



Planning Guide - Material Change of Use

Planning permission is required for the change of use of land. The statutory definition of development in section 57 of the *Town and Country Planning Act 1990* (TCPA 1990)¹ includes “material change of use”. Thus, where a change of use is regarded as material, planning permission will be required. See also Planning Quick Guide 46: Planning Permission.

In planning terms, a change in the class of “use” to which the land is put (eg: from business to residential) may constitute development. Generally, change of use within a use class does not require planning permission. Once it has been determined that two uses fall within the same class, a change from one to the other cannot be held to be development by reason of intensification or for any other reason².

Depending on the circumstances, a change of use between use classes may require planning permission from the local planning authority (LPA). When considering a proposal for a material change of use, LPAs must take into account a wide range of factors and possible effects, and base their decision on what they believe is best for the local community.

What are the ‘use classes’?

*The Town and Country Planning (Use Classes) Order 1987*³ puts uses of land and buildings into various categories or ‘Use Classes’. The Order states:

“...where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land.”

Use classes are listed below:

- Class A1. Shops
- Class A2. Financial and professional services
- Class A3. Food and drink
- Class B1. Business
- Class B2. General industrial
- Class B8. Storage or distribution
- Class C1. Hotels
- Class C2. Residential institutions
- Class C2A. Secure residential institutions
- Class C3. Dwelling houses
- Class D1. Non-residential institutions
- Class D2. Assembly and leisure

In England, class A3 ‘Food and drink’ has been split into A3 (Restaurants and cafes), A4 (Drinking establishments), and A5 (Hot food takeaways). A change from a café to a hot food takeaway therefore now requires planning permission. Internet cafes have also been added to Class A1 in England.

¹ *The Town and Country Planning Act 1990*,
<http://www.lexisnexis.com/uk/legal/results/docview>

² *Brooks and Burton Ltd v Secretary of State for the Environment* [1978] 1 All ER 733, [1977] 1 WLR 1294, CA; *Carpet Decor (Guildford) Ltd v Secretary of State for the Environment* (1981) 261 Estates Gazette 56.

³ *The Town and Country Planning (Use Classes) Order 1987*,
<http://www.lexisnexis.com/uk/legal/results/docview>



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In Wales, class B8 (storage and distribution) does not include the use of a building or land for the storage or distribution of radioactive material or radioactive waste.

The Town and Country Planning (Use Classes) Order 1987 notes the following uses that do not belong to a specific Class:

"No class specified in the Schedule includes use–

- (a) as a theatre,
- (b) as an amusement arcade or centre, or a funfair,
- (c) as a launderette,
- (d) for the sale of fuel for motor vehicles,
- (e) for the sale or display for sale of motor vehicles,
- (f) for a taxi business or business for the hire of motor vehicles,
- (g) as a scrapyards, or a yard for the storage or distribution of minerals or the breaking of motor vehicles,
- (h) for any work registrable under the Alkali, etc. Works Regulation Act 1906
- (i) as a hostel
- (j) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex IIA to Directive 75/442/EEC under heading D9), or landfill of waste to which Directive 91/689/EEC applies
- (k) as a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club;
- (l) as a night-club,
- (m) as a casino"

Case law has established that where a use of land is *de minimis* (small enough to be ignored legally), it may be disregarded for the purposes of the Use Classes Order 1987⁴.

The right to change from one use to another within the same use class may be excluded by an express condition of a planning permission.

Are certain uses of land excluded from the requirement for planning permission?

Section 55 (2) of the TCPA 1990 excludes certain uses of land from the definition of "development". Use incidental to the enjoyment of a dwelling house, or for agriculture or forestry are some of the types excluded (see also Planning Quick Guide 46: Planning Permission).

Some changes of use between classes are 'permitted development' and therefore do not require planning permission. For example the change of use to Class A1 (shop) from Class A2 (Financial and professional services). See Planning Quick Guide 45: Permitted Development.

⁴ *Kwik Save Discount Group Ltd v Secretary of State for Wales* (1980) 42 P & CR 166, CA.



Further Information:

The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm

For detail on each of the classes, Section 3 of the Order is available on LexisNexis, or on http://www.opsi.gov.uk/si/si1987/Uksi_19870764_en_2.htm, and its amendments

Town and Country Planning (Use Classes) (Amendment) Order 1991, SI 1991/1567, http://www.opsi.gov.uk/si/si1991/Uksi_19911567_en_1.htm

Town and Country Planning (Use Classes) (Amendment) Order 1992, SI 1992/610, http://www.opsi.gov.uk/si/si1992/Uksi_19920610_en_1.htm

Town and Country Planning (Use Classes) (Amendment) Order 1994, SI 1994/724, http://www.opsi.gov.uk/si/si1994/Uksi_19940724_en_1.htm

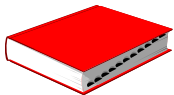
Town and Country Planning (Use Classes) (Amendment) Order 1995, SI 1995/297, http://www.opsi.gov.uk/SI/si1995/Uksi_19950297_en_1.htm

Town and Country Planning (Miscellaneous Amendments and Modifications relating to Crown Land) (Wales) Order 2006, SI 2006/1386, <http://www.opsi.gov.uk/legislation/wales/wsi2006/20061386e.htm>



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