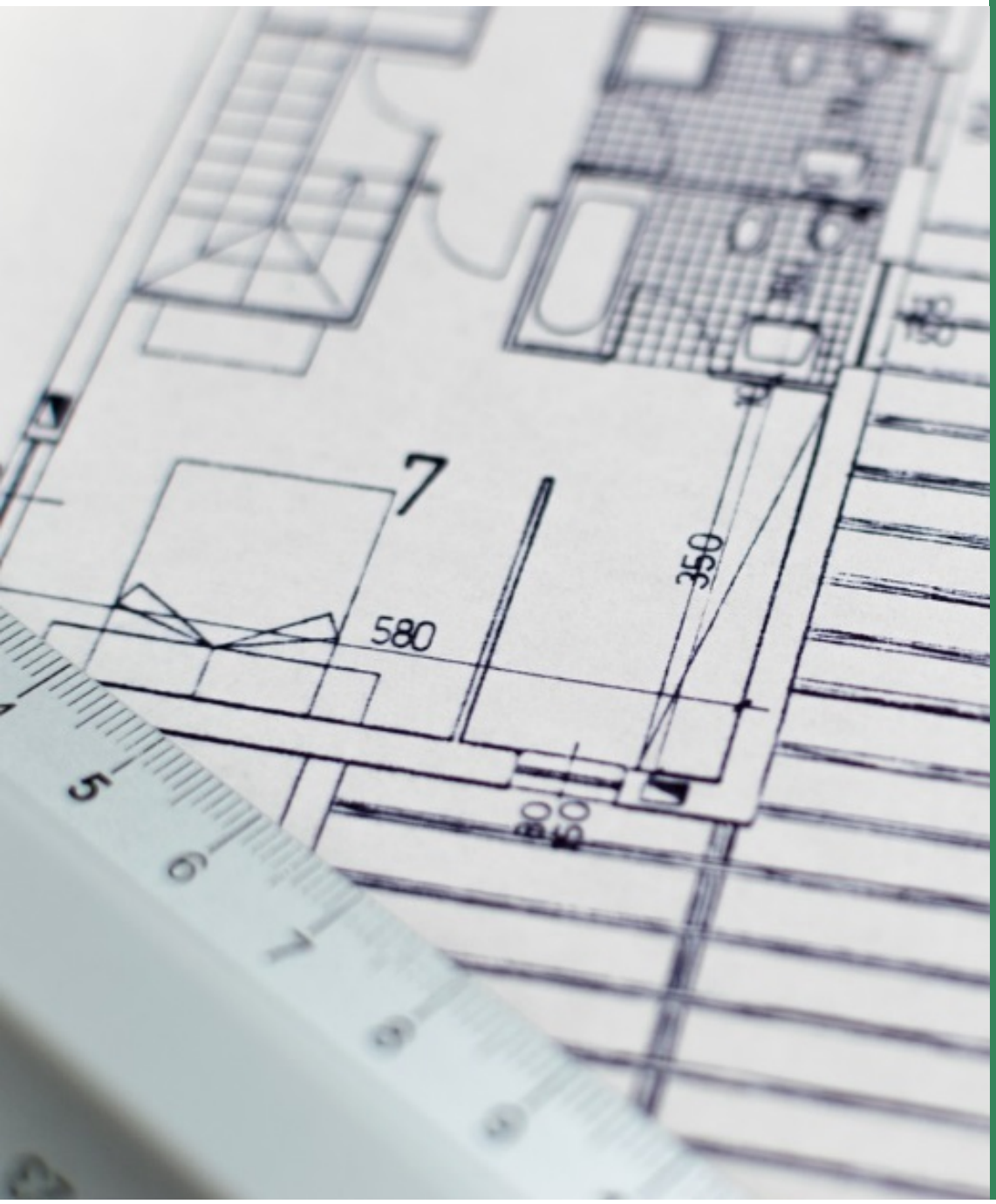
HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 01301, 12 July 2017

Planning: change of use

By Louise Smith



Inside:

Contents

Summary

This briefing paper applies to England only. For information about use classes in the other UK countries see section 9 of the joint Library briefing paper Comparison of the planning systems in the four UK countries: 2016 update.

Use classes of land and buildings

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "use classes". The categories give an indication of the types of use which may fall within each use class. There are four main categories:

- Class A covers shops and other retail premises such as restaurants and bank branches;
- Class B covers offices, workshops, factories and warehouses;
- Class C covers residential uses; and
- Class D covers non-residential institutions and assembly and leisure uses.

These categories are then further split up into a number of subclasses. Not all uses are put into a use class; these are called "sui generis". A further regulation, the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "2015 Order) grants what are called "permitted development rights". Permitted development rights are a right to develop without the need to apply for planning permission, although in some cases "prior approval" may be needed. Under the 2015 Order planning permission is not needed for changes in use of buildings within each subclass and for certain changes of use between some of the classes.

Removing permitted development rights

In some circumstances local planning authorities can suspend permitted development rights in their area, under Article 4 of the 2015 Order.

Recent changes

In 2015 betting and payday loan shops were moved into the "sui generis" category of use classes, meaning that a planning application is now necessary before a building can be converted into those uses. In May 2017 the former Government removed the permitted development rights which allowed pubs to change use or to be demolished.

Office to residential change of use

The office to residential change of use permitted development right has attracted controversy. This was originally a temporary three year permitted development right, but subsequent regulations have put this on a permanent footing from 6 April 2016. Concern has been expressed about the impact on office rents and availability and on the quality and affordability of the housing produced.

