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USE CLASSES ORDER

Introduction

1. The Government has introduced significant changes to the Use Classes Order in England.
2. The relevant secondary legislation comes into force on 1 September, after having been laid on 21 July. It will have permanent effect.

Effects

3. Classes A1 (shops), A2 (professional services), A3 (restaurants), B1 (offices) and parts of D1 will be amalgamated into a new Class E, covering “commercial, business and service” uses. This appears to include commercial offices. Class E is reproduced in Appendix 1.
4. The “A” (shop-type) and “D” (institutions) use classes will be abolished.
5. Those parts of the current Class D1 not incorporated into Class E are transferred to a new Class F1, including education, non-commercial galleries, museums, libraries, public halls, places of worship, and law courts.
6. A new Class F2 is created for community uses. This will include small corner shops (shops selling essentials of less than 280 sq m over 1km from the nearest similar shop), local community halls, swimming pools and outdoor recreation areas.
7. Pubs, wine bars and drinking establishments, pubs with expanded food provision, hot food takeaways, live music venues, cinemas, concert, bingo and dance halls are all added to the list of sui generis uses.

Discussion

8. A wide range of uses will fall within the same Class E use class. Consequently, changes between these uses will not constitute development and so will not require planning permission.
9. Existing buildings or land currently in A1, A2, A3 or B1 use will automatically transition to Class E on 1 September. It appears that existing Class D1 and D2 uses, such as crèches, clinics and gyms, will, however, remain that D use, meaning that planning permission for a change of use would continue to be needed in the usual way.
10. A new category of “other services which it is appropriate to provide in a commercial, business or service locality” is included within Class E. We understand that this would cover uses such as post offices and travel agents. These were formally explicitly included within Class A1, as it is likely that they would have otherwise defaulted to Class A2.
11. The concept of a “part use” is introduced, both within Class E and the Order itself. This appears to confirm that the change of use of part of an existing wider building, use or planning unit to an alternative Class E use would not require permission.

12. Class E does not appear to address the fact that restaurants require extract facilities. Planning applications may still be necessary to construct the necessary plant although in some cases it may lead to restaurants coming into use without adequate ventilation arrangements / no planning controls. Non-planning powers may need to be used for enforcement. The permitted development rights for the construction of extracts under Schedule 2, Part 3, Class C of the GPDO do not appear to be available as these would rely on a change of use to A3 as well, which would no longer be necessary, and is not applicable to listed buildings or units over 150 sq m. This should be confirmed once the transitional arrangements are better understood.
13. A transitional period to 31 July 2021 appears to allow existing prior notification procedure rights, with reference to the 'old' use classes order, to continue to be used until that date, but its legal effect is unclear and requires further investigation.
14. The reference to offices to carry out "any operational or administrative functions" is curiously phrased and the Government's intention may, again, require further explanation.
15. Moving from "pub" to "pub with food" or vice-versa appears to require planning permission as both become separate sui generis uses.
16. The implications for the construction of land use policy relating to offices in areas such as the City of Westminster is unclear.
17. Whilst LPAs could restrict flexibility within Class E on new permissions granted from now, they are likely to struggle to use Article 4 directions to prevent changes of use in existing units. This is because Article 4 removes permitted development rights, whereas changes of use within a single use class are, legally, not development at all and thus cannot be restricted by Article 4 directions.

Appendix 1

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
- (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,
- (c) for the provision of the following kinds of services principally to visiting members of the public—
 - (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,
- (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,
- (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
- (g) 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.

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