

Changes to the Use Classes Order - Ashtons Legal - August 17, 2020

The changes, which come into effect on 1 September 2020, represent a fundamental overhaul of the current Use Classes Order in a 'let the market decide' shake-up of the planning system.

The aim is to reflect the increasingly diverse range of uses found in town centres as well as allowing businesses the flexibility to meet changing demands. Plans to reform the Use Classes Order have been in the pipeline for some time but have been fast-tracked as a result of the COVID-19 pandemic.

What are the changes?

The changes provide for three new use classes:

1. Class E (Commercial, business and service)

This new single Use Class will amalgamate previous use classes (A1) Shops, (A2) financial/professional services, (A3) cafés/restaurants, (D1 part) medical health facilities, creche and nurseries (D2 part) indoor sports/fitness, and (B1) office/business/light industrial uses.

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

3. F.2 (Local community).

The new Use Classes are summarised in the table at the end of this article.

When do the changes take effect?

From 1 September 2020, where a building or other land is being used for a purpose falling within one of the original Use Classes, that building or other land will be treated as if it is being used for the corresponding new Use Class (for example – an existing retail shop within Class A1 would be deemed to be occupied for a use falling within new Class E).

New planning applications, variations and reserved matters will also be determined by reference to the new Use Classes, although previous Use Classes in particular cases until 31 July 2021. There are also some complicated transitional provisions relating to all planning applications that are live as at 1 September 2020, and these will remain in place until 31 July 2021.

What are the implications?

The changes to Class E will allow far greater flexibility to change uses without the need to apply for planning permission thereby allowing a retail shop to be converted to a restaurant or vice versa.

However, at the same time, the new changes also introduce some further restrictions on other uses, such as Pubs/Drinking establishments, takeaways, cinemas, concert halls, bingo halls and dance halls which all now fall under separate sui-generis classes and consequently planning permission will be required to change between these individual uses as well as to any other of the new Use Classes.

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.

[Edward Dodson](#), Head of Retail Strategy at [Cheffins](#) looks at the possible benefits and disadvantages this will have for town centres.

He comments: “These changes will bring a significant benefit to town centres which will now be able to react far more quickly to changing market demands. The changes will also bring the added advantage of enabling mixed uses under one roof. The historic situation whereby the planning authority control the range and mix of uses within a town centre will change, with the responsibility now transferring to Landlords. Will Landlords act responsibly in seeking to maintain diversity or will they be driven by the highest rent generator? The market will no doubt dictate.

On the flip side, we could potentially see out of town business parks converted into retail parks or difficult-to-let light industrial units, particularly in smaller market towns, being converted to a discount supermarket. These changes, previously controlled by planning and sequential tests, will now be allowed. Planning law to protect some property types, such as light industrial against retail, is now obsolete.

The changes will have a fundamental effect on how user clauses in new leases are drafted and this is bound to have a knock-on effect on rent reviews and property valuations. Greater control via restrictive users will reduce rental and capital values.”

Legal Aspects

Rhian Brook, Senior Associate at **Ashtons Legal**, comments on the possible legal issues with the new changes in respect of both new and existing leases:

“If the permitted use within an existing lease either does not refer to the use class order (because it just states that the permitted use is as a shop or an office) or fixes the use class as being as at the date the lease was granted then the Landlord will have certainty. In this scenario, the permitted use will not change on 1 September when the new provisions come into force.

If the permitted use does refer to the use classes order “as amended from time to time” or words to that effect then these changes will potentially affect what comes under the definition of the permitted use. It is common to see leases with wording such as “offices within Use Class B1” and the changes to the order mean that this reference then becomes “offices within Use Class E” which now includes not only offices but also other uses such as retail, financial and medical services and nurseries. Although the Landlord will have to grant consent to the change of use from offices there is often the obligation not unreasonably to withhold consent and therefore the permitted use going forward will potentially be much wider.

In any new lease, the Landlord will as always need to weigh up whether to refer to a restricted permitted use which may have a deflationary impact at rent review or have a wider use with less control. The changes in the use classes might make the impact of this decision all the greater. It may be that Landlords choose to restrict the definition of permitted use by using wording which aligns for example with the previous use class in the 1987 order and it will be interesting to see what effect this wording will have in rent reviews in the future.”

What does this mean for Local Plan Policy?

Local plans typically forecast needs for new commercial space e.g. retail, offices, housing, open space and social infrastructure. The amalgamation of use classes therefore now creates a local plan dilemma – not only for forecasting future E Class needs but in managing future change given changes within Class E no longer require planning permission. This raises fundamental questions concerning retail impacts, sequential tests, employment land requirements etc.

Claire Shannon, Associate within **Cheffins** Planning Department adds: “These changes represent the most fundamental change to the Use Classes Order in 30 years and whilst the intention is to provide added flexibility, they also raise a huge number of questions and uncertainties. One such question will be whether the Local Planning Authorities will seek to impose restrictions, through conditions, to limit future changes of use. The role of local plan policy is important in this regard if Councils do seek to impose such restrictions, then Government may well oppose that – but revisions to the National Planning Framework and Guidance is needed to clarify this. Watch this space!!

Careful consideration should also be given to protective covenants, conditions and legal obligations that may restrict the use of premises and which may frustrate these radical changes. It should also be noted that the changes only relate to lawful use of a property – not necessarily the active use. Any associated operational development may well still require planning permission and the changes do not remove the need for planning permission for material shopfront alterations, consent for signage, licensing and landlord’s consent.”

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	F.2
Shop	A1	E
Financial & professional services (not medical)	A2	E
Café or restaurant	A3	E
Pub, wine bar or drinking establishment	A4	Sui generis
Takeaway	A5	Sui generis
Office other than a use within Class A2	B1a	E
Research & 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
Hotels, boarding & guest houses	C1	C1
Residential institutions	C2	C2
Secure residential institutions	C2a	C2a
Dwelling houses	C3	C3
Small house in multiple occupation 3-6 residents	C4	C4
Clinics, health centres, creches, day nurseries, day centre	D1	E
Schools, non-residential education & training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts	D1	F.1
Cinemas, concert halls, bingo halls and dance halls	D2	Sui generis
Gymnasiums, indoor recreations not involving motorised vehicles or firearms	D2	E
Hall or meeting place for the principal use of the local community	D2	F.2
Indoor or outdoor swimming baths, skating rinks, and outdoor sports or recreations not involving motorised vehicles or firearms	D2	F.2