Changes coming into force

Regulations will also come into force to allow for light industrial buildings to change use to housing from 1 October 2017. There are also proposals to grant further agricultural to residential change of use permitted development rights.

Calls for further change

There are calls to give greater powers to local authorities to prevent change of use to betting shops in areas where there are already clusters of them. There are also calls to curb the change of use of shops into charity shops.

1. The use class system

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "use classes". The categories give an indication of the types of use which may fall within each use class. It is only a general guide and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which class a particular use falls into. There are four main categories:

- Class A covers shops and other retail premises such as restaurants and bank branches;
- Class B covers offices, workshops, factories and warehouses;
- Class C covers residential uses; and
- Class D covers non-residential institutions and assembly and leisure uses.

Further information about use class categories is available on the Planning Portal website.

A further regulation, the Town and Country Planning (General Permitted Development) (England) Order 2015 (No. 596) ("the 2015 Order") grants what are called "permitted development rights". Permitted development rights are a right to make changes to a building without the need to apply for planning permission. Under this order planning permission is not needed for changes in use of buildings within each class and for certain changes of use between some of the classes. A table on the Planning Portal website sets out which changes of use between classes are permitted.

Not every use of a building fits within a use class category.

Not every use of building is put into a use class under this legislation. Examples of these are theatres, hostels providing no significant element of care, scrap yards, petrol stations, nightclubs, launderettes, taxi businesses, amusement centres, casinos, and betting and payday loan shops. If a building or business is "sui generis" i.e., not in a particular category, or the new use is "sui generis", then there will normally need to be a planning application to change the use under the procedures set out in the *Town and Country Planning Act 1990*.

Recent changes have permitted some sui generis use to change to residential use under permitted development rights. Being sui generis does not preclude a change of use, it just means that a planning application will normally need be made so that the local planning authority can consider the implications of change of use in detail.

A change of use of land or buildings will require planning permission if it constitutes a material change of use.[1] There is no statutory definition of "material change of use". Whether a material change of use has taken place is a matter of fact and degree and this will be determined

[1] HM Government, Planning Practice Guidance, When is permission required? Paragraph: 011 Reference ID: 13-011-20140306 Revision date: 06 03 2014

on the individual merits of a case. In the first instance this will be determined by the relevant local planning authority.

1.1 Prior approval

Prior approval from the LPA is required before certain permitted development changes of use can go ahead.

For many permitted development rights which relate to change of use of buildings there is a "prior approval" system, set out in the 2015 Order. Prior approval requires the local planning authority (LPA) to approve technical aspects of the development, such as its siting, design and transport and highways issues. These pre-approval requirements vary depending on the exact type of change of use permitted development right. If the LPA decides to refuse prior approval on these issues then the change of use may not go ahead.

Further information about prior approval, what it is and when it is required is provided in the Government's Planning Practice Guidance.

2. Article 4 Directions

Permitted development rights can be removed if a local authority makes an "article 4 direction".

In some circumstances local planning authorities can suspend permitted development rights (including those relating to change of use) in their area. Local planning authorities have powers under Article 4 of the *2015 Order* to remove permitted development rights. While article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified and has wide powers to modify or cancel most article 4 directions at any point.[2]

Article 4 directions must be made in accordance with national Government guidance given in the National Planning Policy Framework which directs that there must be a clear justification for removing national permitted development rights:

> 200. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

The online Planning Practice Guidance (PPG) which accompanies the NPPF states that provided there is justification for both its purpose and extent, it is possible to make an article 4 direction covering:

- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect[3]

LPAs can liable to pay compensation in some circumstances, where permitted development rights are withdrawn.

There are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction. The PPG sets out that if a local planning authority makes an article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

- refuses planning permission for development which would otherwise have been permitted development; or
- grants planning permission subject to more limiting conditions than the General Permitted Development Order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

---

2 Department for Communities and Local Government, Extending permitted development rights for homeowners and businesses: technical consultation, November 2012, page 20

3 HM Government, Planning Practice Guidance, What can an article 4 direction do? Paragraph: 037 Reference ID: 13-037-20140306 Revision date: 06 03 2014

> Paragraph: 042 Reference ID: 13-042-20140306
>
> Revision date: 06 03 2014[4]

Whereas before April 2010 the Secretary of State confirmed certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation. A local planning authority must, as soon as practicable after confirming an article 4 direction, inform the Secretary of State via the National Planning Casework Unit. The Secretary of State does not have to approve article 4 directions, and will only intervene when there are clear reasons for doing so.[5]

The withdrawal of development rights does not necessarily mean that planning consent would not be granted. It simply means that an application has to be submitted, so that the planning authority can examine the plans in detail.

---

4 HM Government, Planning Practice Guidance, Is compensation payable where permitted development rights have been withdrawn? Paragraph: 042 Reference ID: 13-042-20140306 Revision date: 06 03 2014

5 HM Government, Planning Practice Guidance, Does an article 4 direction have to be submitted to the Secretary of State? Paragraph: 051 Reference ID: 13-051-20140306 Revision date: 06 03 2014

3. Key recent changes on change of use

3.1 May 2013: flexible business uses

In July 2012 the coalition Government published a consultation, New opportunities for sustainable development and growth through the reuse of existing buildings. It proposed to create new permitted development rights to assist change of use for a range of new business uses.

