence plan ("Schéma de cohérence territoriale" or "SCoT")) provisions designed to regulate the establishment of dark stores on their territory:

The regulations of a town planning plan may in particular "specify the land use according to the main usages that can be made of it or the nature of the activities that can be carried out on it" and "define, according to local situations, the rules regarding the use and nature of authorised constructions"<sup>7</sup>. They may also "identify and delimit the areas, blocks and streets in which commercial variety is preserved or developed, particularly through retail and local shops, and define, where relevant, the provisions likely to ensure this objective" and "delimit, in urban areas ("zones urbaines") or areas to be urbanised ("zones à urbaniser"), sectors in which the preservation or development of infrastructure and logistics facilities is necessary and define, where relevant, the type of these facilities as well as the provisions likely to ensure this objective"<sup>8</sup>.



Source Knight Frank

<sup>4</sup> Under [Article R. 151-28 of the French Urban Planning Code](#), shops fall under the "trade and service activities" use, while warehouses, defined as "constructions intended for the storage of goods or for logistics" by Article 4 of the Ministerial Decree of 10 November 2016, fall under the "other activities in the secondary or tertiary sectors" use.

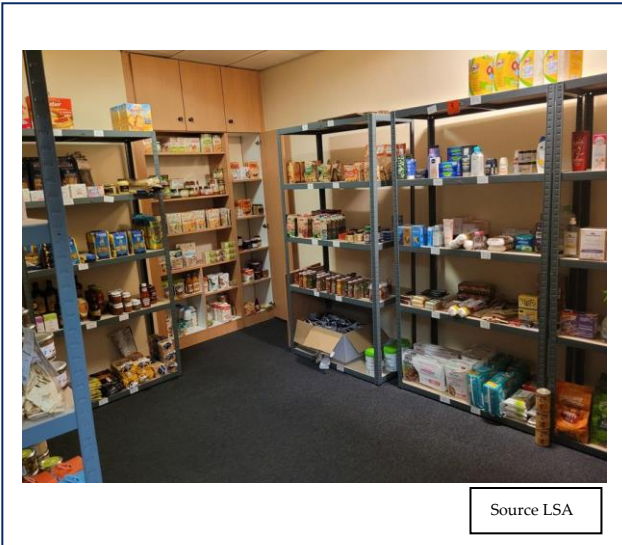
<sup>5</sup> [Article R. 421-14, c\) of the French Town Planning Code](#)

<sup>6</sup> [Article R. 421-17, b\) of the French Town Planning Code](#)

<sup>7</sup> [Article L. 151-9 of the French Town Planning Code](#)

<sup>8</sup> [Article L. 151-16 of the French Town Planning Code](#)

- Where there is no territorial coherence plan, the guidelines for spatial planning and programming (“Orientations d’aménagement et de programmation” or “OAP”) of the inter-municipal local town planning plan must henceforth include "guidelines relating to retail, craft and logistics facilities" and determine "the terms and conditions for the setting up of retail, craft and logistics facilities which, because of their size, are likely to have a significant impact on spatial planning and sustainable development"<sup>9</sup>.
- Since the passing of Law 2021-1104 of 22 August 2021 on the fight against climate change and the strengthening of resilience to its effects, territorial coherence plans must include a " craft, retail and logistics development document determining the terms and conditions for the setting up of retail facilities which, because of their size, are likely to have a significant impact on spatial planning, town centre trade and sustainable development "<sup>10</sup>. This document determines "the terms and conditions for the setting up of commercial buildings and commercial logistics buildings according to their surface area, their impact on the artificialisation of land and their impact on territorial balances, particularly with regard to the development of local trade, the frequency of purchases or the flows generated by people or goods"<sup>11</sup>.



Source LSA

The obtaining of the necessary town planning authorisations therefore requires a prior analysis of the local regulations.

Furthermore, the carrying out of this business is subject to compliance with European, national or local regulations applicable to competition, food trade regulations, commercial leases, digital economy, labour law, outdoor advertising and intellectual property,...

all matters that we, at **BMH** AVOCATS, are familiar with.

<sup>9</sup> [Article L. 151-6 of the French Town Planning Code](#)  
<sup>10</sup> [Article L. 141-6 of the French Town Planning Code](#), first paragraph  
<sup>11</sup> [Article L. 141-6 of the French Town Planning Code](#), second paragraph