

Committee(s)	Dated:
Planning & Transportation Committee – for information	08092020
Subject: Planning Reform: Changes to the Use Classes Order and Permitted Development Rights Announced July 2020	Public
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Summary

The Government is pursuing a planning reform agenda and has brought forward a number of changes to secondary legislation to provide greater flexibility in the planning system to address the objectives of delivering more housing and adapting to changes in town centres. This report outlines the key planning changes legislated for in July 2020 and the key implications of these changes for the City of London. It focusses on changes made to the Use Classes Order (UCO) which regulates changes of land use, and changes made to Permitted Development Rights (PDR) which determine which forms of development need specific planning permission .

The effects of the new UCO changes will probably be most evident in the existing retailing clusters where easier changes of use without the need for planning permission could hasten changes in their character. The City Corporation has always sought to apply its planning policies for its commercial areas flexibly to deliver a complementary mix of offices and other uses which support the City's business role. To that extent the broader, new Class E created by the UCO changes accords with this approach. However, if the UCO changes were to lead to undesirable trends then it might be appropriate for the City Corporation to consider the use of available planning and other powers to manage the mix of land uses in the public interest.

The Government has also made changes to the Permitted Development Rights which came into effect by 31st August, principally aimed at making it easier to extend existing buildings to provide more housing, or to demolish existing vacant, free-standing commercial, light industrial or residential buildings to provide more homes. These new PD rights seem radical but they are subject to significant limitations and prior approval requirements which limit their practical use such that it is not thought they will have a significant impact on the commercial focus of the City.

It is noted that the national planning policy situation is still evolving as the Government has promised further guidance later in August on the implementation of the changes already announced and has also proposed further significant changes to

the planning system in a Planning White Paper which was issued on 6th August 2020 for public consultation until 29th October 2020. A further consultation on other changes to the planning system has also been issued for response by 1st October 2020. The proposals in the White Paper could affect local plan-making, development management and infrastructure funding. They will need to be responded to after careful consideration. A separate report on the White Paper and the accompanying planning changes consultation will be prepared for consideration by this committee in October.

Recommendation(s)

Members are recommended to:

- Note the publication of the revised Use Classes Order 2020 which took effect on 1st September 2020.
- Note the changes to Permitted Development Rights published during July 2020 which took effect on 31st August 2020.
- Note that officers will report further on detailed implications once the National Planning Practice Guidance has been amended to reflect the policy intent of the new Use Classes Order, including the detailed implications for the existing Local Plan and the draft City Plan 2036.

Main Report

Background

1. The Government is pursuing a planning reform agenda and has brought forward a number of changes to secondary legislation to provide greater flexibility in the planning system to address the objective of delivering more housing, adapting to changes in town centres, and also to address some short term issues raised by the Covid-19 pandemic. This report outlines the key planning changes legislated for in July 2020 and the key implications of these changes for the City of London. It focusses on changes made to the Use Classes Order (UCO) which regulates changes of land use, and changes made to Permitted Development Rights (PDR) which determine which forms of development need specific planning permission.
2. Members may recall that in October 2018 the Government consulted on a range of proposed changes to the Use Classes Order to support easier changes of existing uses in the high street and to provide additional permitted development rights to deliver new housing. Those proposals included the merging of retail use classes but did not include offices in the merged class. Members recognised the need to address changing shopping habits and supported in principle the merging of retail use classes. Members objected to the proposed new Permitted Development Rights relating to extensions or demolitions to provide additional housing principally due to concern at the loss of local planning control over changes in the built form and the location of housing.

3. The new UCO changes that took effect on 1st September went much further than the earlier proposals by including offices in the new broader Class E (commercial, business and services) and this should be seen as being part of a wider planning reform agenda which the Government is actively pursuing. The new permitted development rights granted to boost housing delivery are similar to those proposed previously. They do remove the need for planning permission for certain extensions and demolitions to deliver more housing, but they are subject to significant limitations and prior approval requirements which limit their practical use such that it is not thought they will have a significant impact on the commercial focus of the City. .

