

## 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 1<sup>st</sup> 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 1<sup>st</sup> 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/ukxi/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 31<sup>st</sup> 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).