

Build, Build, Build – New Use Classes and Permitted Development Rights

England and Wales · 24.07.2020

The Government has published legislation to bring sweeping changes to the Use Class Order (UCO) ^[1] by creating two new classes of permitted development (PD) rights.

From 1 September 2020 existing buildings that are already used for Class A1, A2, A3, B1 and certain D1 and D2 uses will fall within a new single Class E and, unless the permissions they operate under have specific controls, will be able to change to other uses within that new class without the need for planning permission.

The changes to the use classes system are certainly the most radical to the planning system in recent times. The Government has said it wants the use classes system to better reflect the diversity of uses on high streets and in town centres to give businesses the flexibility to adapt and diversify to meet changing demands. Despite this stated focus, however, the effect of the changes to create a new commercial, business and service use class is not limited to these locations. This means that the reforms will affect and deliver flexibility for any buildings within the relevant uses wherever they are in England.

Other reforms contribute to delivering against the Government's housing targets by encouraging the creation of new homes from the regeneration of vacant and redundant buildings.

We summarise the changes below but as with all new arrangements it is early days and there are certainly grey areas around how they will play out and how local planning authorities may seek to restrict the new flexibilities. It is also important to note the transitional arrangements mean that the full benefit of the flexibility offered will not happen until the end of July 2021.

1. Use Class Order Amendments

A new **Use Class E** – a general “*commercial, business and service*” use class – absorbs previous classes A1, A2, A3, B1 and parts of D1 and D2 and covers retail, food, financial services, indoor sport and fitness, medical or health services, nurseries, offices and light industry. Class E will also include a new category of ‘other services which it is appropriate to provide in a commercial, business or service locality’. This is likely to cover uses such as post offices and travel agents which were previously included within Class A1.

A new **Use Class F1** absorbs the remaining parts of current Class D1 that are not in the new Class E – “*learning and non-residential institutions*”. This will include education, non-commercial galleries, museums, libraries, public halls, places of worship and law courts.

A new **Use Class F2** is created for “*local community*” uses. This absorbs part of current Class A1 and D2 and includes small corner shops, local community halls, swimming pools and outdoor recreational areas.

Pubs, wine bars and other drinking establishments, drinking establishment with expanded food provision, hot food takeaways, live music venues, cinemas, concerts, bingo and dance halls are added to the list of *sui generis* uses so a change from one to another would require planning permission if there is a material change in use. There are serious potential grey areas with this for example what the division is between a pub and a drinking establishment with expanded food provision may be.

The new UCO also introduces the concept of a “part use”, allowing a change of use of part of a building, use or planning unit to an alternative Class E use without permission.

Movements between the new uses but within the same use class will no longer require planning permission as it will no longer constitute “development”.

The key transitional points to note are:

- The changes take effect on 1 September 2020 but there is a “material period” from 1 September 2020 to 31 July 2021 which phases some of the changes relating to applications and PD rights.
- During the “material period” references to uses and use classes in the General Permitted Development Order will remain as currently defined in the current UCO. This will allow a period of grace for development currently permitted under the GDPO to happen with reference to the current use class

definitions.

- Applications for prior approvals in the “material period” under existing PD rights will be assessed against the current UCO.
- For “live” applications for planning permission submitted before 1 September 2020 (including ones submitted between now and September) which refer to uses or use classes in the current UCO, they must be determined by reference to those old use classes. Once implemented, however, in the absence of controls in the permission such uses may fall within the new classes for the purposes of the UCO.
- After 1 September 2020 there is no prohibition on applications seeking permission specifying the new use classes.

There are, however, concerns around the ability of local planning authorities to use existing tools to limit the new flexibility in practice including the use of planning conditions to restrict PD rights. There are also concerns, if an applicant seeks full flexibility, on the amount of assessment work which will be required in support of planning applications to assess the wide and differing range of impacts which could arise to avoid these types of conditions.

If applications seek an open Class E use then there will also be complex issues around the extent of planning conditions and S106 obligations required to control the myriad of potential impacts. This may in practice lead applicants to seek a simpler course of seeking permission for a single or flexible use involving one or more of the uses within Class E which would, once implemented, benefit from the flexibility to move within the other Class E uses.

Granting permission for an open Class E use would also raise issues around the appropriate community infrastructure levy (CIL) rate. Many charging schedules gear rates to the current use classes and it is not clear if this issue has been considered by the Government. Local planning authorities will need to review how the changes interact with their charging schedules and where there are issues this may impact on the ability of developers to reach accurate estimates of CIL liability.