On 24 January 2013, the Government confirmed that it would make the following changes:

> **Getting redundant agricultural buildings back into use**
>
> As part of the 2011 growth review we undertook to review how change of use is handled in the planning system. We ran a consultation "New opportunities for sustainable development and growth through the reuse of existing buildings" in July 2012.
>
> Following that consultation, I can confirm that in order to help promote rural prosperity and job creation, agricultural buildings will be able to convert to a range of other uses, but excluding residential dwellings. There will be a size restriction and for conversions above a set size a prior approval process will be put in place to guard against unacceptable impacts, such as transport and noise.
>
> **Flexibility for business uses**
>
> To enhance flexibility in the planning system, which can be vital when a quick response is necessary to support business growth, we will increase the thresholds for permitted development rights for change of use between business/office (B1) and warehouse (B8) classes and from general industry (B2) to B1 and B8 from 235 m(2) to 500 m(2).
>
> **Getting empty town centre buildings back into use**
>
> To create opportunities for new and start-up businesses and help retain the viability and vitality of our town centres, we will allow a range of buildings to convert temporarily to a set of alternative uses including shops (Al), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) for up to two years.[6]

These changes were made through the (now revoked) Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (SI 2013/1101), which came into force on 30 May 2013.[7] The permitted development rights were transferred across to the Town and Country Planning (General Permitted Development) Order 2015.

The coalition Government also published a summary of responses to the July 2012 consultation on 9 May 2013. In it the Government confirmed that it would not proceed with the proposal to allow use class C1 hotels

6 HC Deb 24 January 2013 c16WS

7 Department for Communities and Local Government, New measures coming into force ensure the very best use is made of empty and underused buildings, 9 May 2013

to have permitted development rights to convert to class C3 houses. The Government noted that "in comparison with the rest of the proposals in this consultation, there was a general lack of support for this idea." The Government said it would seek change of use of hotels to houses by other means:

> 43. The Government will look to local authorities to manage effective change of use of surplus or outdated hotel accommodation to new uses through Local Plan policies and, where appropriate, Local Development Orders.[8]

3.2 April 2014: new residential uses, shops, schools and childcare facilities

On 6 August 2013 the coalition Government published a consultation, Greater flexibilities for change of use. The consultation proposed new permitted development rights in five areas:

- To create a permitted development right to assist change of use and the associated physical works from an existing building used as a small shop or provider of professional/financial services (A1 and A2 uses) to residential use (C3);
- To create a permitted development right to enable retail use (A1) to change to a bank or a building society;
- To create a permitted development right to assist change of use and the associated physical works from existing buildings used for agricultural purposes to change to residential use (C3);
- To extend the permitted development rights for premises used as offices (B1), hotels (C1), residential (C2 and C2A), non-residential institutions (D1), and leisure and assembly (D2) to change use to a state funded school, to also be able to change to nurseries providing childcare; and
- To create a permitted development right to allow a building used for agricultural purposes of up to 500m2 to be used as a new state funded school or nursery providing childcare.[9]

From April 2014 certain agricultural buildings have permitted development rights to change to residential dwelling use.

The Government published its response to the consultation on 14 March 2014. It confirmed that it would go ahead with the majority of these new change of use permitted development rights as proposed. An exception to this was that the change to allow agricultural buildings to convert to residential use would not apply in areas of National Park land and other protected areas. These changes were be implemented through the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 (SI 2014/564), which came into force on 6 April 2014.

---

8 Department for Communities and Local Government, New opportunities for sustainable development and growth through the reuse of existing buildings: Summary of responses, 9 May 2013

9 Department for Communities and Local Government, Greater flexibilities for change of use, 7 August 2013

3.3 April 2015: commercial, industrial and residential use changes

The coalition Government announced a series of new change of use permitted development rights in:

- The Budget 2014;
- Supporting High Streets and Town Centres Background Note, 6 December 2013;
- A Written Ministerial Statement on 30 April 2014; and
- Technical consultation on planning, July 2014

The coalition Government introduced a wide range of new change of use permitted development rights at the end of the last Parliament.

The Government did not issue a formal response to the Technical consultation on planning before the 2015 General Election. It did however, confirm, in its 25 March 2015 written statement to Parliament, that a number of the changes proposed in it would be made through publication of the following statutory instruments:

- *The Town and Country Planning (General Permitted Development) (England) Order 2015* No. 596 (the "2015 Order")
- *The Town and Country Planning (Compensation) (England) Regulations* No. 598
- *The Town and Country Planning (Use Classes) (Amendment) (England) Order* 2015 No. 597

These were laid shortly before Parliament dissolved for the 2015 general election and the majority of the provisions came into force from 15 April 2015. The explanatory notes to these regulations set out the scope new change of use permitted development rights as follows:

> 7.2 A new permitted development right, for a three year period, will allow **storage or distribution buildings** (B8) to change use to **residential** (C3). Up to 500m2 of floor space will be able to change to residential use. The right is subject to a prior approval process covering transport and highways, air quality impacts on intended occupiers, noise impacts of the development, risks of contamination, flooding, and the impact the change of use would have on existing industrial uses and or storage or distribution uses. If the site is under an agricultural tenancy then the consent of both the landlord and the tenant will be needed for any development to be permitted. The right only applies to buildings that were last used or were in use as storage or distribution (B8) on or before 19th March 2014. This would include former businesses in an office use (B1) or general industrial (B2) buildings that have changed use to storage or distribution (B8) use under existing permitted development rights, provided that they were in such uses on 19th March 2014. However, there is an additional requirement that a building seeking to change use must have been in B8 use for a period of a least 4 years before the date development begins. The new right does not apply in National Parks, Areas of Outstanding Natural Beauty, the Broads and World Heritage Sites, Listed Buildings or land within the curtilage of Listed Buildings, Scheduled Monuments, or in Sites of Special Scientific Interest, Safety Hazard Areas and Military Explosives Storage Areas. After changing to a residential use, existing permitted development rights for dwelling houses (C3) will not apply.

