



# ARE THE RECENT CHANGES TO THE USE CLASSES ORDER AND PERMITTED DEVELOPMENT RIGHTS BOTH FLEXIBLE AND SUSTAINABLE?

QUOD BULLETIN

August 2020



## 1. Introduction

- 1.1. Significant changes to the planning legislative landscape are afoot which are likely to fundamentally alter the way our high streets function and accelerate housing delivery.
- 1.2. Ultimately, some forms of development will no longer need planning permission, speeding up the delivery of development. But is it quite that simple? We have taken the time to consider the details and implications to give you the big picture.
- 1.3. This bulletin focusses on amendments to the Use Classes Order (1987) and General Permitted Development Order (2015) and provides our insights on their potentially wide-ranging effects.
- 1.4. We also note the recent announcement by Robert Jenrick, Secretary of State for Housing, Communities and Local Government.

### Further reforms to the planning system?

- 1.5. At the weekend Robert Jenrick set out in a newspaper article more information on the Government's wider reforms to the planning system which he has said will be published this week.
- 1.6. The article suggests a move to a more 'zonal' approach with land in each area being mapped into three types of zone – growth, renewal or protection – with detailed rules for each zone. Where proposed development meets those rules it should be granted planning permission. It is not yet clear whether this will involve primary legislation or whether the Government will instead require Local Plans to take a different format and to extend Permission in Principle and Local Development Orders, which are currently part of statute but rarely used. The detail has not yet been published and it is likely that such changes to the system will take time to be enacted and bed in and it is therefore too early to advise on the implications for Clients. Quod will advise once there is more clarity on the reforms to help Clients navigate through what could be very radical changes.
- 1.7. Quod will also continue to engage with Clients and Government to make practical suggestions which can help deliver shared ambitions for growth, both in the short and longer term.

## 2. Amendments to the Use Classes Order

### The Facts

- 2.1. Amendments to the Use Classes Order come into force on 1st September 2020 which will sweep away some of the current Use Classes and at the same time create new Use Classes that are intended to better represent modern business operations.
  - 2.2. The main change brings more flexibility. Use Classes A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), B1 (business), parts of D1 (non-residential institutions) and D2 (assembly and leisure) will be combined into a single new Use Class: **Class E Commercial, Business and Service**. Changes between
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these uses will no longer constitute “development” and will not require planning permission.

- 2.3. To protect some elements of the D-Use Classes from the above changes, two further new classes have been created:
  - ***Class F.1 Learning and Non-residential institutions***
  - ***Class F.2 Local Community Use***
- 2.4. Other uses are either unchanged or would become Sui Generis (a Use Class of their own).
- 2.5. A full graphical guide is appended to this bulletin.
- 2.6. Planning applications submitted before 1st September 2020 must be determined against the current Use Classes, even when the decision is made on or after that date. Once the permission is implemented, the building or land will thereafter fall within one of the new Use Classes, unless expressly prevented via planning control (condition or legal agreement). Existing permitted development rights will continue to apply until 31st July 2021 by when the General Permitted Development Order is expected to be updated.
- 2.7. Article 4 Directions, which remove permitted development rights for specific areas, made before 1st September must comply with the current Use Classes Order until 31st July 2021. This has the effect of temporarily overriding the amended Use Classes Order until that end date.

### Quod's Insights

- 2.8. The amendments provide a significant overhaul of the Use Classes Order not seen since the 1980s. Increased flexibility for changes of use has implications for both existing and new development, which are outlined below:
    - The amendments are intended to help revive underperforming town centres, reducing vacancy rates and improving diversification. This brings regulations into line with modern thinking on the future of town centres. They however also present opportunities for more flexible asset management of real estate outside town centres.
    - The change of use of existing premises within Class E from 1st September 2020 may be complicated by the continued effect of any conditions limiting the lawful use. Each case will require careful review to determine whether there are any planning controls on the existing planning unit. Where restrictions exist, there may be scope to amend them via existing planning routes.
    - Certificates of Lawfulness are likely to be a commonly used route to confirm lawfulness of use, in the all-encompassing Class E. A thorough understanding of the property's planning consent(s) will be key.
    - Planning permission would still be required for material changes to the external appearance of a building.
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- Where the new Class E allows for a broader range of uses than permitted under the current Use Classes Order on an existing building, this can form a strong ‘fallback’ argument for alternative development.
- The way Class E uses are described in a planning application should affect the way the scheme is assessed. If the full range of Class E uses are sought then a worst-case assessment could be undertaken. In the absence of a considered approach, the Local Planning Authority (“LPA”) may look to restrict specific uses by planning condition.
- In general, we can expect local authorities to seize any opportunities to regain some control over land use. Conditions on planning permissions for new development are the most likely means.
- The legislation suggests a building or other land needs to be ‘in use’ at the end of August, in order for it be treated as Class E from the 1st September 2020. This suggests that vacant buildings at that time would not become a Class E use. This would seem at odds with the Government’s intention to facilitate early reoccupation of vacant buildings.
- Class E includes indoor sport, recreation or fitness to visiting members of the public (i.e. gyms). However, Regulations state that it is only existing Class A1, A2, A3 and B1 uses that will be treated as Class E from the 1st September 2020. This would imply, for example, that an existing gym (currently a Class D2 use) would not benefit from the flexibility of changing to other uses, such as a shop.
- The legislation is inconsistent in that it identifies that all shops in use at the end of August will become Class E on the 1st September 2020. However, such an approach is at odds with the new classification for new ‘community shops’ of less than 280 square metres (i.e. Use Class F.2), which the new Use Classes Order seeks to protect.
- The new Class E may create some additional uncertainty in relation to the calculation of CIL payments as it groups together uses (and Use Classes) that are currently dealt with separately in CIL charging schedules. It will be important to determine, working with the collecting authority how use (and therefore CIL charges) will be determined for new uses including Use Class E.<sup>1</sup>

