Martin Goodall's Planning Law blog on Use Class MA

Class MA – Some further points Wednesday, 7 April 2021

In my post yesterday below, I summarised briefly the provisions of the new Class MA in Part 3. However, it is worth bearing in mind some other points to which I did not have time to draw attention yesterday, including one or two deliberate omissions from Class MA.

Residential conversion of several types of premises that are *sui generis* uses is not permitted by Class MA. Thus, in contrast to Class M, this PD right does not extend to hot food take-aways, betting offices, pay day loan shops or launderettes. I do not know whether this omission was deliberate or inadvertent, or whether the government may add these to Class MA in the future.

Second, also in contrast to Class M, the PD right under Class MA does not include any building operations. This is in line with Classes O and PA, which Class MA also replaces. So, planning permission will be required in the vast majority of cases for external alterations to the building, including new doors and windows, and other external details. LPAs should bear in mind, however, that planning permission for the change of use itself is already granted by Article 3 of the GPDO (as well as all internal alterations to convert it to residential use – covered by section 55(2(a)). It follows that the only issues for the LPA to consider in determining a planning application for such building operations are those that relate strictly to those building operations themselves, including aesthetic and other material considerations (if any).

In Class M, the requirement for a prior approval application included the following matter:

- whether it is undesirable for the building to change to a residential use because of the impact of the change of use on adequate provision of services of the sort that may be provided by a building falling within Use Class A1 (shops), Use Class A2 (financial and professional services) …… , but only where there is a reasonable prospect of the building being used to provide such services, or (where the building is located in a key shopping area) on the sustainability of that shopping area.

This requirement is *not* repeated in Class MA, so the retail impact that may result from the residential conversion of retail premises, even in a key shopping area, is no longer a matter with which an LPA can concern itself. The only 'protected' uses whose loss must be considered are NHS health centres and registered nurseries. Clearly, therefore, (despite ministerial protestations to the contrary) the government is content to preside over the decline and death of England's town centres.

Furthermore, Class MA (unlike former Class PA) does not include as a matter requiring prior approval:

- where the authority considers the building to which the development relates is located in an area that is important for providing industrial services……, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services

Instead, the relevant matter that may require the LPA's prior approval under Class MA is the impact *on intended occupiers of the development* of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses [which is not the same thing at all]. Here again, the LPA is precluded from considering the impact of the loss of industrial premises. So planning officers can forget any idea of protecting employment land where residential conversion is proposed under Class MA.

A couple of final points are worth bearing in mind. First, although prior approval is required in respect of the provision of adequate natural light in all habitable rooms of the dwellinghouses, and there is no reference here to the adequacy of the residential accommodation, Article 3(9A) makes it clear that Schedule 2 does not grant permission for, or authorise any development of, any new

dwellinghouse where the gross internal floor area is less than 37 square metres in size, or that does not comply with the nationally described space standard issued by the former DCLG on 27 March 2015. On the other hand, adequacy of amenity space, provision for refuse storage, etc. is not a matter with which the LPA can concern itself in relation to Class MA.

The second point is that paragraph W of Part 3 applies to the processing of all prior approval applications under Part 3, and so the 56-day Rule will apply to Class MA in the same way. Planning officers must therefore be alert to the need to issue a determination *within* the 56-day period, which commences on the day following receipt of a completed application. So LPA officers should not waste time in deciding whether of not to 'validate' the application. If it does not comply with the rules, it can be rejected under paragraph W(3).

I dare say there are other ramifications to Class MA that will become clear in the light of experience, but that will do for now. Happy town planning!

Posted by Martin H Goodall LARTPI at 12:55 3 comments:

Government goes ahead with new PD rights Tuesday, 6 April 2021

Readers are no doubt getting used by now to the meaning of the word "Consultation". The government announces a proposed legislative change (in this case making important changes to the GPDO). They invite comments, prompting numerous vociferous objections. Then they totally ignore these responses and go ahead with the changes anyway. That's "Consultation".

The opposition in this case came not merely from 'the usual suspects', but also from important elements in the property industry, who might perhaps have been expected to support the greater freedom to redevelop commercial property. So concerned are the professional bodies with the potential impact of these changes that even after these amendments to the GPDO were made last week, the RTPI, the RIBA, the RICS and also the CIOB [Chartered Institute of Building] wrote to the Prime Minister to express their concern that these latest PD changes could present a real risk to the country's town centres and to small businesses in particular. However, I doubt whether the government will take any notice.