Changes to the Use Classes Order Applicable from 1st September 2020

4. The Use Classes Order 1987 (as amended) identifies categories of land uses within which a change of use does not constitute development and therefore it can take place without the need for specific planning permission. The Use Classes Order has been subject to changes since 1987, but the fundamental principles have remained the same. Local plan policies and their implementation through development management processes have been based on the categorisation of land uses set out in the Order. Therefore changes to that Order can have significant effects on both local planning policy and its implementation through development management.
5. On 21st July 2020, a substantial amendment to the Use Classes Order was laid before Parliament and this came into effect on 1st September 2020 (The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, SI 2020 No. 757). See link at <https://www.legislation.gov.uk/uksi/2020/757/made>. The new UCO revoked the existing Use Class A (retail) and created new Use Classes E (commercial, business and service), F1 (learning and non-residential institutions) and F2 (local community). It also moved several additional land uses to Sui Generis status where changes to or from them are more tightly controlled. The main changes to the Use Classes Order are summarised in the table included as Appendix 1.
6. Existing buildings or land that was previously in Classes A1, A2, A3 or B1 use automatically transitioned to Class E on 1st September 2020.
7. A significant innovation in the new UCO is the concept of 'part' uses that will allow the change of use of part of an existing use to an alternative Class E use without the need for specific planning permission. The intention is to facilitate flexibility to make rapid changes within town centre units to adapt to changing social trends and market conditions. Further guidance may clarify how this will operate in practice.
8. The new UCO changes are intended to be permanent although it is possible that given their radical nature the Government might make further changes at a later date in the light of experience. The Government has indicated that further guidance on the implementation of the new UCO will be issued prior to 1st September and if so this will be reported orally to Members.

9. Applications submitted, but not determined, before 1st September 2020, will be determined in relation to the 1987 Use Classes Order. The 2020 revisions will only apply to applications submitted from 1st September 2020. Therefore planning applications that come before this committee in the next few meetings will probably be determined in relation to the 1987 UCO.
10. Where existing development has been approved under the 1987 UCO and benefits from other permitted development rights, these rights will remain for a transitional period from 1st September 2020 until 31st July 2021. Existing Article 4 Directions which relate to the 1987 UCO will also be saved until 31st July 2021.

Implications for the City of the new Uses Classes Order 2020

11. The main implications relate to changes in the local planning authority powers available to the City Corporation to manage changes of existing land uses within the City of London. Most changes in the new UCO result in reduced local powers though some uses that are in future to be treated as Sui Generis are subject to tighter controls.

Mix of office, retail and other town centre uses

12. The creation of a broad, new Use Class E (commercial, business and service) which includes offices, retail and some other uses in the same Use Class is the most significant change, which will affect the mix of uses in town centres and out-of-town centres nationally, and it will also affect the mix of uses found in the City including within our Principal Shopping Centres. The UCO changes will in general reduce the current ability of the City as a local planning authority to regulate changes of existing uses in the City, including the ability to prevent some undesirable changes. Notable consequences include:
 - Loss of planning control over change of use from offices to other Class E uses which could lead to the loss of some existing office stock, but in practice this loss could be outweighed by larger increases in newly permitted office stock elsewhere.
 - Reduced ability to manage change in the Principal Shopping Centres and Retail Links due to the loss of planning control over Class E changes of use which now include offices, shops, restaurants, cafes and some medical services.
 - Removal of ability to prevent changes of use from existing retail and other Class E publicly accessible uses in the Culture Mile and other Key Areas of Change which currently form a core around which other beneficial uses could cluster.
 - Removal of ability to prevent changes of use from existing isolated shops and some other local services which could be unwelcome to local customers.
 - Conversely, several uses have been made 'Sui Generis' which means there is now greater planning control over changes of use to or from them. New Sui Generis uses include drinking establishments (formerly A4), hot food takeaways (formerly A5), cinemas, concert, bingo and dance halls (formerly D2).

13. Those parts of former Class D1 (Non-residential institutions) that have not been included in the new Class E have been transferred into the new Class F1 (Learning and non-residential institutions). A new Class F2 (Local community uses) has also been created which includes halls, meeting places, outdoor recreation and small isolated shops, though such shops are unlikely to exist in the City.
14. Town centre retailing is under pressure generally at present due to Covid-19 and competition from online retailing. However, it is considered that the City's Principal Shopping Centres will continue to be the focus of new retail development despite the greater flexibility. Developers and owners are expected to continue to see the advantages of a diverse tenant base and the benefits of vibrancy and activity at street level in such locations. The effects of the UCO changes are likely to be felt more keenly on the Retail Links and on isolated individual or groups of retail units elsewhere in the City. The expectation is that changes of use no longer requiring planning permission could lead to the loss of retail units and an increase in other Class E uses in such locations.
15. The new definition of drinking establishments (formerly A4) and hot food take-aways (formerly A5) as Sui Generis means that planning permission will be required for any change of use into, or out of, these uses. This change will ensure that adverse impacts from the loss of such facilities, or any adverse amenity impacts from proposed new uses can continue to be addressed through planning.

