

# Development Control Committee report



## Changes to the Use Classes Order

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| Exempt / confidential / not for publication | <b>No</b> |
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## Executive summary

A report to present on the updates to the Town and Country Planning (Use Classes Order) 1987 (UCO) as amended which came into effect on 1<sup>st</sup> September 2020.

### 1. Decision/s to be made

That the Committee notes the updates to the UCO and the potential impact on the Development Management Service.

### 2. Why is the decision needed?

The Government has enacted a series of reforms to the Planning System. One element of this was for further amendments to secondary legislation to allow for development, including changes of use, to be undertaken without the requirement for planning permission to be granted by the local planning authority but allowed under changes to the UCO.

Whilst this potentially allows for substantial material changes of use to be enabled without the former need for planning permission, as is often the case with amendments to secondary legislation, there is scope for misinterpretation about what is allowed and not allowed leading to potential confusion,

disappointment and resultant Corporate and/or service complaints and potential increases in Planning Enforcement activity.

To maintain a good service, the local planning authority should be able to demonstrate clear understanding of the rights, conditions and limitations of the said legislative changes and be able to make decisions and advise its customers and stakeholders accordingly.

### 3. Background

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 were made on 20 July and took effect on 1 September 2020. The changes are quite complex, not least due to the requirement to include various transitional provisions to ensure a reasonably smooth move to the new and revised Use Classes Order.

For clarity the changes are set out below:

| Use  | Former Use Class | New Use Class | Use  | Former Use Class | New Use Class |
|--|------------------|---------------|--|------------------|---------------|
| Shop selling essential goods no more than 280 square metres                | A1               | F.2           | Hotels, boarding and guest houses                  | C1               | No change     |
| Shops  | A1               | E             | Residential Institutions                           | C2               | No change     |
| Financial and Professional Services  | A2               | E             | Secure Residential Institutions                    | C2a              | No change     |
| Café or Restaurant   | A3               | E             | Dwellings  | C3               | No change     |
| Pub or drinking establishment  | A4               | Sui Generis   | HMO up to 6 persons                                | C4               | No change     |
| Take-away  | A5               | Sui Generis   | Clinics, Health care, nurseries                    | D1               | E             |
| Office (except A2 use)   | B1a              | E             | Schools non-residential institutions               | D1               | F.1           |
| Products, Process, Research and Development                                | B1b              | E             | Cinemas, concert halls dance halls                 | D2               | Sui Generis   |
| Industrial process can be conducted in residential area without undue harm | B1c              | E             | Gyms, indoor recreation                            | D2               | E             |
| Industrial   | B2               | No change     | Hall, meeting place for community use              | D2               | F.2           |
| Storage and Distribution   | B8               | No change     | Swimming baths, skating rinks indoor sports venues | D2               | F.2           |

The new Use Classes are as follows: Class E (Commercial, business and service uses), Class F.1 (Learning and non-residential institutions) Class F.2 (Local community uses).

It is noted that several of the uses previously within specified Use Classes have now been added to the list of sui generis uses set out in Article 3(6). These are uses:

- as a public house, wine bar, or drinking establishment
- as a drinking establishment with expanded food provision
- as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises
- as a venue for live music performance
- a cinema
- a concert hall
- a bingo hall
- a dance hall

Several other uses that were formerly included in Use Class A1 (shops) are omitted. Without that listing, quite a few of those uses would not have come within the A1 Use Class, because they did not comprise or include (except as a purely ancillary use in some cases) the retail sale of goods. However, for the purposes of the Use Classes Order, if a building or other land is being used for a purpose that, on 31st August 2020, fell within any of Use Classes A1 (Shops), A2 (Financial and professional services), A3 (Restaurants and cafes), or B1 (Business), that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within the new Class E (Commercial, business and service).

With regard to the transitional phase, the relevant period is between 1 September 2020 and 31 July 2021. Any references in the GPDO to the uses or use classes specified in the Schedule to the Use Classes Order are to be read as if those references were to the uses or use classes which applied on 31st August 2020 (i.e. before the UCO was amended by the current regulations).

Therefore, if between those two dates, a prior approval application is made under Part 3 of the Second Schedule to the GPDO, or if an Article 4 Direction is made, modified or cancelled, it is the pre-September 2020 uses, use classes and definitions that are to apply to that application or to that Direction. Where an Article 4 Direction is made before 1 September 2020, references in the Direction

to pre-September 2020 uses or use classes are to continue to be read as references to those uses or use classes.

In the same way, if a planning application (including an application for Permission in Principle or an application for the approval of reserved matters) is made before 1 September 2020, referring to a pre-September 2020 use or Use Class, that application must be determined by reference to that pre-September 2020 use or use class.

There is nothing in the amendments specific to appeals and it is understood that an appeal determined after 1<sup>st</sup> September 2020 will treat the application in relation to the new Use Classes.

#### 4. Implications

|                   |   |                                     |   |
|-------------------|---|-------------------------------------|---|
| Financial         | X | Human rights, equalities, diversity |   |
| Legal             | x | Policies or Council Plan            | x |
| Communication     | X | Procurement                         |   |
| Energy Efficiency |   | Workforce                           |   |

##### a) Financial implications

None – met within current budget. However, there are potential implications for lower planning fees through more development being allowed without the need for formal planning permission from the Local Planning Authority.

##### b) Legal implications

Changes to the Town and Country Planning (Use Classes Order) 1987 as amended will have a potentially significant impact on the caseload and customer service requirements of the Development Management Service, including the need on occasion for related Legal Advice and appeals against the related decisions of the Local Planning Authority to the Planning Inspectorate.

For the proposed CMK Article 4 Direction, due to come into effect on 2nd July 2021, relating to removal of PD rights for office to residential conversions under the Prior Approval procedure, Regulation 3 of the UCO amendments provide for the reference to pre-September 2020 uses or use classes are to continue to be read as references to those uses or use classes.

##### c) Communication

Changes to the UCO should be communicated through customer service such as the related pages of the Council website as well as internally. It is considered essential that stakeholders, in particular, ward members, Parish Councillors and planning agents are informed of the DM Service's understanding and interpretation of these changes.

Whilst it is envisaged that some interest may be expressed through submission of applications for lawful development certificates (LDCs), the extent of the changes, especially in relation to Planning Policy, will take some time for customers to fully appreciate. Early and clear agreement for consistency of communication therefore is important.

#### d) Policies and Local Plan

The adopted Local Plan, Plan:MK (2019) seeks to bring new vitality to the city centre and the cultural life of the Borough. Regeneration of the most challenged estates, new housing, both in the city centre and in the urban and rural areas and the high standards of design and community facilities and accessibility of the original principles will continue with improved access to all supporting the living and working in all parts of the borough.

Along with the incoming changes to the Use Classes Order, certain policies will be potentially more affected by others:

Policy ER11 for protection of local shops, post offices and public houses refuses planning permission for changes of use that involve the loss of existing shops, pubs or post offices unless no longer commercially viable.

Policy ER18 relating to non-retail uses in town centres granting planning permission for non-A1 uses where they inter alia are appropriate within a town centre setting, there is not an existing over-concentration of non-class A1 uses within the town centre boundary and the proposed use would enhance the vitality of the town centre by extending the range of facilities offered and/or stimulating activity outside normal shopping hours.

#### e) Other implications

None

### 5. Alternatives

These changes are already in force and the Council must understand, interpret and apply them efficiently going forward.

## 6. Timetable for implementation

To be noted by the Development Control Committee as it has already taken effect.

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### List of background papers

Amendments to the TCP (Use Classes) Order:

<https://www.legislation.gov.uk/uksi/2020/757/made>