The ability for local authorities to impose controls in the context of a planning application may mean that the greatest benefit of the changes will be for existing uses which are free from such controls in their permissions from 1 September 2020.

2. New PD Right - The demolition of buildings and the construction of new dwellinghouses in their place

A new PD right introduced by the Government allows for vacant commercial and residential buildings to be demolished to make way for new housing. This change will come into effect on 31st August 2020^[2]. Builders will not need planning permission to demolish and rebuild vacant and redundant commercial or residential buildings if they are re-built as homes. Instead a simplified application is required through the “prior approval” process.

Further new PD rights have been announced and are considered in our article [here](#).

Limitations and exclusions

If a development is to make use of the new PD right, the old building must:

- have a footprint of no larger than 1,000m² and be no higher than 18m;
- have been built before 1990;
- not be within a conservation area, national park, area of outstanding natural beauty or a site of special scientific interest; and
- have been vacant for at least 6 months before the date of the application for prior approval.

The right provides consent for works for the construction of a new building that can be up to two storeys higher than the old building with a maximum overall height of 18 metres. The demolition and subsequent construction must be completed within three years of the date of the grant of prior approval.

Conditions and prior approval requirements

The developer must apply for the Council's prior approval of certain aspects of the proposed development. These include transport and highways impacts, contamination and flooding risks, the design and external appearance, the provision of natural light and impact of noise, business and local amenity. This list has been expanded from the previous matters considered in the prior approval process, to address concerns raised about the potential poor standard of homes created under PD rights.

A report for the management and construction of the development must also be provided to the Council before beginning the development. This is to include the method of demolition, proposed hours of operation and how any adverse impact of noise, dust, vibration and traffic is to be mitigated. The position and dimensions of windows, doors and walls and the dimensions of each room must also be submitted to the Council. This is a further safeguard to ensure that the dwellings provided are of a high quality.

3. New PD Right – Upwards extensions to individual homes

In late June, the Government published a new PD right allowing for upwards extensions to existing blocks of flats^[3]. For more information, see our recent LawNow Article [here](#). The Government has now furthered this by allowing upwards extensions to individual homes to allow for the creation of new homes or additional living space. This will also come into effect on 31st August 2020^[4].

Four new classes of PD rights are created, allowing for new dwellinghouses to be built on both detached buildings and on terrace buildings (currently either in commercial or mixed use or in use as a dwellinghouse). Two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.

Restrictions and exclusions

There are various restrictions that apply, including the following:

- The existing building must have been constructed after 1st July 1948 and before 5th March 2018;
- The additional dwellinghouses must be flats; and
- The additional storey(s) must be constructed on the principal part of the building.

There are also height restrictions in place, with a minimum floor to ceiling height and a maximum roof height of 18 metres. Where the house is in a terrace, its height cannot be more than 3.5 metres higher than the next tallest house in the terrace.

The land on which the building is located is also limited – the building must not be located on a site of special scientific interest, a safety hazard area, a military explosives area or within 3km of the perimeter of an aerodrome. Additionally, the PD right does not apply to listed buildings or scheduled ancient monuments.

Conditions and prior approval requirements

As with existing PD rights, the developer must apply for the Council's prior approval of certain aspects of the proposed development. These include the impact of the amenity of any adjoining premises (including overlooking, privacy and the loss of light), the external appearance (including the design and architectural features of the principal and side elevation), and air traffic and defence asset impacts. A report detailing the management of the construction must also be provided to the Council.

Comment

The new regulations aim to improve the delivery of desired development, by removing some of the considerable 'red tape' for planning applications. The Government's hope is that this should reduce the pressure on greenfield sites by giving greater freedom for buildings to change use without planning permission.

By allowing for the creation of new homes from the regeneration of vacant and redundant buildings, the Government are aiming to support high street revival by allowing empty commercial office spaces to be quickly repurposed, in theory making brownfield development easier.

Some of the effects of the deregulation are unclear: the transitional provisions will mean that parallel regimes will run with permissions with development involving old and new UCO.

Many local planning authorities may not welcome this loss of control and might react, for example, with conditions to disapply Class E to retain some control over the changes. Introducing Article 4 Directions is not an option to control changes of use that, under the new UCO, are not development.

As with any new procedures there will be a period of bedding in as stakeholders analyse the regulations and their impact and look at the benefits and potential threats they create. Given the significance of the changes, however, we do not expect that process to be rapid and we also expect different local authorities will seek to exercise differing levels of control depending on their local needs.

[1] The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

[2] The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020

[3] Regulation 22 of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

[4] The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020

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