Health facilities

16. The 2015 Local Plan and the emerging draft Local Plan encourage the provision of local health facilities and protect existing facilities. However the inclusion of health centres and clinics into new Class E could make it easier for them to change to other Class E town centre uses without the need for planning permission. It is likely to result in a much a higher turnover of health facilities, particularly private facilities which respond more readily to fluctuations in the market demand and the broader City economy.

Transportation

17. The City's Transport Strategy, adopted Local Plan and emerging draft Local Plan all encourage the greater use of active travel and measures to reduce the level and impacts of freight and servicing movements. The Local Plan and the London Plan set out parking and freight and servicing standards for new development according to the land uses being permitted. Greater flexibility in subsequent changes of use could lead to changed uses not having appropriate parking, freight or servicing arrangements. The current approach will therefore need to be reviewed, perhaps to allow for a wider range of uses when first assessed, or with the greater use of planning conditions where justified to prevent such outcomes.

Noise, emissions and the night-time economy

18. The Planning Service works closely with colleagues in Markets and Consumer Protection to ensure, through good design at a very early stage, that new and existing development does not create a loss of amenity in terms of noise, emissions and other environmental impacts. The new UCO changes have

removed the need for planning permission for changes of use within Class E, removing the potential to use the planning system to require control during the construction phase, good acoustic design, control over hours, odour control or management plans to reduce potential adverse impacts arising from noise and increased activity as well as ensuring effective venting of emissions (including odours) and control of light emissions. This will have a significant impact on the City's environment and will probably give rise to more complaints by the City's workers, residents and visitors. It also means that colleagues will not be alerted through the planning application process to potential environmental concerns that might arise through changes of use.

19. Existing environmental health regulations and licensing requirements will remain in force and will become the main means of managing such changes of use but will not be able to provide an equivalent level of environmental protection. In addition, proposals for the external venting of buildings, or alterations to the external appearance of a building, will still require planning permission in most cases. These mechanisms can address some of the concerns arising from the new UCO changes but will not be able to prevent the principle of change of use which if it is not defined as development, does not need planning permission.
20. The potential for part change of use carries a risk that as the part use is changed the planning controls used to prevent a negative impact to the existing or future use will no longer be available. The result may be office space that suffers noise and odour issues which may not be actionable as nuisance.

Local Plan implications

21. The new UCO changes mean that some policies relating to land uses in the Local Plan 2015 and the draft City Plan 2036 will need consequential updating to reflect the new land use categories. Other policies are now of less or no relevance as their implementation was based on local planning controls relating to the old UCO. Officers have already undertaken an initial assessment of all policies. It is considered that the overall aims of these Plans are still reasonable and deliverable though there will need to be changes to some key policies to reflect changes in the detailed control over changes of use available to the local planning authority. The most significant changes are likely to be needed in the retail policies.
22. The City Corporation's existing Article 4 Direction which retains local planning control over changes of use from offices to housing in the City is unaffected by the new UCO changes. The amended regulations provide for references to uses or use classes in Article 4 Directions which have already been made to continue to be construed as the previous use classes. Offices and housing remain in separate Use Classes and so changes of use between them would still require planning permission in accordance with the Article 4 Direction.
23. The Government intends to amend the National Planning Practice Guidance to reflect the policy intent of the new Use Classes Order. Once such guidance has been published officers will be in a position to suggest the best way to apply the existing Local Plan in the changed circumstances, and to suggest the best way to

update the draft City Plan 2036. It is likely, however, that the Local Plan review timetable, already delayed due to Covid-19, will be further delayed.

