

**PLANNING REGULATORY BOARD
TRAINING/CONSULTATIVE MEETING**

**Date:- Thursday, 3 September
2020**

Venue:- Virtual Meeting

Time:- 9.00 a.m.

**Meetings of the Planning Board can all be viewed by live webcast by following this
link:- <https://rotherham.public-i.tv/core/portal/home>**

1. Apologies for Absence.
2. Training Session/Consultative Meeting (documentation attached) with focus on:- (Pages 1 - 13)
 - Changes to the Use Classes Order and new Permitted Development Rights (Pages 1-7)
 - Consultation on Changes to Planning Policy and Regulations (Page 8)
 - Government White Paper - Planning for the Future (Pages 9-12)
 - Lichfields - Guide to Changes to the Use Classes Order in England (Page 13)
3. Date of next meeting - Thursday, 24th September, 2020 at 9.00 a.m.

Member Training

Changes to the Use Classes Order and new Permitted Development Rights

Introduction

The Government has published a number of new Statutory Instruments in relation to the Use Classes Order and General Permitted Development Order which bring about a number of important changes to the Planning System.

1. The Use Classes Order Amendments – The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
2. The GPDO Amendments - The Town and Country Planning (General Permitted Development)(England) (Amendment) (No 2) Order 2020
3. The GPDO Amendments - The Town and Country Planning (General Permitted Development)(England) (Amendment) (No 3) Order 2020

The legislation came into force on 31 August and 1st September. Each of the above are covered in more detail below:

1. The Use Classes Order Amendments – The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

This legislation came into force on 1st September 2020 with a transitional period that lasts until 31 July 2021.

During that transitional period, the changes to the Use Classes Order will not be applied to the General Permitted Development Order (GPDO). In other words, the GPDO, which sets out what changes can occur between different Use Classes without requiring planning permission, will still operate until the end of next July, as if the Use Classes Order had not been modified. So whilst there will be new Use Classes from the 1 Sept, nothing will actually change until the 31 July 2021.

The changes aim to amend and simplify the Use Classes in England and the Government states that the purpose of the new Use Classes is to “better reflect the diversity of uses found on high streets and in town centres and to provide the flexibility for businesses to adapt and diversify to meet changing demands...this is particularly important at the present time as town centres seek to recover from the economic impact of Coronavirus”.

The changes will mean that the former Class A (shops, financial and professional, cafes/restaurants and drinking establishments) and Class D (including education, gyms, schools, cinemas, community halls, clinics etc) are revoked and Class B1 (offices, research and development and light industry) is removed.

In their place are new Classes E, F1 and F2.

Class E 'Commercial, Business and Service'

This will comprise of the former A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (offices, light industry, research and development) classes, along with parts of the D1 (non residential institutions) and D2 (assembly and leisure) classes, including indoor sport and recreation and fitness, provision of medical or health services and creche/day nursery and day care.

This means that A4 drinking establishments and A5 hot food takeaways become 'Sui Generis' (outside of the Use Class), along with cinemas, concert halls and bingo halls. These uses would therefore always require permission.

Class E

- a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
- b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
- c) for the provision of the following kinds of services principally to visiting members of the public
 - (i) financial services, (banks and building societies)
 - (ii) professional services (other than health or medical services), or (estate and employment agencies etc)
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
- d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
- e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner, (Doctors, clinics & health centres, acupuncture clinic etc. (must be medical or health related)) (but not beauticians, nail bars, massage parlours etc. see sui generis – formally use class D1(a)) ,
- f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
- g) for
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class F1 'Learning and Non Learning Institutions'

- a) education uses,
- b) display of works of art,
- c) museum,
- d) public library or public reading room,
- e) public hall or exhibition hall,
- f) public worship or religious institution; and
- g) law court.

Class F2 'Local Community Uses'

- a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—
 - (i) the shop's premises cover an area not more than 280 metres square, and
 - (ii) there is no other such facility within 1,000 metre radius of the shop's location, (formally A1 use class)
- b) a hall or meeting place for the principal use of the local community,
- c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms, ((see also *sui generis*) – formally D2(e) use class)
- d) an indoor or outdoor swimming pool or skating rink.