The latest changes to the GPDO came in the form of the *Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021* [SI 2021 No. 428], which was made on 30 March and comes into force on 21 April, although (as explained below) the new PD rights do not in fact take effect until 1 August. It applies both to England and to Wales. [But is this right? What about the devolution of planning powers to Welsh Ministers? *See comment below for an explanation.*]

I am not going to attempt to set out the new provisions in any detail. What follows is simply a summary of some of the main points. In Part 3, Class M (the residential conversion of buildings formerly within Use Classes A1 and A2) and Class O (the residential conversion of offices formerly within Use Class B1(a)) will cease to apply after 31 July, and will be replaced by the new Class MA, which (subject to the restrictions and limitations mentioned below) will extend to all buildings falling within the current Use Class E.

This new PD right will also have the effect of replacing (and in effect reviving in a new form) the lapsed PD right that was formerly granted by Class PA. Only Class N (the residential conversion of an amusement arcade or centre, or a casino, each of which is a *sui generis* use) remains in its original form. Whether it was an unintentional oversight or a deliberate change, the effect of the abolition of Class M is to put an end to the PD right for the residential conversion of betting offices and pay day loan shops (with or without flats above them). This aspect of Class M has not been subsumed within the new Class MA.

There are the usual restrictions, which exclude certain buildings from this PD right. The most important of these is the requirement that the building must have been vacant for a continuous

period of at least 3 months immediately prior to the date of the application for prior approval [although this would hardly seem long enough to prevent the practice on the part of unscrupulous landlords of 'winkling out' existing tenants].

Another essential qualification is that the use of the building must have fallen within one or more of the old 'town centre' and similar use classes (i.e. A1, A2, A3, B1, D1(a), D1(b), or D2(e) (*other than use as an indoor swimming pool or skating rink*) and/or the new Class E, for a continuous period of at least 2 years prior to the date of the application for prior approval. The cumulative floor space of the existing building changing use under Class MA may be up to a fairly generous limit of 1,500 square metres. Some of the usual exclusions apply to buildings or their curtilage will apply to Class MA (SSSI, Listed Building, Scheduled Monument, Safety Hazard Area, Military Explosives Storage Area, AONB, the Broads, National Park or World Heritage Site and also if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained).

PD under Class MA will be subject to a prior approval application being made in respect of transport impacts of the development (*particularly to ensure safe site access*), contamination risks in relation to the building, flooding risks in relation to the building, impacts of noise from commercial premises on the intended occupiers of the development, the provision of adequate natural light in all habitable rooms of the dwellinghouses, the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, or for waste management, storage and distribution, or a mix of such uses. Where the development involves the loss of services provided by a registered nursery, or a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost, this will also be a matter requiring prior approval.

Although the location of the building within a conservation area is not a disqualification in the case of Class MA, the impact of that change of use on the character or sustainability of the conservation area will be a matter requiring prior approval, but only where the development involves a change of use of the whole or part of the ground floor.

An application for prior approval for development under Class MA may not be made before 1 August 2021. Development must be completed within a period of 3 years starting with the prior approval date, and any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse Use Class C3 and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

Various changes have also been made to Parts 7, 8, 11 and 20 in Part 2 of the Second Schedule to the GPDO, which I haven't got time to discuss here. One important transitional provision is to preserve the effect of existing Article 4 Directions in respect of PD under Class O for a further year. Until the end of 31 July 2022, a direction issued under article 4(1) of the GPDO that is in effect immediately before 1st August 2021,and which withdraws permission for all or any development, or for any particular development, granted for Class O of Part 3 of Schedule 2 to the GPDO, and which has not been cancelled in accordance with the provisions of Schedule 3 to the GPDO, will remain in effect as if a reference to any development permitted under Class O included a reference to the equivalent development under Class MA of Part 3 so far as that development would, but for the direction, be permitted under Class MA.

Finally, there is one minor amendment to the *Use Classes Order*. This change has the effect of excluding use as a swimming pool or skating rink from Class E, so that these two uses will now fall solely within Class F.2(d). I commented on the apparent anomaly of a swimming pool or skating rink falling alternatively within either Class E or Class F.2 on page 360 of the Revised Edition of *The Essential Guide to the Use of Land and Buildings under the Planning Acts* (pages 16/17 in the November 2020 Supplement). I also pointed out one or two other anomalies of a similar nature in the UCO as revised last year, and it will be interesting to see whether the government takes the opportunity to deal with those too in future amendments to the UCO.

Posted by Martin H Goodall LARTPI at 18:03