Wider implications for the City Corporation

24. The changes in planning law assessed in this report will have wider implications for the work undertaken by other departments. For example, the change of use planning applications previously considered were often used as a flag to monitor changes that needed consideration by other departments. Environmental and public health matters may still need to be addressed but will no longer have the benefit of the planning application process to provide a context for early engagement and positive health outcomes. Licensing and other regulatory procedures will become more important when dealing with matters that are no longer a planning matter, but will no longer have the ability to deliver the same standard of amenity.
25. Another implication is that business rate records will no longer be able to rely on planning permissions to flag changes of use that may have business rating implications. The new UCO changes and the new PD rights might also provide opportunities for the City Surveyor to manage his property portfolio in the City and elsewhere in different ways.

Changes to Permitted Development Rights Applicable by 1st September 2020

26. A number of separate amendments to the General Permitted Development Order (GPDO) have been laid before Parliament, one on 24th June coming into effect on 1st August and two on 21st July coming into effect on 31st August. The changes made are expressed, rather confusingly, in terms of the 1987 Use Classes Order and not the 2020 UCO revision. Provisions in the new Use Classes Order allow for references to the 1987 Use Classes Order to continue as a transitional measure in the GPDO up until 31st July 2021.
27. The new permitted development (PD) rights allow for:
- purpose-built freestanding blocks of flats of three storeys or more to extend upwards by up to 2 additional storeys to create new homes, up to a height of 30m. This change came into effect on 1st August.
 - Upwards extension of up to 2 additional storeys on existing houses, detached or in a terrace, to create new self-contained homes or additional living space up to a height of 18 metres. Single storey homes will be able to add 1 additional storey.
 - The upwards extension of up to 2 additional storeys on free standing blocks, up to a height of 30 metres and on buildings in a terrace (of 2 or more buildings) in A1, A2, A3 or B1a use, or betting office, payday loan shop or launderette.
 - Vacant and redundant free-standing commercial and light industrial premises, and residential blocks of flats, to be demolished and replaced with new residential units. At the same time, the right will allow up to 2 storeys to be added to the height of the original building, to help create more homes, as long as the resulting residential building is no higher than 18 metres.

Implications for the City of the new Permitted Development Rights

28. The new PD rights seem radical but in practice are subject to a number of limitations and requirements for prior approvals which will limit the direct impact on the City, its commercial office focus, and on general amenity.
29. The impact of new PD rights for upwards extensions of residential buildings on the City's commercial function is likely to be limited, principally because of the relatively low number of residential properties in the City and their concentration in identified residential clusters. However such extensions rights could impact on neighbouring residential amenity. There may be scope for PD rights to be exercised on parts of the Middlesex Street Estate and the Mansell Street Estate and smaller residential blocks in areas such as Smithfield, but not in the Barbican or Golden Lane Estates due to their listed and conservation area status. In practice, it is not clear that such extensions would make commercial sense due to the limitations on the PD rights, and so it is more likely that a developer seeking to increase housing on a site would instead seek a fresh planning permission for a more radical redevelopment.
30. The new PD right for the upwards extension of commercial blocks could potentially have a greater impact. Further detailed assessment will be required to consider the scope for such upwards extension in the City, but the scope will be limited by the requirement for such buildings to have been built between 1948 and 2018, to have not already have been extended upwards, to be less than 18m in height once extended and to be outside of a conservation area or not impacting on a listed building. The non-planning issues of right to light infringements caused by upwards extensions of both commercial and residential buildings may also be a limiting factor in some cases.
31. The new PD right for demolition of detached commercial buildings and their replacement with residential could in theory have had the greatest impact on the City's commercial office cluster and the long-standing Local Plan approach to the protection of office space. However, an analysis of the impact of this PD right has been undertaken using GIS sieve mapping techniques, which demonstrates that it is likely to have negligible impact on the City in practice, due principally to the nature of the City's building stock, its age and the number of listed buildings and conservation areas. The new PD right would not apply:
- If the building is not detached
 - If the building is in a Conservation Area
 - If it is a listed building
 - If the footprint of the current building is greater than 1,000 m²
 - If the height of the highest part of the building above ground level (not including plant, radio masts, antenna etc.) is higher than 18m at any point
 - If the current building was constructed since 31st December 1989

Options

32. The City Corporation will need to implement the new Use Classes Order and the new Permitted Development Rights that took effect before or on 1st September

2020 as they form part of the national planning law. However there remain options for the City Corporation to consider seeking the use of Article 4 Directions where justified to control the use of permitted development rights, and to consider the use of planning conditions, where they meet the Government's 6 tests, to limit the effect of the new UCO on newly permitted development, though not on changes of existing uses. The appropriateness of such options will need to take full account of any further guidance and on the Government's wider planning reform agenda.