7.3 A new permitted development right will allow **amusement arcades/centres and casinos**, which are sui generis uses and so do not sit in any specific use class, to change use to **residential** (C3) use and carry out associated building works that are reasonably necessary to make this change. This will enable reuse of existing buildings, support high streets and increase housing supply. Up to 150 m2 of floor space will be able to change to residential use. The right is subject to a prior approval process covering transport and highways, flooding, contamination and, where buildings works are to be carried out under the permitted development right, design. The right does not apply in National Parks, Areas of Outstanding Natural Beauty, the Broads and World Heritage Sites, nor to land within the curtilage of Listed Buildings or Scheduled Monuments, or Sites of Special Scientific Interest, Safety Hazard Areas and Military Explosives Storage Areas. After changing to a residential use, existing permitted development rights for dwelling houses (C3) will not apply.

(…)

7.5 A new permitted development right will allow the change of use from **shops** (A1) to **financial and professional services** (A2) to help businesses adapt more quickly to market changes and support high streets. The rights will also apply equally to premises that have changed to a shop (A1) following a planning permission granted by a local planning authority, or by exercising a permitted development right.

7.6 **Betting offices and pay day loan shops** will be removed from the A2 use class and become **sui generis**. They will continue to benefit from the permitted development rights to change to A1 and A2 uses. They will also benefit from the permitted development right to temporarily change of use for a period up to 2 years (Class D of Part 4 of Schedule 2 to the Order), after which they can revert to their previous use or change to A1 or A2 uses. Premises that have changed use to a betting office or pay day loan shop under the Class D temporary permitted development right retain their original use class and will revert to that at the end of the two year period.

7.7 A new permitted development right will allow the change of use from **shops** (A1), **financial and professional services** (A2), **betting offices, pay day loan shops and casinos** to **restaurants and cafés** (A3) and for limited building works to allow the installation of extraction and ventilation units, and for waste storage and management. This will enable businesses to adapt and support high streets. Up to 150m2 floor space will be able to change use and the right is subject to a prior approval process covering noise, smell/odours, transport and highways, hours of opening as well as siting and design in relation to extraction, ventilation, waste management, storage and undesirable impacts on shopping facilities. Shopping impacts will be assessed in relation to the effect of the development on the sustainability of key shopping centres and the provision of services. This is intended to enable local planning authorities to protect valued and successful retail provision in key shopping areas, such as town centres, while underused shop units are kept in use outside those areas. Local planning authorities may consider the impact of the development on the provision of important local services, such as post offices, though only if there is a reasonable prospect of the premises being occupied by another retail use. Premises may revert from A3 use to their original use class if that was A1 (shops) or A2 (financial and

professional services) under existing permitted development rights. A planning application will be required for change of use from A3 to a betting office or pay day loan shop. The existing permitted development right for the temporary change of use from A1 and A2 to A3 for a period of two years will remain. The right does not apply to land within the curtilage of Listed Buildings or Scheduled Monuments, to Sites of Special Scientific Interest, Safety Hazard Areas and Military Explosives Storage Areas.

7.8 A new permitted development right will allow the change of use from **shops** (A1) **and financial and professional services** (A2) to **assembly and leisure uses** (D2), with an upper threshold of 200m2 of total floor space. This will make it easier for businesses to provide a mixed range of leisure and entertainment uses on the high street and in town centres. The right applies to premises that were in A1 or A2 use on 5th December 2013. However the right would not apply to premises that have changed use to A1 or A2 under other permitted development rights after 5th December 2013, until they have been in such use for a period of five years. This right is subject to a prior approval process covering transport and highways, hours of opening, noise impacts of the development and undesirable impacts on shopping facilities. Shopping impacts will be assessed in relation to the effect of the development on the sustainability of important shopping centres and the provision of services. This is intended to enable local planning authorities to protect valued and successful retail provision in key shopping areas, such as town centres, while underused shop units are kept in use outside those areas. Local planning authorities may consider the impact of the development on the provision of important local services, such as post offices, though only if there is a reasonable prospect of the premises being occupied by another retail use. The permitted development right does not apply in conservation areas, National Parks, Areas of Outstanding Natural Beauty, the Broads and World Heritage sites. Nor do they apply to land within the curtilage of Listed Buildings and land within the curtilage of Listed buildings, Scheduled Monuments, Sites of Special Scientific Interest, Safety Hazard Areas or Military Explosives Storage Areas. Permitted development rights to convert a D2 premises to a registered nursery or state funded school do not apply to premises that change to D2 use under these rights.[10]

Betting and payday loan shops

Betting and payday loan shops no longer have a use class category. Planning permission is required before other shops can change to this use.

The coalition Government's July 2014 Technical consultation originally proposed to alter the A1 (shops) and A2 (financial institutions) use classes, to create a larger, renamed, A1 class which would incorporate a lot of the A2 uses. This was in part aimed at solving the issue of betting shops and payday loan shops being able to open without requiring planning permission. Instead of making this change the 2015 Order moved betting and payday loan shops out of the A2 class and into the sui generis class. This means that planning permission is now required before a building can change to either of these uses. The Explanatory memorandum to the 2015 Order explained why this was done:

> 8.5 There was overwhelming support for the proposal to always require a planning application for change of use to a betting

[10] The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015 No. 597 Explanatory Memorandum

office or pay day loan shop. There was also support for the proposal to combine the shops (A1) and most of the financial and professional services (A2) use classes, with the additional flexibility welcomed but concern over potential loss of diversity in the high street. The Government decided to retain the current shops (A1) and financial and professional (A2) use classes, and to introduce a permitted development right to allow change of use from A1 to A2.[11]

3.4 April 2016: office to residential use

The permanent permitted development right

From 6 April 2016 the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (the "2016 Order") put on a permanent basis, what had previously been a temporary right which allowed office to residential change of use without requiring planning permission. The temporary right had been due to expire in May 2016.