The full new Use Class Order can be accessed via the following link:

<https://www.legislation.gov.uk/ukssi/2020/757/contents/made> and a guide to the changes produced by Lichfields is attached at Appendix 1.

Impact:

The purpose of the new Use Classes Order is to allow those uses in the same Class to be changed without the need for planning consent.

The introduction of Use Class E is going to have significant consequences in a number of areas but notably for town centres and not necessarily just those that the Government are envisaging. Whilst the increased flexibility will be welcomed by many landlords and owners with vacant premises, it remains to be seen whether this 'let the market decide' approach has harmful unintended consequences for town centres. However, it is very likely that there will need to be a re-think for planning policy and strategies for town centres, with less emphasis on retail as the key attraction.

Whilst the intention is obviously to promote the diversification of town centres by allowing absolute flexibility of use between the old Use Classes A1-A3, B1, D1 and D2, the reality is that Use Class E is conversely also going to make it easier to deliver 'out-of-centre' retail and leisure development.

Buildings often found outside centres such as offices, gyms, light industrial units and even health centres will now fall within Use Class E and, provided there are no restrictive conditions to the contrary, could be converted into (for example) a foodstore or other intensive retail use without the need for planning permission. This potential increase in out of centre development appears to run counter to the Government's stated objective of stimulating the recovery of the high street.

It is unlikely that many retailers will want to convert a light industrial unit directly into retail floorspace for corporate and branding reasons, but it now appears that it will be possible to present this in planning terms as an entirely credible option and the 'fall-back' position if permission was to be refused for a replacement, purpose built retail unit of the same size on the same site. Such a scenario raises serious questions about the future effectiveness of the Government's longstanding town centre protection policies (the retail impact and sequential tests).

This could well be a calculated risk on the Government's part, in that the continued reduction in demand for new retail floorspace (vs an already substantial supply) means that most retailers will not be focussed on expansion over the coming years whether in or out-of-centre. A modest increase in out-of-centre retail units may therefore be regarded by the Government as a price worth paying to finally equip our town centres with the planning tools needed to diversify rapidly in response to changes in the retail, leisure and business sectors.

Other changes introduce more restrictions rather than flexibility. Partly in response to the impact of the Covid-19 crisis, there is added protection against the loss of learning, non-residential and community facilities, including museums, public halls and local shops. These uses are now included in new Classes F1 and F2. Other potential 'bad neighbour' town centre uses have been placed in the list of Sui Generis uses, with no permitted changes of use e.g. pubs/bars, takeaways, cinemas and live music venues; albeit that this is as much about protecting some of these uses as it is about ensuring changing to those uses requires planning permission. The grey area relating to food/beverage outlet's classification as A3 or A5 will become a key area of dispute e.g. it is not clear whether a mixed restaurant and takeaway use is now in the new E class or Sui Generis.

2. The GPDO Amendments - The Town and Country Planning (General Permitted Development)(England) (Amendment) (No 2) Order 2020

These amendments came into force on 31st August and set out that the construction of up to two additional storeys of new residential accommodation (or one storey if the case of an existing building that is only single-storey) is permitted development subject to the prior approval of certain matters by the local planning authority. This can be achieved by way of an extension to an existing residential property to form more accommodation for that property (under Part 1 Class AA of the GPDO), or by

an extension to a building to create additional dwellings in the form of flats (under new Part 20, Classes AC and AD).

The permission in Part 1 is subject to a number of conditions and limitations. They include that the prior approval of the local planning authority must be obtained for certain detailed matters, that the permission is only available in the case of existing dwellings constructed between 1 July 1948 and 28 October 2018 (other than those developed as a result of a change of use in accordance with other provisions in the GPDO which are also excluded) and that the permission is subject to an overall limitation on height and/or on the overall increase in height and on the maximum floor to ceiling height of the extension.

