

### NEW USE CLASSES ORDER

New legislation came into force on 21 April 2005 to amend the Town & Country Planning (Use Classes) Order 1987.

By way of background, the Use Classes Order categorises land uses. The General Permitted Development Order, which has also been amended, permits certain changes of use between use classes without the need for a specific grant of planning permission. The previous regime was felt to be lacking in both clarity and its effectiveness, as types of commercial use have altered since 1987, and indeed, new ones have evolved. For example, the classification of uses such as internet cafes has caused difficulties, and use class A3 (food and drink) was felt to be too wide – potentially allowing permitted changes of use from anything from a tea shop to a “super pub”.

The changes introduced on 21 April apply mainly to commercial uses.

**Class A**, relating to uses usually to be found in shopping areas, is now split into five sub-classes rather than the previous three. These are:

#### A1: Shops

This class now specifically includes internet cafes, which are seen in policy terms to be useful amenities to members of the public and therefore should be allowed in predominantly shopping areas. Any sale of hot drinks and food does however need to be ancillary to the internet use to ensure the A1 categorisation.

Sandwich bars are included in this class, so long as any sales of hot food and drink, and the presence of a few tables for customers, is only an ancillary part of the business.

Previously, the General Permitted Development Order allowed the change of use from car showrooms to shops. This is no longer the case.

Retail warehouse clubs are now excluded from any classification, and are therefore classed as sui generis.

#### A2: Financial and Professional Services

This class has not been altered. A change of use from a shop to a use other than the retail sale of goods will still need planning permission. However, changes within sub-class A2, e.g. from estate agents to solicitors to bank etc. will still be allowed.

#### A3: Restaurants and Cafes

This new class A3 is limited solely to establishments whose primary purpose is the sale and consumption of food on the premises. If the restaurant or café also has a bar area, it will still fall within A3 so long as the serving of drinks is ancillary or incidental to the serving of meals.

#### A4: Drinking Establishments

This new use class is specifically aimed at pubs and bars. Where it is clear that the primary use of the pub or bar is the purchase and consumption of alcoholic drinks on the premises, then it will fall into class A4 notwithstanding the fact that there may be a sizeable dining area as is the case in many modern pubs and bars.



#### A5: Hot Food Takeaways

This class has been created to deal with premises where the primary purpose is the sale of hot food for consumption off the premises.

It has been felt necessary to categorise hot food takeaways separately from restaurants and cafes because of the different environmental issues, which need to be controlled, such as litter and the noise arising from longer opening hours.

**Class B** of the Use Classes Order (business and industrial uses) remains unchanged by the new legislation.

**Class C** (hotels and residential uses) remains unchanged.

**Class D** (other non residential uses) remains largely unchanged. The amended Use Classes Order specifically states that nightclubs are now sui generis and therefore will always be subject to development control procedures in order to ensure that environmental issues are considered and dealt with.



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## TIME LIMITS FOR PLANNING APPEALS – A REMINDER

The time limit for lodging planning appeals has been changed again with effect from January 2005.

The deadline for submitting planning appeals has reverted from three months to six months from the date of the decision letter refusing planning permission, or six months from the date when the planning application should have been determined.

This revised six-month deadline applies to all appeals against:

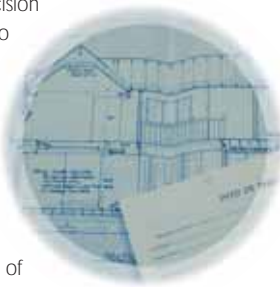
- Refusal of planning permission
- Conditions applied to a planning permission
- Refusal of approval of the Local Planning Authority under a Development Order
- Non-determination of a planning application within the prescribed periods

The new (re-instated) six month period applies to all decisions made on or after 14 January 2005, and to all decisions as at that date where the old period for appeals of three months had not run out. Therefore the new six month period will apply to all decisions made on or after 14 October 2004.

Developers will probably welcome the change back to six months. Although the previous change to three months was intended to streamline the appeals system, it has had the opposite effect. Developers have been forced to lodge appeals in many cases owing to the time constraints, rather than having the time to discuss and submit alternative proposals to the planning authority. The result has been a greatly increased workload for the Planning Inspectorate, who are currently warning of 45-50 week lead times for carrying out site visits in appeals made by way of written representations.

### SUPPLEMENTARY PLANNING GUIDANCE

In a recent High Court case, an Inspector's decision on appeal was quashed as she had not taken into account relevant supplementary planning guidance (which had been referred to in a number of relevant development plan policies she had considered) as it had not been placed before her by the authority or appellant. The Court held that she should have requested further information from the parties and then applied the SPG to the circumstances of the case.



### DEAL WATCH

Jocelyn Denton and Mark Dixon recently acted for Newham Council in the negotiation of what is believed to be the largest planning agreement, in terms of value, ever completed. The Stratford City development is a £4 billion, 13.5 million square feet regeneration project in Stratford, East London and the S106 commitments secured from the developer total some £120 million, (excluding affordable housing contributions). The package will deliver new schools, health facilities, transport infrastructure improvements, employment and training commitments, community facilities, affordable housing, public open space/public access and other benefits.

### ADVICE FROM PLANNING OFFICERS

It is very common practice for advice to be sought from planning officers whether, for example, a proposed development requires planning permission. In many cases, those who seek such advice treat it as the binding view of the authority and act upon it. The Court has held that the concept of a legitimate expectation that the authority will follow such officers' advice has only a very limited role to play in planning. In a recent case the High Court held that a complaint that arose as a result of unintentionally misleading advice from a planning officer in relation to an informal inquiry could not possibly amount to a legitimate expectation so as to warrant the grant of planning permission contrary to very powerful planning objections identified by an Inspector. In practice this means that proposed developers should be very cautious indeed when relying upon advice on planning law or planning policy from planning officers as in the vast majority of cases the authority will not be bound by the officers' advice.

### REGIONAL PLANNING GUIDANCE

The High Court has rejected a claim that the policy framework in PPG11 created a legitimate expectation that important policies in a draft RPG would be the subject of discussion before the panel appointed to consider it. The Court indicated it was clear that there was no guarantee that any particular matter would be canvassed at the public examination or that the Secretary of State would adopt any or all of the panel's recommendations.



#### INFORMATION

*If you have any queries on any planning & development matters please contact:*

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or Jocelyn Denton at York on 01904 625790**

This bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to

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**The law is stated as at 12 May 2005  
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