The 2016 Order included a new condition to allow local planning authorities to consider the "impacts of noise from commercial premises on the intended occupiers of the development". Another new criteria specifies that any office to residential change of use will have to be completed within three years of the developer getting prior approval from the local planning authority.

The Order also will also remove the current exemption of certain areas from the permitted development right, with effect from 31 May 2019. Many of these areas were London Boroughs. On 15 March 2016 the Mayor of London published a Central Activities Zone supplementary planning guidance to provide guidance on how to maintain a balance between office and residential development and to set out how London Boroughs could seek an "Article 4 direction" to remove the permitted development right so that it did not apply in certain areas.

The office to residential change of use permitted development right was originally a temporary one which lasted until 30 May 2016.

It was made permanent from 6 April 2016.

Following the Government's October 2015 press release it had been expected that the regulations would extend the permitted development right to allow, for the first time, applicants to demolish offices to then build housing. This has not been done in the regulations.

Technical information and the policy background to the changes is set out in the Government's explanatory memorandum to the 2016 Order.

The temporary permitted development right

In April 2011 the coalition Government consulted on a proposal to grant permitted development rights allowing change use of buildings from commercial to residential use, Relaxation of planning rules for change of use from commercial to residential: Consultation. The aim was to provide more housing.

Responses to the consultation were published in July 2012, Changing land use from commercial to residential consultation: summary of responses and government response. In it the Government said that it

[11] The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015 No. 597 Explanatory Memorandum

would include a new policy in the National Planning Policy Framework to direct local planning authorities to normally approve planning applications for change from commercial to residential use:

> to include a new policy in the National Planning Policy Framework1, to be read in the wider context of the Framework document, that local planning authorities '…*should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate…*';[12]

On 24 January 2013 the Government announced that it would introduce new permitted development rights to allow change of use from B1(a) office to C3 residential.[13] A letter to chief planning officers confirmed that the new rights would run for a period of three years from the date of coming into force.[14] It was brought into force by the (now superseded) Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (SI 2013/1101), which came into force on 30 May 2013.[15] Local Authorities were given the chance to apply for exemption from this Order before it came into force. 17 local authorities (mostly London Boroughs), as set out in the Order, were successful in gaining an exemption.

A case was brought in the High Court to challenge the Secretary of State's decision not to grant exemptions to these new rules for the London Boroughs of Islington, Richmond and Camden.[16] In December 2013 Judge Mr Justice Collins dismissed the judicial review claim and said that the Government's actions had not been unlawful.[17] Following the court case, the Government reviewed the use of Article 4 directions established by some councils to try to block the permitted development right to change office to residential use. In a written statement the then Planning Minister Nick Boles said he had requested that Islington and Broxbourne councils make their directions more targeted.[18]

In the July 2014 Technical Consultation of Planning, the then Government proposed to put the temporary permitted development right allowing change of use from office to residential use on a more permanent basis.

---

12 Department for Communities and Local Government, Changing land use from commercial to residential consultation: summary of responses and government response, July 2012
13 HC Deb 24 January 2013 c16WS
14 HC Deb 24 January 2013 c16WS
15 Department for Communities and Local Government, New measures coming into force ensure the very best use is made of empty and underused buildings, 9 May 2013
16 For more information see Inside Housing, "Office to residential scheme comes under fire at High Court" 4 December 2013.
17 "London boroughs lose office-to-homes High Court legal challenge" Planning, 20 December 2013
18 Written Statement to Parliament, Change of use: new homes, 6 February 2014

Comment

Planning magazine reported a study by Savills which suggested that in some parts of the country it would not be economic for offices to be converted into homes:

> A study by consultancy Savills points out that permitted development rights for change of use from class B1(a) offices to class C3 residential use will "only bring forward new homes through conversions in locations where residential values are higher than office values".
>
> Savills said the rules, due to come into force on 30 May, will create a "north-south opportunity divide". It said its statistics show that developers in Manchester and Leeds would make a loss if they converted offices to homes.
>
> This is because the uplift in capital value of a converted property in either of those cities would be insufficient to cover conversion costs of at least £100 per square foot, according to the report.
>
> In contrast, the statistics show that developers in Croydon, for example, would make a profit.[19]

A briefing by London Councils in August 2015 showed that it did not support making the permitted development right permanent. London Councils offered its assessment of the permitted development rights' impact, noting (for example) the loss of key office accommodation and of new affordable housing supply.

