

## **LEGAL ALERT**

### **Changes of use of buildings and land - Amendments to the Town & Country Planning (Use Classes) Order 1987**

A new statutory instrument comes into force on **21 April 2005** amending the Town & Country Planning (Use Classes) Order 1987 (“the Order”). The Town and Country Planning (General Permitted Development) Order 1995 (“GPDO”) is also amended to reflect the changes to the Order.

#### **The Amended Order**

The changes introduced by the amended Order have potentially significant implications for property owners, in particular those in the food, drink and nightclub industries.

The former Food and Drink use class *A3* has been broken down into three further classes: Class A3 - Restaurants and Cafes; Class A4 - Drinking Establishments, and Class A5 - Hot Food Takeaways.

The GPDO permits premises in any of these three classes to change to both A1 (shops) and A2 (professional services). It also permits premises in either class A4 or A5 to change to A3. However, express planning permission will now be needed to change from A3 to an A4 or A5 use.

Nightclubs, have been confirmed as *sui generis*. This means that they will require a specific planning consent and do not fall within any general use class. The aim is to ensure that such premises, which can have a significant environmental impact, are subject to specific planning considerations before development.

The amended Order also clarifies certain uses which have become more popular since the Order was first introduced. Internet cafes are given an A1 classification where the primary purpose is to provide access for the public to the internet. Retail warehouse clubs (involving the sale or display for sale of goods only to members of a club) are confirmed as *sui generis*, therefore requiring specific planning permission. Car showrooms remain *sui generis* and the permitted development right to change use from a car showroom to A1 has been removed from the GPDO.

#### **Practical Impact?**

New express planning consents issued after 21 April 2005 will specify A3 and/or A4 and/or A5 uses as appropriate. A change of use from a current A3 restaurant/café use to a bar or hot food takeaway will now require a formal planning consent permitting an A4 or A5 use.

Many current commercial leases which allow an A3 use expressly exclude any amendments to the Use Classes Order 1987. The permitted use under the lease will therefore continue to include drinking establishments and hot food takeaways as well as restaurants. However, if new commercial leases granted after 21 April 2005 refer to the Order (without specifically excluding the amendments made on 21 April 2005) then the user should specify A3 and/or A4 and/or A5 use as appropriate. Since the new A3 use cannot change to A4/A5 use under the GPDO (but A4/A5 can change to A3) a lease with a new A3 permitted use only may be considered less “valuable” at rent review, and restrict alienation prospects.