

## Planning Use Classes – Major Shake Up

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*The Government is making major changes to use classes, particularly those that relate to town centre uses. An amended new Use Classes Order will provide greater flexibility, allowing more changes of use to take place without the need for planning permission.*

For those who have been advocating greater town centre flexibility the changes will be welcomed. Local authorities are likely to be stunned by the changes, which remove their ability to control offices, shops, restaurants and gyms.

From 1 September 2020 use classes A and D are revoked and a new use class E will be introduced which covers the following existing use classes:

- Class A1 - shops;
- Class A2 - financial and professional services;
- Class A3 - restaurants and cafes; and
- Class B1 – business (offices, R&D and light industrial)

Class E also includes the following uses that were previously parts of D1 and D2, so long as they are provided principally to visiting members of the public:

- indoor sports, recreation and fitness;
- medical or health services;
- a creche, day nursery or day centre.

This means that land or buildings used for any of these purposes will not need to obtain planning permission for changes to other uses within the new class E.

There are also new classes F1 and F2. Class F1 is for learning and non-residential institutions. Class F2 is a new concept for a use class: local community use. This includes small isolated shops selling essential goods, a hall or meeting place; areas for outdoor sport or recreation; and an indoor or outdoor swimming pool or skating rink.

Cinemas, music venues, pubs, wine-bars, bingo halls and takeaways will become sui generis uses with no changes of use allowed without planning consent.

Under transitional provisions:

- planning applications made before 1 September 2020 that refer to any of the current use classes will be determined by reference to that use class; and
- the provisions of the current General Permitted Development Order (GPDO) will continue to apply to the existing use classes until 31 July 2021 (when presumably that Order will be revised).

#### Some practical implications:

Landowners will be interested in how they can exploit these changes. Previous liberalisations of planning laws have sometimes been greeted by planning authorities seeking to thwart the changes through the use of directions under the GPDO: however, the working of the Use Classes Order means that the new rights cannot be removed in this way. Some existing planning permissions may have express conditions or associated planning obligations that prevent the new flexibilities from being taken up. For example, the courts have determined that a planning condition that stipulates that a building shall be used for, say, B1 purposes only means exactly that and it will have the effect of preventing the exercise of wider rights that are subsequently granted. Authorities may start to use conditions to limit the rights on new permissions, even though doing so would be against Government policy.

Another aspect that may be worth exploring is the reference in the new class to 'use or part use' of premises for the purposes described in class E. This is a novel use of the expression, leading to speculation as to whether it is simply sloppy drafting or possibly the ability to argue a use falls within class E even if it is, in fact, a composite use.

For existing, unimplemented, permissions it needs to be remembered that the specified use has first to be implemented (and for more than a token period) before the rights of the use class can be taken up. i.e. a permission for B(1)(a) use will need to be constructed and genuinely used for offices before its use can then be switched to retail.

The changes also raise issues for the determination of planning consents: how will planning policies apply to the new use class E? For example, a proposed development may be in a location where office use is favoured but retail use is discouraged - how will this be dealt with? Also, at what rate will CIL be charged, when the charging schedule has differential rates for existing uses? Both local plans and charging schedules might suddenly find themselves out of date.

Landlords will need to consider the implications of the changes for leases. For existing leases there may be implications on rent reviews and renewals: for new leases landlords will want to consider whether to limit the scope of the permitted use.

It is going to be interesting to see how innovative landowners use these new rights to create value in their portfolios, in perhaps unexpected ways. There are also some contradictions that need ironing out: for example, what happens to shops that accidentally pass from being in the E use class to F2 either simply by changing the nature of the goods sold or because they become isolated as result of the closure of other nearby shops?

Nobody doubted that changes were needed to reinvigorate the high street, but few expected the proposals to be quite so radical. Time will tell if this was the boost that was needed or whether these changes go too far with unexpected consequences. For sure, with a Planning Green Paper soon to be published, we can expect further shake-ups for the planning system.

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