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<sup>1</sup>A CIL charging schedule sets the rates for CIL within a charging authority. Regulation 13 of the CIL Regulations (2010 as amended) allows differential rates to be set “by reference to different intended uses of the development”. It does not require these uses to be defined with reference to the Use Classes Order. Local authorities usually define rates with a description of the use, sometimes with the Use Class as well. Existing planning permissions will continue to pay CIL based on the uses as allowed in the planning permission. For new Class E uses it is likely that a Collecting Authority will seek to charge on the basis of the actual uses as related to the description of uses in the charging schedule (eg. retail, office, workshop etc). Where uses are not known at commencement the authority will need to take a view on appropriate rates to charge – which may be defined by the description of development and/or conditions, or the most likely use, or in some cases the highest rate. If appropriate it may be worthwhile for applicants to agree to restrictions on a permission to exclude the possibility of paying a higher CIL rate where it is known that they will not be delivering certain uses within the new Class E.

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### 3. Amendments to the General Permitted Development Order

#### Existing Blocks of Flats

- 3.1. Class A “Construction of New Dwellinghouses” was introduced into Part 20 Schedule 2 of the General Permitted Development Order (“GPDO”) in June 2020 and came into effect on 1st August. Part 20 now provides for the permitted development of up to two additional storeys of new flats above the top floor of a purpose-built, detached block of flats, plus associated operations.
- 3.2. However, a significant number of limitations need to be satisfied<sup>2</sup> (such as the building must have been built between 1st July 1948 and 5th March 2018) and Prior Approval must be obtained from the LPA including details on a range of matters<sup>3</sup> such as design and external appearance.

#### Existing Commercial and Mixed-use Buildings and Houses

- 3.3. Additions have also been introduced to the GPDO to allow upward residential extensions to existing commercial and mixed-use buildings and existing houses, including associated operations. The following Classes come into effect on 31st August 2020:

##### *Part 1 of Schedule 2*

- Class AA - enlargement of a dwellinghouse by construction of additional storeys.

##### *Part 20 of Schedule 2*

- 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 dwellinghouses on detached buildings in use as dwellinghouses.

- 3.4. All subject to certain limitations, the new provisions allow up to two additional storeys on existing houses of two or more storeys and one additional storey to existing one-storey houses. Up to two additional storeys may also be allowed on existing commercial buildings within certain uses.<sup>4</sup> Part 20 restricts permitted

<sup>2</sup> The various amendments to the GPDO detailed within this Bulletin contain several limitations for development to be considered permitted. However, only a selection have been listed in this Bulletin and advice should be sought as to whether a building(s) meets the specified criteria.

<sup>3</sup> Each new Class introduced to the GPDO has specific matters which need to be addressed and material to be submitted as part of Prior Approval and not all are listed this Bulletin. Advice should be sought on the relevant matters and submission material

<sup>4</sup> Class A1 (Shops); Class A2 (Financial and professional services); Class A3 (Restaurants and cafés); Class B1(a) (Offices); Certain sui generis uses (Betting offices, payday loan shops or laundrettes); Any mix of two or more of the above uses; and, Class C3 (dwellinghouses) together with one of the above uses.



development rights to buildings constructed between 1st July 1948 and 5th March 2018, while the Part 1 amendments relate to buildings constructed between 1st July 1948 and 28th October 2018.

- 3.5. Prior Approval is also required from the LPA, which requires the submission of information depending on the Class, such as assessments of impact on amenity, daylight/sunlight and appearance.
- 3.6. Following the development, every new unit in the building must remain in residential use (Class C3) and for no other purpose.

