

REPORT TO: Environment and Urban Renewal Policy
and Performance Board

DATE: 30th September 2020

REPORTING OFFICER: Strategic Director – Enterprise,
Community and Resources

PORTFOLIO: Physical Environment

SUBJECT: Revisions to the Town & Country
Planning Use Class Order

WARDS: Borough wide

1.0 PURPOSE OF THE REPORT

- 1.1 The purpose of this briefing is to update the Board on changes to national planning regulations that remove, in many circumstances, the need for planning permission where change of use is involved. The Government's intent is make it easier for high street uses to adapt and change according to local circumstances without a planning application.
- 1.2 Other changes, as described below, will also be introduced including new "Use Classes" in relation to "learning and non-residential institutions" and "local community uses".
- 1.3 It should be noted that there is a legal challenge to both the General Permitted Development Order (GPDO) and Use Classes Order (UCO) changes. The High Court has directed that this action will be heard in a "rolled-up" hearing in the first half of October. This means that the Court will deal with both the application for leave to proceed and with the substantive claim at the same time. This is a procedure that is sometimes adopted in cases of urgency. The legal challenge to the legislation is serious, and the grounds on which this challenge is based raise important legal issues, especially in relation to the failure to carry out a Strategic Environmental Assessment. The alleged failure to take proper account of the responses to consultation, or to consider the government's own specialist advice, also raises a serious *Wednesbury* (unreasonableness) issue.

2.0 RECOMMENDATION: That

- 2.1 **The Board note the proposed changes to national planning regulations covering "Use Classes" that categorise the way that land and buildings are used.**

3.0 SUPPORTING INFORMATION

- 3.1 A broad range of uses for land and buildings fall into various categories known as “Use Classes” as defined by national planning regulations dating from 1987¹. In the event that a change to the use of a building is proposed, it may require an application for planning permission (or prior approval); for example, to change from a shop to a restaurant currently requires planning permission.
- 3.2 New planning regulations are now in force (1 September 2020) and will create three new Use Classes and most importantly, a new broad category of uses mainly found in town centres, which the Government contend will “...*allow commercial, retail and leisure uses greater freedom to adapt to changing circumstances and respond to the needs of their local communities*”. The effect of the changes in planning law are that a wide range of changes to the use of buildings will be permissible and without a need to obtain planning permission.

4.0 POLICY IMPLICATIONS

4.1 Changes made by the Regulations

- 4.2 The new use Class E (“**Commercial, Business and Service**”) will replace and encompass those uses that previously fell within the following Use Classes:-

- Class A1 - shops;
- Class A2 - financial and professional services (such as banks, solicitors and estate agents);
- Class A3 - restaurants and cafes, and;
- Class B1 - business.

The new “Class E” will also include gyms, health centres, clinics, nurseries and day centres.

- 4.3 The consequence of the imminent change in planning law is that buildings used for the above uses will not need to obtain planning permission for changes within the Use Class; so to change from a shop to a gym to a café will not require planning permission.
- 4.4 Two further new Use Classes will also be introduced, which the Government say are designed “...*to ensure that those uses which are important to local communities can be protected through the planning system.*” Changes of use within (but not between) each of these Use Classes, as described below, will not require planning permission.
- 4.5 Class F1 is for **learning and non-residential institutions**. Specifically, any use (not including residential use):-
- (a) for the provision of education;
 - (b) for the display of works of art (otherwise than for sale or hire),
 - (c) as a museum,
 - (d) as a public library or public reading room,

¹ The Town and Country Planning (Use Classes) Order 1987

- (e) as a public hall or exhibition hall,
- (f) in connection with, public worship or religious instruction,
- (g) as a law court.

- 4.6 Class F2 is for **local community use**. Specifically, any use as:-
- (a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—
 - (i) the shop's premises cover an area not more than 280 metres square, and
 - (ii) there is no other such facility within 1000 metre radius of the shop's location,
 - (b) a hall or meeting place for the principal use of the local community,
 - (c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms,
 - (d) an indoor or outdoor swimming pool or skating rink.
- 4.7 The impending revisions also provide for the need for the Council's consideration of some uses, because a change away from certain existing uses will in future require planning permission; whereas previously this wasn't the case. The Government have achieved this by taking certain uses out of the Use Classes Order altogether.
- 4.8 The above change means that any change to - or from - the following uses will require planning permission:-
- 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;
 - as a cinema;
 - as a concert hall;
 - as a bingo hall, and;
 - as a dance hall.
- 4.9 Reactions to the proposed changes
- 4.10 The changes have been welcomed by many in the private sector. The director of policy at the British Property Federation was recently reported to have said that the changes struck a balance and that *"I think they are radical, without being reckless"*.
- 4.11 The British Retail Consortium have sounded a note of more caution in saying: *"Reducing bureaucracy is fine in principle but we need to be careful not to undermine councils' ability to properly plan their high streets."*
- 4.12 In contrast, the chairman of the Planning Officers Society has highlighted more significant concerns in saying that: *"the consequences will be phenomenal. Just leaving the market to do what it wants is very unlikely to deliver the combination of uses that attract people to town centres. At the moment, councils cluster uses to provide vitality. This will decimate town*

centres as you end up with lots of 'dead' uses not serving the public. It's madness."