In February 2016, the House of Lords Select Committee on the Built Environment, in its report on Building better places, found that making the permitted development permanent might harm the built environment. It remarked, too, that it might undermine some areas' initiatives around physical and economic regeneration. The committee also suggested that the Article 4 regime might be too restrictive and local authorities might need more scope to respond to local circumstances:

> 139. The Government has stated its intention to make permanent the change in office to residential permitted development rights. It is clear, however, that in some parts of the country this change could be detrimental to the built environment. There are concerns regarding the design quality and suitability of some of the housing that is being provided through these conversions. In addition, concerns have been expressed regarding the loss of local character and important employment sites, posing a threat to the mix of uses required to deliver sustainable places.
>
> 140. Local authorities are well placed to understand whether an increase in office to residential conversions will be appropriate for their area. We believe that, when changing permitted development rights, the Government must also make it easier for local authorities to respond to local circumstances. We recommend that the Government should review and remove some of the restrictions that currently prevent more widespread use of Article 4 directions by local authorities. One such result might be the removal of the current 12 month period of notice

[19] "Office-to-resi changes 'will create north-south opportunity divide'" Planning, 23 April 2013

> that councils are required to observe in order to avoid liability for compensation payments.[20]

In its response, the Government agreed that development ought to be sustainable, but reiterated that making the permitted development right permanent could deliver new homes:

> 74. The Government has an ambition to significantly increase housing supply, and agrees that it is key to ensure that development is sustainable. The permitted development right for the change of use from office to residential has provided additional much needed new homes. We have therefore made the right permanent from 6 April 2016 so that it can continue to play a part in delivering new housing.
>
> 75. The permitted development right allows for consideration by the local authority of specific impacts as matters for prior approval; highways and transport, contamination and the risk of flooding. In addition, the permanent right allows local planning authorities to consider proposals to mitigate the impact of noise from commercial premises on new residential occupants. All new dwellings delivered under permitted development rights are required to meet building regulations. The right provides only for the change of use, and planning permission is required for any external physical works, including to the design or physical appearance of the building. We look to developers to build quality homes, and as with all businesses it will be up to the market to determine whether anyone is willing to buy such properties.[21]

It argued, too, that the Article 4 process was neither costly nor onerous:

> 76. Local authorities can make an Article 4 direction in respect of an employment area or specific building where it is felt that it is necessary to protect the amenity or wellbeing of the area.
>
> 77. The Article 4 process is not costly or burdensome. Rather it seeks to ensure that those whose permitted development rights are being removed are consulted, so that a proper debate can occur before a direction takes force. There is a clear and streamlined process for making an Article 4 direction. This process was put in place in 2010 and guidance is provided. Local planning authorities are familiar with the process, with around 200 authorities having made 600 directions since 2010 on a wide range of permitted development rights.
>
> 78. Local authorities can make an immediate direction. Where they do so, it is right that those whose rights are removed have recourse to compensation if they are subsequently refused planning permission for the same development within a year. The Government believes these procedures strike the right balance.[22]

3.5 April 2016: launderette to housing change of use

From 6 April 2016 the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 granted a new

---

20 Select Committee on National Policy for the Built Environment, *Building better places*, 19 February 2016, HL Paper 100 2015-16: pages 37-38

21 *Government Response to the Report of the House of Lords Select Committee on the Built Environment*, Cm 9347, November 2016 : page 13

22 *Government Response to the Report of the House of Lords Select Committee on the Built Environment*, Cm 9347, November 2016 : pages 13-14

permitted development right for launderettes to change to housing, subject to a prior approval process that allows councils to assess the impact of changes on the "adequate provision" of such services.

3.6 April 2017: state-funded schools

In the February 2016 Implementation of planning changes: technical consultation, the former Government proposed to:

- Extend from one to two academic years the existing temporary right to use any property within the use classes for a state-funded school;
- Increase from 100 m^2 to 250 m^2 the threshold for extensions to existing school buildings (but not exceeding 25% of the gross floorspace of the original building); and,
- Allow temporary buildings to be erected for up to three years on cleared sites where, had a building not been demolished, the existing permitted development right for permanent change of use of a building to a state funded school would have applied.

These changes have now come into force through the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2017, from 6 April 2017. Before changing use of a building or land to a state-funded school for a single year, approval must be sought from the relevant Minister to use the site as a school, who must notify the local authority of the approval. When permanently changing use of a building to a state-funded school, prior approval must be sought from the local planning authority as to highways, noise, and contamination impacts.[23]

3.7 May 2017: public houses

Under the *Town and Country Planning (Use Classes) Order 1987* (SI 764) pubs generally fall into use class A4 – drinking establishments. It used to be the case that planning permission was not required for a change of use from class A4 (pub) to certain other uses, for example supermarkets, provided that the pub was not listed as an asset of community value.

Section 15 of the Neighbourhood Planning Act 2017 required the Secretary of State, "as soon as reasonably practicable after the coming into force of this section" to remove the existing permitted development rights which allow drinking establishments, including pubs, to change use or to be demolished. This has now been done and has come into force, through the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017, from 23 May 2017.

Permitted development rights for change of use and demolition have now been removed for pubs.

This particular section in the 2017 Act was added at the Consideration of Lords amendments stage of the then Bill in the House of Commons on 28 March 2017 by the then Government. The section added was an

[23] HM Government, Implementation of planning changes: technical consultation February 2016, p61

amendment in lieu of a similar new clause (amendment 35) added in the House of Lords which was moved by Labour peer Lord Kennedy of Southwark at the Bill's Report Stage (2nd Day) in the House of Lords on 28 February 2017.

Prior to this the coalition Government had removed permitted development rights (for change of use and demolition) for pubs which were listed as an asset of community through schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, from 15 April 2015.

4. Forthcoming changes

4.1 Light industrial to residential change of use

The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 created a new three-year temporary permitted development right for the change of use from light industrial to housing, up to a maximum floorspace of 500 square metres. This new right will come into force on 1 October 2017, to give time for councils to issue an article 4 direction removing the right where appropriate. Prior approval will be required in order to assess transport impacts, contamination and flood risk, as well as the impact on the sustainability of providing industrial, storage or distribution services where the change is in an area regarded as "important" for these activities.

