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# Planning Relaxations for Commercial Property

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Changes to the planning system means tighter restrictions on amenity and Space Standards for new dwellings delivered through permitted development. While rights to convert commercial properties to residential are currently undergoing consultation for introduction later in 2021.

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Last year, the Government announced it would be introducing fundamental changes to the planning system. The first of these changes came into force on 1 September 2020 in The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (“the Use Classes Amendment”). The Use Classes Amendment effectively re-categorises commercial property into one single use class.

Simultaneously with the Use Classes Amendment, The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 (“the GPDO Amendment”) came into force. Both pieces of legislation aim to significantly boost the supply of new homes and to allow greater flexibility between commercial uses.

These changes are to be supplemented in 2021 with tighter restrictions on amenity and Space Standards for new dwellings delivered through permitted development.

Further changes to the permitted development rights to convert commercial properties to residential are currently undergoing consultation and will be introduced later in 2021.

### Use Classes Amendment

The classification of certain uses of property and land has undergone a substantial change in the Use Classes Amendment. The changes principally relate to commercial uses, such as retail, offices, financial and professional services, restaurants, cafes, crèches and gyms.

The Use Classes Amendment has placed most of the ‘A’ uses, B1 uses, D1 uses and D2 uses into a single

Use Class – “Use Class E. Commercial, Business and Service”. The new Use Class E is set out at the end of this Article for reference.

Premises which fall within A1, A2, A3, B1, D1 or D2 use on 1 September 2020 are to be treated as falling within the new Class E.

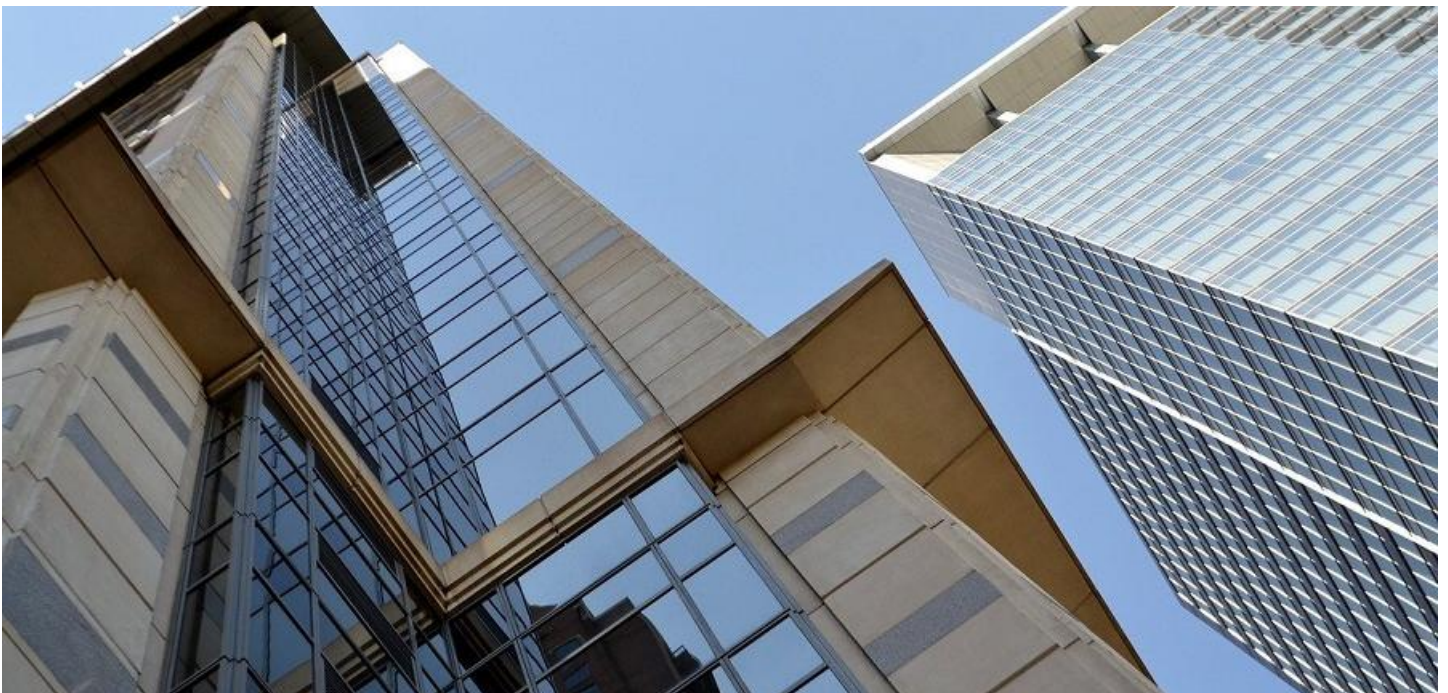
### What do these changes mean?

The purpose of assembling all of these uses into a single Use Class is to provide flexibility in the office and retail sector, to allow premises to operate freely between these uses (within Class E) without requiring planning permission.

For example, a building which was used as a gym on 1 September could now be occupied by a retail unit (also Class E) and vice versa without requiring planning permission. Prior to the Use Classes Amendment, changing the use of premises from a gym to retail could have required a sequential assessment, if it was in a location outside a town/local centre. This will no longer be necessary, where the principle of the use is already established by an existing building within Class E.