4.13 Implications for Halton

4.14 The principle aim of these reforms, to create vibrant, mixed use town centres by allowing businesses greater freedom to change to a broader range of compatible uses is generally welcomed. The changes are generally considered to align with the significant steps taken by the Council - both prior to and since the pandemic - to support the regeneration of our town centres.

4.15 The role of town centres has always been a continually evolving one, albeit in recent years the pressures on the traditional 'high street' have significantly mounted and then recently accelerated with the substantial challenges of Covid 19. The expectation from communities as to what they expect to find on modern high streets has also changed.

4.16 The relaxation of certain planning controls in themselves will have little bearing on the success of a business venture, and it is clear that this move is not supported by evidence that the need for planning permission is a significant barrier to business. These changes were not subject to prior consultation – with the Government's rationale for not doing so based on an earlier consultation having been undertaken about lesser reforms and the *"pressing need to support town centres."*

4.17 However, the relaxations *will* allow flexibility for town centre businesses and the removal of a hurdle which some, particularly small businesses, may perceive as a bureaucratic hurdle. The new Commercial, Business and Service Use Class may also help stores adapt their space for delivery centres and pick up and collect facilities, which are all increasingly part of the current retailing model.

4.18 Probably the biggest concern of these changes is on the Council's "town centre first" planning policies designed to protect our town centres and the range of uses allowed within them. Under the changes any use within the new town centre use class, anywhere, will be able to change to any other, without planning permission. The impacts of this are that individual shops in the town centre could be left isolated, surrounded by non-retail uses with less footfall to and from them and as a result the "offer" of our town centres could become diluted.

4.19 Outside of the town centre, there is also a concern that as a consequence of the changes, food retailers target out of town business parks to convert properties into supermarkets, a change that will not require planning permission.

4.20 Positively though, the impending changes to national planning regulations do not dilute other licensing controls impacted by these changes, although

the Government has also recently introduced separate changes to the Pavement café licensing regime.

- 4.21 The changes also mean that changes of use to (or from) public houses and hot food takeaways require planning permission with the consequence that local pubs can be protected. Also, the proliferation of hot food takeaways can be prevented, which can be an important tool in supporting the reduction of health inequalities in the borough.
- 4.22 The 'Local community' use class (F2) also includes the use of buildings where this is principally by the local community and the importance of small, local shops in meeting the day to day shopping needs of local communities is recognised, including those within large residential estates and outside of main shopping areas. The new controls, to require planning permission where the loss of a small local shop (if no other such shop exists within 1km) is welcomed.
- 4.23 The changes from 1 September are as a consequence of amendments to existing planning regulations and it is understood that a new set of (consolidated) regulations will be introduced next year. However, officers are not currently aware that the imminent changes ensure that controls are in place for changes of use close to sites covered by The Control of Major Accident Hazard Regulations (COMAH), where proposals which are likely to attract large number of people, such as a supermarket – which could take place without planning permission as a consequence of the changes - are normally unacceptable on safety grounds.

5.0 OTHER IMPLICATIONS

- 5.1 There will be a need to edit the relevant policies in the DALP to ensure that reference is now made to the new Use Class Order.

6.0 RISK ANALYSIS

- 6.1 A key risk is the loss of control. However, there are no practical actions that can be taken to mitigate these risks. The biggest concern of these changes is on the Council's "town centre first" planning policies designed to protect our town centres and the range of uses allowed within them. Under the changes any use within the new town centre use class, anywhere, will be able to change to any other, without planning permission. The impacts of this are that individual shops in the town centre could be left isolated, surrounded by non-retail uses with less footfall to and from them and as a result the "offer" of our town centres could become diluted. Outside of the town centre, there is also a concern that as a consequence of the changes, food retailers target out of town business parks to convert properties into supermarkets, a change that will not require planning permission.

7.0 EQUALITY AND DIVERSITY ISSUES

7.1 There are no equality and diversity implications arising from this report.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
<u>The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020</u> <u>Table of existing and proposed Use Classes</u>	Planning & Transport Strategy, Municipal Building	Alasdair Cross