### Demolition and Rebuilding for Housing

- 3.7. A new Class ZA “Demolition of buildings and construction of new dwellinghouses in their place” has also been introduced into Part 20 of Schedule 2 of the GPDO and comes into effect on 31st August 2020.
- 3.8. The provisions allow the demolition of a single detached, purpose built block of flats or any other single detached building comprising Class B1(a)/Class B1(b)/ Class B1(c) uses or any combination of them (which existed on 12th March 2020) and their replacement with:
  - a purpose-built detached block of flats; or
  - a purpose-built detached dwellinghouse.
- 3.9. There are, however, many limitations where development would still require planning permission, including the age and size of the current building<sup>5</sup> and where the footprint of the replacement home falls outside the current footprint.
- 3.10. Prior Approval must be obtained from the LPA with several matters to be addressed to their satisfaction (including design and amenity), supported by information including internal layouts. The LPA should determine the Prior Approval within eight weeks of validation and there is a right to appeal against non-determination.
- 3.11. There are no permitted development rights to alter the use of a home created under Class ZA.

### Community Infrastructure Levy

- 3.12. Development allowed through permitted development rights meets the definition of a “planning permission” in Regulation 5 of the CIL Regulations (2010, as amended). The Development may therefore be CIL liable where a Charging Schedule is in place and where either a residential unit or more than 100 sqm of net additional GIA is created. Net additional GIA may be chargeable at the rates set out in the Charging Schedule (adjusted for inflation), although it may be exempt if it is a residential annex/extension (Reg 42a) or self-build (54a). If the existing building fails to meet the “in use” test or any demolition takes place too early, the total GIA of the whole building(s) could be CIL liable – not just the net additional floorspace.

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<sup>5</sup> Constructed after 31 December 1989 or where the footprint exceeds 1,000sqm.



- 3.13. The same CIL administration is required for Permitted Development as for standard planning permissions – namely you must submit relevant forms, claims for relief or exceptions and commencement notices prior to the commencement of any material operation on site.

### Quod Insights

- 3.14. The amendments to the GPDO have the potential to increase new housing delivery, subject to the various limitations being met. This will require careful review on a case-by-case basis. We have the following key insights:
- Should a proposal meet the terms of the GPDO and an Article 4 Direction restricting the rights is not in place, the principle of development will be established providing a fallback position for negotiating planning permission for a larger scheme.
  - The matters to be addressed seek to ensure that the additional and new residential units are appropriately designed, and we expect LPAs to be firm on this.
  - That a building must have been “constructed” before 31 December 1989 is likely to be the subject of legal interpretation and some debate.
  - The draft fees for Prior Approval under Part 20 of the GPDO are identified under draft amendments to the Fee Regulations and are significantly higher than other Prior Approvals but less than that for a planning application i.e. £334 for each new unit for schemes providing 50 or fewer units (compared to £462 each), and for schemes proposing over 50 units £16,525 and an additional £100 for each new unit in excess of 50 units, up to a maximum fee of £300,000 (compared to £22,859 + £138 per additional dwelling over 50 units).
  - Such schemes will not be expected to provide affordable housing.
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# Use Classes Regulations 2020 - guide to the changes



Amendments to the Use Classes Order come into force on 1st September 2020 which will revoke some of the current Use Classes and create new Use Classes that are intended to better represent modern business operations.

The table below summarises the changes, setting out those uses that will change as part of the new regime. Please note to allow for easy comparison, the exact wording definition is not replicated below.

Use	Use Classes Order 1987 (as amended) (up to 31st August 2020)	Use Classes Regulations 2020 (from 1st September 2020)
Shops (Retail)	<b>A1</b>	<b>E</b>
Shops (Retail) (not more than 280 sqm (net sales area)) mostly selling essential goods, including food and at least 1km from another shop	<b>A1</b>	<b>F.2</b>
Financial and Professional Services	<b>A2</b>	<b>E</b>
Cafes or Restaurants	<b>A3</b>	<b>E</b>
Drinking Establishments / Pubs	<b>A4</b>	<b>Sui Generis</b>
Hot Food Takeaways	<b>A5</b>	<b>Sui Generis</b>
Business – Offices	<b>B1a</b>	<b>E</b>
Business – Research and development of products or processes	<b>B1b</b>	<b>E</b>
Business – Industrial processes	<b>B1c</b>	<b>E</b>
Medical or health centres, crèches, day nurseries, day centres	<b>D1</b>	<b>E</b>
Schools, education centres, museums, public libraries, public halls, exhibition halls, places of worship or religious instruction, law courts	<b>D1</b>	<b>F.1</b>
Hall or meeting place for the principal use of the local community	<b>D1</b>	<b>F.2</b>
Cinemas, concert halls, bingo halls, dance halls	<b>D2</b>	<b>Sui Generis</b>
Gyms, indoor sport, recreation or fitness facilities (not involving motorised vehicles or firearms) principally to visiting members of the public	<b>D2</b>	<b>E</b>
Indoor or outdoor swimming baths, skating rinks, outdoor sports facilities or recreation grounds (not involving motorised vehicles or firearms)	<b>D2</b>	<b>F.2</b>

For more information about these changes please contact us on:

**Quod** - [hello@quod.com](mailto:hello@quod.com) - [www.quod.com](http://www.quod.com)

The table above provides a guide summarising the changes effected by the Town and Country Planning (Use Classes) (Amendment) Regulations 2020, demonstrating the changes that will take effect from 1 September 2020. Please note this information is in summary format only.



# Use Classes Regulations 2020 - the new Use Classes Order



The table below provides a consolidated version of the uses within the Use Classes Order, coming into force on 1st September 2020. This is provided for information purposes only.

<b>E</b>	<p><b>Commercial, Business and Service</b></p> <p>Use, or part use, for all or any of the following purposes—</p> <p>(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,</p> <p>(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,</p> <p>(c) for the provision of the following kinds of services principally to visiting members of the public—</p> <p>i. financial services,</p> <p>ii. professional services (other than health or medical services), or</p> <p>iii. any other services which it is appropriate to provide in a commercial, business or service locality,</p> <p>(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,</p> <p>(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,</p> <p>(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,</p> <p>(g) for—</p> <p>i. an office to carry out any operational or administrative functions,</p> <p>ii. the research and development of products or processes, or</p> <p>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.</p>	<b>C1</b>	<p><b>Hotels</b></p> <p>Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.</p>
<b>F.1</b>	<p><b>Learning and Non-Residential Institutions</b></p> <p>Any use not including residential use—</p> <p>(a) for the provision of education,</p> <p>(b) for the display of works of art (otherwise than for sale or hire),</p> <p>(c) as a museum,</p> <p>(d) as a public library or public reading room,</p> <p>(e) as a public hall or exhibition hall,</p> <p>(f) for, or in connection with, public worship or religious instruction,</p> <p>(g) as a law court.</p>	<b>C2</b>	<p><b>Residential Institutions</b></p> <p>Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwellinghouses)).</p> <p>Use as a hospital or nursing home.</p> <p>Use as a residential school, college or training centre.</p>
<b>F.2</b>	<p><b>Local Community</b></p> <p>Use as—</p> <p>(a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—</p> <p>i. the shop's premises cover an area not more than 280 metres square, and</p> <p>ii. there is no other such facility within 1000 metre radius of the shop's location,</p> <p>(b) a hall or meeting place for the principal use of the local community,</p> <p>(c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms,</p> <p>(d) an indoor or outdoor swimming pool or skating rink.</p>	<b>C2 A</b>	<p><b>Secure Residential Institutions</b></p> <p>Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.</p>
<b>B2</b>	<p><b>General Industrial</b></p> <p>Use for the carrying on of an industrial process other than one falling within the uses described in Class E, sub-paragraph (g) (shown above).</p>	<b>C3</b>	<p><b>Dwellinghouses</b></p> <p>Use as a dwellinghouse (whether or not as a sole or main residence) by—</p> <p>(a) a single person or by people to be regarded as forming a single household;</p> <p>(b) not more than six residents living together as a single household where care is provided for residents; or</p> <p>(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).</p>
<b>B8</b>	<p><b>Storage or Distribution</b></p> <p>Use for storage or as a distribution centre.</p>	<b>C4</b>	<p><b>Houses in Multiple Occupation</b></p> <p>Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.</p>
		<b>SG</b>	<p><b>Sui Generis</b></p> <p>No class specified in Schedule 1 or 2 includes use —</p> <p>(a) as a theatre,</p> <p>(b) as an amusement arcade or centre, or a funfair,</p> <p>(c) as a launderette,</p> <p>(d) for the sale of fuel for motor vehicles,</p> <p>(e) for the sale or display for sale of motor vehicles,</p> <p>(f) for a taxi business or business for the hire of motor vehicles,</p> <p>(g) as a scrapyards, or a yard for the storage or distribution of minerals or the breaking of motor vehicles,</p> <p>(h) for any work registrable under the Alkali, etc. Works Regulation Act 1906,</p> <p>(i) as a hostel,</p> <p>(j) as a waste disposal installation for the incineration, chemical treatment or landfill of hazardous waste,</p> <p>(k) as a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club,</p> <p>(l) as a night-club,</p> <p>(m) as a casino,</p> <p>(n) as a betting office,</p> <p>(o) as a pay day loan shop,</p> <p>(p) as a public house, wine bar, or drinking establishment,</p> <p>(q) as a drinking establishment with expanded food provision,</p> <p>(r) as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises,</p> <p>(s) as a venue for live music performance,</p> <p>(t) a cinema,</p> <p>(u) a concert hall,</p> <p>(v) a bingo hall,</p> <p>(x) a dance hall.</p>

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