Operational development, such as physical works to the building, plant, car park or advertisements, would still require permission. Also, if there are conditions within an operative planning permission restricting the use of those premises, these restrictions would take precedence.

The Use Classes Amendment goes further than just providing flexibility between the uses within Class E. It also permits the ‘part use’ of a building for any purpose within the same class. For example, a shop could include a restaurant/café element, which would all fall





within the same class. There will certainly be opportunities for restaurant/café operators to gain access to prime shopping streets, otherwise protected by strict shopping policies.

The Use Classes Amendment has also been designed to allow flexibility in the office market. It will allow redundant office spaces to convert to other more viable commercial uses. However, the practicalities of converting purpose-built offices to other Class E uses will dictate how frequently these conversions take place.

The new Class E use is estimated to include around 1.5 million buildings, which now predominantly benefit from this greater flexibility.

### The GPDO Amendment

The General Permitted Development (Order) 2015 allows certain type of development to be carried out without the requirement for a full planning application.

Demolition of vacant offices/flats and constructing new purpose-built dwellings

The GPDO Amendment came into force on 31 August 2020 and introduces a fully new permitted development right (Part 20, Class ZA) to demolish vacant B1 uses (offices, light industrial, research & development) or flats and construct new dwellinghouses (C3) in their place. The new dwellings

can either be a detached block of flats or a detached dwellinghouse.

The new right is designed to encourage the replacement of vacant, stand-alone B1 buildings with new dwellings. The right also allows existing dwellings (either single dwellings or blocks of free-standing flats) to be replaced with a larger residential building.

The right is therefore analogous to the Class O permitted development right (to convert offices to residential), which continues to be well-used in selective boroughs. In some boroughs, the conversion from offices to residential contributes more to the housing supply than any other sources. The effectiveness of the Class O right has led some Councils to introduce Article 4 Directions to restrict its use and to protect offices.

The new permitted development right is unusually broad in scope and allows substantial buildings (up to 18 metres; approx. 6 storeys) to be constructed without a full planning application.

### Limitations

Approval for certain aspects of a new residential building still need to formalised via the Prior Approval process with the Local Planning Authority. This process, whilst not as lengthy or cumbersome as the full planning application process, nevertheless still needs to be followed to obtain an approval.

The matters to be considered by the Council in a Prior Approval include the impact of the development on transport and highways; design and flood risk; impact of noise from other premises on residents; design and external appearance; adequacy of natural light in habitable rooms; impact on amenity of neighbouring premises; method of demolition; and the impact of demolition on heritage and archaeology.

There are, naturally, restrictions on this permitted development right relating to height and type of building. The permitted development right does not apply in the most sensitive policy locations, such as conservation areas or within the curtilage of listed buildings.

### Future Changes

On 30 September 2020, the Secretary of State for Housing, Communities and Local Government, Rt Hon Robert Jenrick MP announced that houses delivered through permitted development rights would in the future have to meet the National Described Space Standards. The space standard begins at 37m<sup>2</sup> of floorspace for a new one bed flat with a shower room (39m<sup>2</sup> with a bathroom), ensuring proper living space for a single occupier. These further changes to the permitted development regime will be delivered through a Statutory Instrument, coming into force on 6 April 2021.

In December 2020, the Government commenced consultation on introducing an expanded permitted development right. This right would permit all Class E buildings to convert to residential use without needing planning permission. There are no proposed limits on the size of buildings which could be converted. In theory, a department store, gym or office block of any size could benefit from the new right.

Additionally, the new right is expected to apply in conservation areas. One of the major limitations of the existing permitted development rights is that is dis-applied in conservation areas. There are almost 10,000 conservation areas designated in England, with a significant proportion covering the commercial heart of town and city centres.

### New Class E: Commercial, Business and Service

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public, (formerly A1 use);
- (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, (formerly A3 use);
- (c) for the provision of the following kinds of services principally to visiting members of the public (formerly A2 use):

- (i) financial services,
  - (ii) professional services (other than health or medical services), or
  - (iii) any other services which it is appropriate to provide in a commercial, business or service locality.
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public, (formerly D2 use);
  - (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, (formerly D1 use);
  - (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public (formerly D1 use);
  - (vii) for:
    - (i) an office to carry out any operational or administrative functions;
    - (ii) the research and development of products or processes, or
    - (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. (all formerly B1 uses)



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*Richard Sagar is responsible for a variety of aspects of town and country planning which includes advising commercial, public authority and private clients with particular emphasis on advocacy at public inquiries. His specialist areas of work include residential, retail, waste and energy projects with extensive experience of appeals, development plan examinations, tribunal and compulsory purchase work.*

*Richard has also dealt with a variety of judicial review and High Court challenges, and is well versed in court procedure and protocol. He is a highly regarded and extremely experienced advocate who has acted as lead advocate at numerous appeal Inquiries for complex and large scale developments.*

*Consistently rated as one of the UK's top planning solicitors in Planning Magazine, the leading publication for planning professionals, Richard also has experience of working alongside Counsel, in the role of the instructing solicitor, should the case require.*

*Richard regularly appears as a solicitor advocate for his impressive roster of clients. One interviewed client notes: "He has a forensic, dogged approach to dealing with issues and the formulation of strategy. We found him to be exceptional." Endorsed by 'The Best Lawyers in the United Kingdom' directory for Planning.*