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IMPLICATIONS FOR NURSERY SETTINGS



The Government introduced significant changes to the Use Classes Order in England, which came into force on 1 September. Described by Boris Johnson as *“the most radical reforms to our planning system since the Second World War”*, a recent Judicial Review claim against it has just been thrown out, meaning the changes will definitely go ahead.

Class D1 (non-residential institution) and Class D2 (Assembly and leisure) uses have been abolished, along with Classes A1 (shops), A2 (professional services), A3 (restaurants) and B1 (offices).

The majority of these uses have been merged into a new ‘Class E’, including:

- Shops, offices and restaurants
- Medical or health services
- Creche, day nursery or day centre

Changes between these uses will not require planning permission, and should lead to increased flexibility between these uses.

Those parts of the current Class D1 not incorporated into Class E are transferred to a new Class F1, including public halls and places of worship, many of which are occupied by nurseries (now in Class E).

INTENTION

The intention is to provide flexibility to support the diversification of the high street; the effects of Covid-19 may have accelerated the Government’s introduction of this reform.

The additional flexibility may be broadly welcome, but there are implications, beneficial and adverse, for nurseries.

MORE OPPORTUNITIES FOR NURSERIES TO EXPAND

Nurseries will now be able to occupy a wider range of space, including High Street / retail space without requiring planning permission.

Where retail or an office is being considered for a new nursery it may, nevertheless, be prudent to confirm that there are no historic planning controls, such as conditions or S106 agreements, that would continue to apply and prevent occupation as a nursery. A Certificate of Lawfulness application could be obtained to confirm this formally.

A scarcity of D1 property has historically driven demand and therefore also rents and prices. With a constrained supply of D1 property, we have seen very strong demand for D1 property from nurseries, particularly in affluent residential locations.

With some retail and the casual dining sector on its knees and many commercial occupiers assessing what Covid-19 means for their businesses and operational requirements, we anticipate a number of vacant offices, retail units and restaurants will come onto the market, and thus, a greater number of opportunities for operators to expand into new settings.

Will property values now plateau due to increased supply? It is too early to tell, but could be good for a new entrant seeking a rapid expansion.

Nursery operators might now be spammed with unsuitable property opportunities (multi-let, no outside space, incompatible neighbouring uses) by well-meaning high street and commercial agents with little or no expertise in the nursery sector and no grasp of locational and operational requirements.

That said, many vacant offices and restaurants will indeed be suitable for nurseries. For example, out-of-town offices and restaurants, with parking and good connectivity. Think of the detached carvery-type restaurant, often well-located on the fringe of a town centre, with ample parking and perhaps also a large beer garden which could convert easily to a nursery with outdoor playspace.

CHANGE OF USE TO NURSERIES

Churches and educational establishments will now require a change of use for nursery use. This is a headache, as it is time consuming and has cost implications, and also carries planning risk (i.e. no guarantee planning permission will be granted).

The likelihood of planning permission being granted will depend on the drafting of existing planning policy, the attitude of the Council and, potentially, also local considerations and pressures.

Many Council's planning policies seek to protect "social and community facilities" which often include the (former) D Class uses. An applicant may now need to demonstrate that a change of use to Class E to facilitate a nursery would be consistent with the intention of the policy. It is likely that, should a Council grant planning permission for the change of use to Class E, the Council would impose a planning condition that would limit the use to nursery use only within Class E, to prevent a unit granted planning permission for a nursery subsequently converting to a shop or restaurant, and therefore negating the intention of a social and community protection policy.

UNAUTHORISED / UNCERTAIN CHANGES OF USE

As a result of splitting halls, education facilities and churches into Class F1, and nurseries into Class E, it is unclear when a facility is operating within its permitted use i.e. does a pre-school, operating within school hours during term-time, constitute an educational facility (Class F1), a nursery (Class E), or a combination of the two (sui generis)?

Is there is going to be a debate as to whether planning permission is required to run childcare facilities from a public / church / village hall, (a huge number of which are used extensively during the week as nurseries), and, if so, at what point a change of use occurs? Weekday childcare operators never previously needed to worry before about the detailed requirements that can be raised by the planning system.

For church halls, we hope that that planning permission would not be required where it could be shown that the nursery use is ancillary to the primary religious function of the building.

USER CLAUSES

We recommend user clauses within existing leases are reviewed to establish the extent of flexibility a leaseholder may now have, which will vary depending on the circumstances of the property and lease.

Issues may arise at rent reviews. If advising on a rent review of a nursery with an old 'D1' User Clause, we would hope sensible lease consultants refer to only nursery rental evidence. However, a dispute may arise if alternative uses provide a materially higher or lower tone of rental evidence.

EFFECT ON VALUE – NEGATIVE / FLAT?

In our experience, the highest rents and prices paid for churches and church halls have been for nursery use which, as they are income producing, can generally outbid religious orders or community groups, whose income is derived from donations.

The additional planning risk, and time and cost requirements of obtaining a Certificate of Lawfulness (if required) may affect values or basis of offers, for uses remaining within Class F1 such as churches.

Nursery operators and investors have informed us they have discounted offers to reflect planning risk, or that offers made are now conditional on a change of use/Certificate of Lawfulness. Generally, this is bad news for the vendor.

For example, we have recently sold a valuable D1 (now F1) property in an affluent London location. An education investor informed us they had discounted their offer for the freehold by 10% to reflect the new perceived planning risk. An additional party submitted an offer on a conditional basis, which carried risk for the vendor.

On the other hand, this could be good news for the commercial landlord with a vacant commercial building, as now, more valuable uses such as nurseries could be established. Whilst many commercial sectors are in distress, nurseries were one of the first sectors to return after lockdown and remain open during Lockdown 2.0. There are several new entrants acquisitive for new settings; demand from nurseries for well-located commercial premises could outstrip demand from traditional commercial sectors.

EFFECT ON OCCUPANCY – NEGATIVE?

Several operators have expressed concern to us, that occupancy levels may fall if new settings opening up within their catchments. If more available property creates more settings and registrations, demand for places and occupancy levels are in turn likely to drop. A good quality operator opening a new nursery within one's catchment, will likely have an adverse effect on occupancy, unless demand within the catchment is very high indeed or you benefit from a waiting list.

There appear to be many unintended consequences of the reform, which is generally bad news for nurseries in the middle of a transaction or planning system, but longer-term we would hope to see increased supply and therefore more opportunities for operators seeking to expand.

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