The scope of prior approval under Part 1 includes the impact on the amenity of any adjoining premises, the external appearance of the dwellinghouse, air traffic and defence asset impacts and impacts on certain protected views.

The permissions in the new classes in Part 20 are only available in the case of buildings constructed between 1 July 1948 and 5 March 2018 and are subject to similar conditions and limitations, including that prior approval must be obtained for various detailed matters and that the permission is subject to limits on overall height etc.

The scope of prior approval under Part 20 in relation to extensions to commercial buildings includes impacts from noise from any commercial premises on the intended occupiers of the new dwellings and impacts from an increase in residential use on the carrying out of any trade, business or other use in the area.

Summary:

In Part 1 (House extensions)

Class AA – enlargement of a dwellinghouse by the construction of additional storeys

In Part 20 (Construction of New Dwellinghouses)

Class AA – new dwellinghouses on detached buildings in commercial or mixed use

Class AB – new dwellinghouses on terrace buildings in commercial or mixed use

Class AC – new dwellinghouses on terrace buildings in use as dwellinghouses

Class AD – new dwellings on detached buildings in use as dwellinghouses

3. The GPDO Amendments - The Town and Country Planning (General Permitted Development)(England) (Amendment) (No 3) Order 2020

Class ZA 'Demolition of buildings and construction of new dwellinghouses in their place' also falls within new Part 20 of the Order and will allow for the demolition of a single detached building, which must have existed on 12 March 2020. It must have been used for offices, research and development or industrial processes (B1 use), or was a free-standing, purpose-built block of flats.

The amendment allows for its replacement with an individual detached block of flats or a single detached dwellinghouse within the footprint of the old building. The building must have been no larger than 1,000 square metres and not taller than 18 metres.

For demolition plans to go ahead, the building should have been built before 1990 and have been vacant for at least six months, it does not apply to demolition of a building in a conservation area, where the footprint of the new building would extend beyond the footprint of the old building, where the overall height of the new building would exceed the height of the old building by more than 7 metres or be more than 18 metres above ground level, whichever is lower. The new building may not, in any case, be more than 2 storeys higher than the old building.

There is also a prior approval process which can consider the transport and highways impacts, flooding risks, noise, design and external appearance, adequate natural light, impacts from the introduction of residential use upon existing businesses and the method of demolition of the existing building. The local planning authority must notify any owners or occupiers adjoining the proposed development.

Impact

There are concerns that this is likely to be a negative impact as an increase in height of residential dwellings has historically been resisted through the planning process due to the impact on the amenity of the occupiers of neighbours and the detrimental effect that this could have on the street scene.

There could also be issues regarding the impact on the Green Belt in terms of what could currently be considered to be inappropriate development but could potentially not be refused under the Prior Notification procedure.

The Permitted Development will also mean that the new buildings to provide flats will be exempt from providing contributions through the S106/CIL including Affordable Housing, Education contributions, sustainable transport etc.

In terms of introducing residential uses within existing commercial/mixed use areas there could be an impact on the residential amenity of the occupiers of any new properties and it is unclear whether the external separation distances to protect residential amenity and provision of appropriate external amenity space can be

considered. In terms of internal spacing standards, there appears to be no requirement to meet the minimum standards which could result in substandard units.

In addition to the consideration of planning issues, it is likely that there could be a financial impact in terms of a reduced application fee for Prior Approval applications (£334 per dwelling as opposed to £462 for a full application).

Consultation on changes to planning policy and regulations

MHCLG's accompanying document "[Changes to the current planning system: Consultation on changes to planning policy and regulations](#)", is the subject of a shorter consultation period, until 1 October and is proposed to be implemented before the end of this calendar year. It proposes:

- Changes to the standard method for assessing local housing need:
- Securing of First Homes through developer contributions in the short term until the transition to a new system
- Supporting small and medium-sized builders by temporarily lifting the threshold for provision of affordable housing
- Extending the current Permission in Principle to major development

Next Steps Officers will work carefully through the detail, and the questions posed within the consultation, drafting a reply for consideration prior to submission.