Further regulations, the Town and Country Planning (Compensation) (England) (Amendment) Regulations 2016 (SI 331) amend the Town and Country Planning (Compensation) (England) Regulations 2015, to limit or exclude, in specified circumstances, the liability of local planning authorities to pay compensation on withdrawal of the permitted development right for the change of use of light industrial premises to dwellinghouses.

4.2 Further agricultural to residential change of use

The former Government's August 2015 rural productivity plan, Towards a one nation economy: A 10-point plan for boosting productivity in rural areas announced a review of the planning and regulatory constraints facing rural businesses, as well as a review of the current thresholds for permitted development change of use from agricultural to residential use. Further information about these existing rights is available from the Planning Permission for Farms page of the Gov.uk website. On 11 February 2016 the Government published a Rural planning review: call for evidence which asked for views on these areas.[24]

The Government's response to this part of the consultation was published in February 2017.[25] In the Response the Government also began a consultation on a new agricultural to residential use permitted development right:

> It is proposed that this would allow conversion of up to 750sqm, for a maximum of 5 new dwellings, each with a floor space of no more than 150sqm. The Government is seeking views on how best to ensure these properties meet local need. It also proposes amending the existing Class Q permitted development right to increase the existing threshold from 450sqm to 465sqm to bring it

[24] HM Government, Rural planning review: call for evidence, 11 February 2016
[25] HM Government, Summary of responses to the technical consultation on implementation of planning changes, consultation on upward extensions and Rural Planning Review Call for Evidence, 7 February 2017, p38-41

into line with the current permitted development right threshold for agricultural development.[26]

[26] HM Government, Summary of responses to the technical consultation on implementation of planning changes, consultation on upward extensions and Rural Planning Review Call for Evidence, 7 February 2017, p41

5. Calls for future change

5.1 Change of use of shops

People sometimes argue that change of use of shops within a use class can change the character of a retail area. For example a local planning authority may consider that too many of the high street shops are of one particular type. While that may be true, the local planning authority may not to be able to do anything about it, unless shops are in different use classes. Planning consent is not required for a change of use when two small shops merge into a larger one, unless outside building works take place.[27]

An adjournment debate in September 2010 heard complaints of the way that small shops are converted into urban supermarkets under permitted development rights.[28]

There have also been reports in the press expressing concern about the increased proliferation of charity shops on the high street and their impact on existing businesses. For examples see:

- "Is this the charity shop capital of Britain?" Daily Mail, 22 January 2015;
- "We can't stop charity shops opening in town'" Leyland Guardian, 20 March 2013
- "Traders unite over charity shop stance" Lytham St Anne's Express, 9 May 2014

When the coalition Government was last asked about this issue in Parliament it ruled out any extra planning regulation for charity shops:

> **Charities: Shops**
>
> **Simon Danczuk**: To ask the Secretary of State for Communities and Local Government pursuant to the answer of 8 November 2010, Official Report, column 30W, on charity shops, if he will consider the merits of introducing powers for local authorities to regulate the (a) number and (b) location of charity shops in their areas. [26774]
>
> **Robert Neill**: The Use Classes Order is concerned with the land-use impacts of development rather than the owner or occupier of the premises. The order is intended to be a deregulatory mechanism which removes unnecessary applications from the planning system because the impacts would be minimal or similar to the pre-existing development. It is not the role of the planning system to give preference to one type of retailer over another.
>
> As I outlined in my previous answer, charity shops deliver a public benefit to society. Singling them out for extra regulation and effectively banning them from opening would be a disproportionate and heavy-handed statist intervention.[29]

---

27 HC Deb 10 July 2007 c1430W
28 HC Deb 13 September 2010 cc712-20
29 HC Deb 29 Nov 2010 c472-3W

5.2 Change of use to betting shops

Prior to 15 April 2015 betting shops were in the A2 use class category which also included financial services such as banks and building societies and solicitors and estate agents. This meant that under permitted development rights planning permission was not required to change from these uses into betting shop use. In addition, permitted development rights allowed the change of use from restaurants and cafés (A3), public houses (A4), and hot food takeaways (A5) into betting shops or payday loan shops without the need for a planning application. Local authorities did not therefore have a role in determining a planning application to grant or refuse change of use to a betting shop in these circumstances.

Changes made in April 2015 moved betting shops into the "sui generis" category. This means that a planning application needs to be submitted to a local authority who can then make a decision on whether to permit the change of use. There are still calls however, for increased planning control.

In February 2017 at the House of Lords Committee stage of the then Neighbourhood Planning Bill 2016-17 Labour Peer Lord Beecham moved an amendment to insert a new clause into the Bill designed to control the proliferation of betting shops:

> **24:** After Clause 11, insert the following new Clause—
>
> "Guidance on clustering of betting offices and pay day loan shops
>
> (1) Before exercising his or her powers under section 41(1), the Secretary of State must issue guidance to local authorities on the granting of planning permission for change of use to betting offices and pay day loan shops.(2) This guidance must set out the manner in which policies in neighbourhood plans and local plans about the number, density and impact of betting offices and pay day loan shops are to be taken into account when determining applications for change of use, in a way which prevents a deleterious effect on the neighbourhood or local area."[30]

Responding for the Government, Lord Bourne of Aberystwyth highlighted the changes made in April 2015 and set out how this gave local authorities better control of betting shops:

> This change was made precisely so that a planning application would be required for any additional such shop. This would allow for local consideration of any issues that might arise due to the change to such a use in that area. Local planning authorities, therefore, already have the ability to manage any additional clustering through their local plan policies. It is not for national government to set out how many betting shops or payday loan shops there should be, and where they should be.
>
> Where a local planning authority is concerned about the clustering of such uses, it should ensure that it has an up-to-date plan with robust policies in place. We know, as has been demonstrated, that some local authorities are already putting in place detailed policies in respect of betting shops and payday loan shops that reflect their individual local circumstances, and setting

30 HL Deb 2 February 2017 c276

> out the position in respect of the numbers and location of those shops.
>
> The National Planning Policy Framework provides local planning authorities with the policy framework to plan for a mix of uses, promoting the viability and vitality of their town centres. Such policies should be based on sound local evidence and tested at examination. Policies contained in the local planning authority's development plan must be taken into account when determining any application for a new betting shop or payday loan shop, unless any material considerations indicate otherwise.[31]

Lord Bourne also highlighted how Ministers with responsibility for planning and gambling issues were working together to review the issue, with a report expected "in the spring":

> Noble Lords will be pleased to know that, as he committed to do in the other place, Gavin Barwell, the Minister for Housing and Planning, met yesterday with the Minister for Sport, Tourism and Heritage, who has responsibility for gambling. They were able to discuss the issues emerging from the review of gaming machines and social responsibility measures undertaken by the Department for Culture, Media and Sport. As noble Lords would expect, there was a positive discussion to consider how we can continue to work together effectively to take forward any proposals arising from the review, which I understand is likely to report later in the spring. I have not as yet had the opportunity to have a detailed discussion with my honourable friend in the other place. If there is any additional information, once again I will include it in the write-round. There is, therefore, an agenda that will continue to have our attention, recognising the concerns that are widely expressed, and of course this goes much wider than planning.
>
> Although we consider that local planning authorities have the tools they need, we will continue to work closely with the Department for Culture, Media and Sport. However, it is not for national government to set out in guidance how many betting shops or payday loan shops there should be in an area. The tools are already with local authorities. These are local issues that should be dealt with through local planning policies. Therefore, I ask the noble Lord to withdraw his amendment.[32]

The amendment with withdrawn by Lord Beecham and not added to the Bill.

A similar amendment was proposed at Report Stage of the Bill in the House of Commons in December 2016. The amendment was moved by Labour member Graham Jones MP, who set out his view on the problems of the clustering of betting shops and highlighted the problem in poorer areas:

> I want to speak to new clause 1, tabled in my name and those of many hon. Members from across the House, and planning guidance on the clustering of betting offices and payday lenders. Fixed odds betting terminals have been described as the crack cocaine of gambling and plague our high streets. Members have witnessed innumerable issues following the explosive growth in betting shops on their constituency's high streets. Given the number, clustering and impact of betting shops, it is high time

---

31 HL Deb 2 February 2017 c278
32 HL Deb 2 February 2017 c278

> that there was clarity in planning law on this significant problem, which my moderate new clause seeks to address.
>
> Research by the Local Government Association reveals a clear correlation between high-density betting shop clustering and problem gambling. Betting shop loyalty cards show that 28% of people living within 400 metres of betting shop clusters are problem gamblers, compared with 22% of those who do not live near a cluster. Research from the Institute for Public Policy Research shows that problem gambling, exacerbated by clustering, costs secondary mental health services and the taxpayer £100 million a year. Further academic research has revealed that clustering disproportionately affects vulnerable communities. The poorest 55 boroughs have more than twice as many betting shops compared with the most affluent 115 boroughs. There has been an adverse impact on our high streets. Those findings were summed up by Mary Portas, who said that
>
> "the influx of betting shops, often in more deprived areas, is blighting our high streets".
>
> I remind some Members who might disagree that the Portas review was set up by Conservative Members when they were in the coalition Government, in the previous Parliament.
>
> To date, deficiencies in the legislative framework have hampered efforts to address the effects of clustering on local communities. We have only to walk down any high street in a deprived area to see clusters of payday lenders and betting shops, which are affecting the vitality of our high streets.[33]

In response the Housing and Planning Minister Gavin Barwell set out the recent changes and said that he did not see a need for national guidance:

> We do not see the need for national guidance that sets out what every authority should do, partly because the situation is by no means uniform across the country, and partly because there are very different opinions within this House and within local authorities about the right response to these issues. The Government's view therefore is that this is a matter that is best left to individual local authorities, as they know their circumstances.[34]

In July 2016 the Local Government Association quoted research conducted by Geofutures for the Responsible Gambling Trust which found that rates of "problem gambling" were higher in areas with clusters of betting shops:

> Analysis of betting shop loyalty card holders shows that 28 per cent of those living within 400 metres of a cluster of betting shops are problem gamblers, compared with 22 per cent of those who don't live near them.
>
> Those living in areas with a higher number of bookmakers were also more likely to be problem or at-risk gamblers compared with those in areas with fewer betting shops. However, the increased risk of being a problem or at-risk gambler was greater among

33 HC Deb 13 December 2016 c667-8
34 HC Deb 13 December 2016 c731

> those living near a cluster of betting shops. This suggests that clusters themselves may be associated with particular risks.[35]

In light of these findings the LGA called for the Government to introduce a "cumulative impacts test" to enable councils to reject applications for new betting shops where there are already existing clusters of shops.[36]

For further information about other issues associated with betting shops, including licensing of them, see Library briefing papers: Fixed odds betting terminals; and Betting shops: licensing requirements, 24 February 2017.

35 Local Government Association, "Extra powers and lower machine stakes are needed to tackle betting shop clustering" 23 July 2016
36 Ibid

BRIEFING PAPER
Number 01301, 12 July 2017

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer