

Permitted Development Rights Commercial and Mixed-Use Premises Existing and Proposed Changes

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The Government's planning reforms in 2020 included the creation of new use classes and changes to permitted development rights to extend the right to demolish buildings and replace them with housing. MHCLG has now issued a consultation proposing to amend these rights yet again to allow Class E changes to residential.

Use Class Order Change Heralds Opportunities

As a reminder, the new Use Class E incorporates what were A1, A2, A3 and B1 Uses. Class E allows for a mix of uses to be operated within existing premises, either concurrently or at different times of the day, without the need for planning permission. On applying for permission for new development there is no requirement to specify use beyond Use Class E, unless there are CIL implications (see final section of this briefing).

From 1st September 2020 existing commercial units in A1, A2, A3 or B1 use are now treated as Use Class E, unless planning conditions prevent a specific use. Changes of use to another use now falling within Use Class E is no longer considered development and does not require permission.

For commercial spaces that previously required an application to be made for prior approval and under the new Use Class Order still results in a change between uses, the prior approval process will continue to apply until 31 July 2021.

Three use classes, A4 (drinking establishment), A5 (hot food takeaways) and D2 (cinemas, concert, dance and bingo halls) have now become *sui generis* uses. This requires an application to be made for changes of use to or from these uses, unless the above transitional arrangements allow the outstanding prior approval permission to be sought.

It is notable that the use of the new Use Classes applies irrespective of any planning designation, such as listed buildings, conservation areas, AONB. Building regulations and associated commercial licensing will continue to apply.

New Consultation: Class E Change of Use to Residential

The Government issued a new consultation on 3 December 2020 seeking views on another new permitted development right allowing change of use from all Class E uses to residential. If implemented, such a right would extend to buildings already in E Use on 1 September 2020.

The Government is proposing that this right should not be limited by size, allowing the whole or part of a building to be converted, subject to the prior approval process. The right is proposed *not* to apply to listed buildings or land within their curtilage, scheduled ancient monuments, safety hazard areas, SSSIs, military explosives storage areas and sites subject to an agricultural tenancy. As with existing requirements, prior approval will need to be sought in relation to:

- Flood risk
- Transport / safe access
- Contamination
- Living conditions of residents
- Suitable location of development in areas with heavy industry and waste management

As some high streets and town centres are within conservation areas, the Government proposes to allow the right to apply to such areas. This would not extend to national parks or areas of outstanding natural beauty.

It is proposed to apply a fee per proposed dwellinghouse, of £96, capped at a maximum of the fee for 50 dwellings. The Community Infrastructure Levy may apply to dwellings created through this route. Consultation on this extended proposal ends on **28 January 2021**. If this follows the example of previous consultations, this right may be implemented early in 2021.

Demolition for New Dwelling(s)

The new Class ZA of the GPDO, subject to the prior approval process, permits free-standing buildings in B1(a)(b)(c) use or free-standing purpose-built residential

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flats (C3) to be demolished and replaced with a dwelling. A number of restrictions apply, requiring:

- The building to have been vacant for a minimum of six months prior to applying for prior approval;
- The building to have been constructed before 1st January 1990;
- The dwelling to be within the demolished building's footprint with floorspace up to 1,000sqm and a maximum height of 18m;
- The demolition to apply to the whole of the building and not more than one building within its curtilage.

This allows new buildings to be up to 7m higher than the original building to accommodate up to two additional storeys. Floor to ceiling height is not to exceed 3m.

Up and Out – Extensions to Premises

Also subject to the prior approval process, additional permitted development rights now allow for the upward extension of buildings to provide more housing. This remains reasonably well restricted, requiring approval of matters including transport impacts, flooding and contamination risks, the provision of adequate natural light in all habitable rooms, and impacts on the amenity of the existing building and neighbouring premises.

These new permitted development rights do not apply to listed buildings or protected areas, including Conservation Areas, AONB, World Heritage Site and SSSI, and must not affect a protected view.

As the prior approval process remains in place results will rely upon individual local planning authority approaches. Clarity will be important to secure permission.

Class AA enables permission to erect up to two additional storeys on the principal part of a *freestanding* building in A1/A2/B1(a) use or in use as a betting office, pay day loan shop or launderette of at least three storeys. Restrictions include a requirement that such buildings must not already be less than three storeys, and must have been built between 1 July 1948 and 5 March 2018. The new height must not exceed 30m and new floors be no higher than 7m.

Class AB permits on the principal part of a building two additional storeys of up to 7.5m above existing roof height on two storey terraced buildings in commercial or

mixed use, and one additional storey of up to 3.5m on one storey buildings. Among a raft of restrictions, new storeys must not exceed the floor to ceiling heights of any storey within the principal part of the existing building, and new dwellings must be flats. New, visible support structures are not permitted. The new height must not exceed 18m.

Current permitted development rights allowing for extension to residential and industrial buildings and warehouses will continue to apply.

Community Infrastructure Levy – Implications

The amendments to the Use Classes Order include provisions that require *Charging Authorities* to apply the levy according to the uses *as previously defined*. Charging Authorities are therefore placed in a difficult position if, for example, an application is submitted for an E use which is not yet defined, and the adopted Charging Schedule has different charges for the previous A1, A2 and other uses now falling within E.

The Planning Practice Guidance has been updated to confirm this, but offers no further guidance on how to interpret such difficulties. Applicants may need to define a use for the purpose of calculating CIL liability, and be aware of the potential ramifications should such a use change.

Conversion of existing development to new dwellings will be CIL liable (if applicable in that LPA area), subject to the normal exemptions and reliefs.

As with all new legislation there will be areas open to interpretation and as such DLP will be able to advise, including assisting with prior notification and if appropriate certificates of lawful development.

As one of the UK's leading independent planning consultancies, DLP Planning is well placed to keep you informed of future announcements and advise on the implications of planning changes for your business.

If you have any queries or require any further information, please do not hesitate to contact DLP Planning Ltd. Details are available at www.dlpconsultants.co.uk/contactus