Member Briefing on Government White Paper

Planning for the Future

The Planning for the Future White Paper seeks any views on each part of a package of proposals for reform of the planning system covering plan-making, development management, development contributions, and other related policy proposals.

1. Local plans

- a) The proposal is that Local Plans will be simplified so that they only identify land for development, the sites that should be protected and the development that can take place. There would be three categories of land:

1. Growth - sites suitable for comprehensive development which, once allocated, will have outline approval for development.

In the case of “substantial developments” (new developments and urban extensions), councils would be required to draw up a “masterplan and site-specific code” which would grant permission in principle to developments which comply with them

2. Renewal – Areas zoned for renewal will be seen as suitable for some development, such as increasing the density within built up areas and infill development, and will benefit from a statutory “presumption in favour” of development. Again a removal of local control as planning permission will be deemed to be acceptable within the zone.

Schemes that comply with the locally-drawn up design codes will also benefit from a “fast-track for beauty” recommended by the government’s Building Better Building Beautiful Commission

3. Protected – Areas zoned as “protected” will be able to remain within their current designations, such as Green Belt and Area of Outstanding Natural Beauty etc. It is also proposed that some area of open countryside with no existing wildlife or landscape protections can be designated “protected”

- b) Local plans will need to give clear area-specific requirements for land that is allocated for growth and renewal including design codes; they will not contain traditional development management policies or duplication of national policy and guidance.
- c) Plans will be subject to a single test of achieving sustainable development instead of the current tests for soundness and the duty to co-operate. There

would be no Sustainability Appraisal and instead this would be replaced by a simplified process for assessing the environmental impact of plans.

- d) Local plans would have to be brought produced within a 30 month statutory timescale and be reviewed every 5 years.
- e) Neighbourhood Plans to be retained but with more focus on form of development to reflect the proposals for Local Plans.

Comment:

Local plans would be restricted to development allocations (through zoning) and specific design codes and standards to be applied to projects in the development zones. This will remove the ability of the Council to include strategic policies relevant to the local area.

There will be a requirement for more engagement with the public during the drawing up of local plans, due to the plans granting permission in principle, which will remove a stage of the planning permission process where the public can object to a development and ability of planning committees to consider the proposal.

Resources for planning departments – proper resourcing will be required to ensure the new local plans are fit for purpose and so that the plans and regulations that have been drawn up in collaboration with local communities and statutory consultees as part of the government's reforms can be fully enforced.

There will also be a requirement for the plan should include “an interactive web-based map where data and policies are easily searchable”, to make the information more accessible to the public. This will require a considerable investment in new systems and the government is proposing that funding will be made available to local planning authorities following a trial of the new systems.

2. Developer Contributions

The existing system of developer contributions will end as part of the proposals. Section 106 agreements will no longer be used and our locally set Community Infrastructure Levy will be replaced by a nationally-set levy (based on development value). The levy would be paid at the point of occupation.

The collection of the levy in this way will require councils to pay for and deliver any infrastructure needed up front if necessary (rather than for example delivery of onsite affordable housing by the developer).

Comment: It is accepted that negotiating and agreeing Section 106 agreements, particularly on larger sites, remains a complex and challenging process and can cause delays. However, it is the only way to create a direct link between new

development and the infrastructure required to mitigate the effects of new proposals. Members of the public could be certain that the requirements for improvements to infrastructure in the local area – school places, investment in public transport, affordable housing, junction improvements etc. would be provided through Section 106 agreements at specific stages as part of the development. This will not be such a transparent process should the linkages between development and developer investment be broken.

Concerns have been raised around the ability of the proposed system to provide the necessary funding for infrastructure and affordable housing given the proposed exemptions from the national levy. The nationally set levy may also put pressure on councils, should low value schemes be delivered, which are therefore exempt from the contributions reducing the ability to provide much needed affordable housing and infrastructure to support new growth.

3. Top down Housing Targets

The Government plans to re-impose top-down housing targets on local authorities. These will be fixed by a “standard method” for calculating housing need. The standard method will be based on how many existing homes are in an area, the projected rise in households, and changes in affordability.

Comment: The initial indications are that the housing requirement for the district will be significantly higher, rising the risk the Council may not be able to meet the annual housing delivery test. Further consideration needs to be given to this matter.

4. Environment

To assist with climate change, emergency improvements in the energy efficiency standards for buildings are proposed with the aim of helping to deliver the commitment to net-zero by 2050.

All new homes to be ‘zero carbon ready’, with no new homes delivered under the new system needed to be retrofitted to help deliver commitment to net zero carbon emissions by 2050.

5. New Design Code Body

A new body is to be set up to be given the role of supporting local authorities in the creation of local design codes. Every local planning authority will be required to employ a chief officer for design and place-making to oversee quality.

Local design codes to be drawn up as part of the local plan process will be required to demonstrate community input before they can be considered to be valid.

6. Further Permitted Development

Shorter and standardised planning applications are proposed with reduced or limited supporting material. Delegation of detailed planning decisions to planning officers where the principle of development has been established will be encouraged.

In addition to the recent changes to permitted development rights (see separate briefing note) which will come into force later this month, the areas zoned as "renewal" areas will allow additional permitted development on residential properties for example. These will be given automatic pre-approval, but will have to take account of local design codes

Comment : - the detail for development management is less clear in the document however the role of the planning application will be reduced and therefore the ability for the public and members to be involved at the application stage and through planning board is likely to be much reduced. The Government will build in penalties for slow decision making such as deemed approval of some applications or refunds of application fees

7. Digital Planning

Public involvement in local planning is proposed to be improved by requiring further digitising of the service, to allow much easier public access to planning documents.

Planning data will be required to be published online line using standard formats that will be searchable and can interact with smartphones etc.

Local plans will also be required to be based on information displayed on a digital plan.

Emerging Comments:-

The Royal Town Planning Institute (RTPI), Royal Institute of British Architects (RIBA), Royal Institution of Chartered Surveyors (RICS), and the Chartered Institute of Building (CIOB) have written to the Housing Secretary urging against any further loosening of permitted development rules in order to avoid "social disasters" in the future.

Use	Use Class up to 31 August 2020	Use Class from 1 September 2020
Shop not more than 280sqm mostly selling essential goods, including food and at least 1km from another similar shop	A1	E.2
Shop	A1	E
Financial and professional services (not medical)	A2	E
Café or restaurant	A3	E
Pub or drinking establishment	A4	<i>Sui generis</i>
Take away	A5	<i>Sui generis</i>
Office other than a use within Class A2	Bla	E
Research and development of products or processes	B1b	E
For any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area)	B1c	E
Industrial	B2	B2
Storage or distribution	B8	B8

Use	Use Class up to 31 August 2020	Use Class from 1 September 2020
Hotels, boarding and guest houses	C1	C1
Residential institutions	C2	C2
Secure residential institutions	C2a	C2a
Dwelling houses	C3	C3
Use of a dwellinghouse by 3-6 residents as a 'house in multiple occupation'	C4	C4
Clinics, health centres, creches, day nurseries, day centre	D1	E
Schools, non-residential education and training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts	D1	E.1
Cinemas, concert halls, bingo halls and dance halls	D2	<i>Sui generis</i>
Gymnasiums, indoor recreations not involving motorised vehicles or firearms	D2	E
Hall or meeting place for the principal use of the local community	D2	E.2
Indoor or outdoor swimming baths, skating rinks, and outdoor sports or recreations not involving motorised vehicles or firearms	D2	E.2

Changes of use within the same class are not development. Use classes prior to 1 September 2020 will remain relevant for certain change of use permitted development rights, until 31 July 2021. The new use classes comprise:

Class E (Commercial, business and service uses),

Class F.1 (Learning and non-residential institutions)

Class F.2 (Local community uses)