Proposals

33. The changes to national planning law should be noted and implemented. Further consequential actions should await further clarification on implementation in the Government's forthcoming revised National Planning Practice Guidance.

Corporate & Strategic Implications

34. Corporate Plan implications: The reduction in local planning powers over some changes of use will have some adverse implications for the Corporate Plan aims of contributing to a flourishing society, shaping outstanding environments and supporting a thriving economy. The changes could reduce the ability of the the City Corporation as a local planning authority to manage changes in land uses in the public interest including the promotion of beneficial change to key areas such as the Culture Mile, Fleet Street and the City riverside.

Financial Implications

35. There are some financial implications as the removal of the need for planning permission for certain changes of use will reduce the number of planning applications and their related fee income. However most planning fee income comes from applications for redevelopment which are unaffected by these changes.
36. There will also be reduced income for the Construction Impacts Levy and potentially higher costs associated with enforcement and legal proceedings.

Conclusions

37. The Government is pursuing a planning reform agenda and has brought forward a number of changes to secondary legislation to provide greater flexibility in the planning system to address the objectives of delivering more housing and adapting to changes in town centres. The changes made to the Use Classes Order (UCO) which regulates changes of land use, and changes made to Permitted Development Rights (PDR) which determine which forms of development need specific planning permission, will have implications for both the plan-making and development management roles of the City as a local planning authority.

38. Most changes in the new UCO result in reduced local powers though some uses that are in future to be treated as Sui Generis are subject to tighter controls. The effects of the new UCO changes will probably be most evident in the existing retailing clusters where easier changes of use without the need for planning permission could hasten changes in their character. The new PD rights seem radical but they are subject to significant limitations and prior approval requirements which limit their practical use such that it is not thought they will have a significant impact on the commercial focus of the City but the possible intensification of the built form could affect general amenity.

Appendices –

Appendix 1: Summary of Changes to the Use Classes Order Applicable in England from 1st September 2020.

Background Papers –

Report to Planning and Transportation Committee 8th January 2019, City Corporation Response to MHCLG Consultation – Planning Reform Supporting the High Street and Increasing the Delivery of New Homes. Agreed by Chairman's Action and reported as item 6 to 29th Jan Committee.

See <http://democracy.cityoflondon.gov.uk/ieListDocuments.aspx?CId=143&MIId=19658&Ver=4>

Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, SI 2020 No. 757). See <https://www.legislation.gov.uk/uksi/2020/757/made>

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020 See <https://www.legislation.gov.uk/uksi/2020/755/made>

The Town & Country Planning (General Permitted Development) (England)

(Amendment) (No.3) Order 2020 See <https://www.legislation.gov.uk/uksi/2020/756/made>

White Paper - Planning for the Future. MHCLG August 2020.

See <https://www.gov.uk/government/consultations/planning-for-the-future>

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Appendix 1: Summary of Changes to the Use Classes Order from 1st Sept. 2020

Appendix 1: Summary of Changes to the Use Classes Order Applicable in England from 1st September 2020		
Changes highlighted in bold		
Land Use	Use Class to 31st August 2020	Use Class from 1st Sept 2020
Shop	A1	E
Shop smaller than 285 sqm selling essential goods including food which is at least 1km from a similar shop	A1	F2
Financial and professional services	A2	E
Restaurant and café	A3	E
Drinking establishment	A4	Sui Generis
Hot food take away	A5	Sui Generis
Offices not within Class A2	B1a	E
Offices for research and development	B1b	E
Light industry suitable in a residential area	B1c	E
General industry	B2	B2
Storage and distribution	B8	B8
Hotels, boarding and guest houses	C1	C1
Residential institutions	C2	C2
Secure residential institutions	C2a	C2a
Dwelling house	C3	C3
Dwelling house for 3-6 residents used in multiple occupation	C4	C4
Clinics, health centres, creches, day nurseries and day centres	D1	E
Schools, non-residential education and training centres , museums, public libraries, public halls, exhibition halls, places of worship and law courts	D1	F1
Cinemas, concert halls, bingo halls and dance halls	D2	Sui Generis
Gymnasium and indoor recreation	D2	E
Halls or meeting places principally for use by the local community	D2	F2
Indoor and outdoor swimming baths and skating rinks, outdoor sports and recreation	D2	F2