

Town Planning Update – April 2021

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 (“The Order”):

- **Laid before Parliament – 31st March 2021**
- **Coming into force – 21st April 2021**

The Government has introduced a series of new and amended Permitted Development Rights (PD Rights) through the above Order. The new measures announced by the Government include some significant changes that will affect both the NHS Property Services (NHSPS) and wider health estate.

This note focuses on:

- A new permitted development right to allow for the change of use from the Commercial, Business and Service use (Class E) to Residential use (Class C3)
 - Potential for conversion of existing Health Centres, Offices and other Class E uses to residential without the need for planning permission.
 - *New Class MA in Part 3 of Schedule 2*
 - *From 1st August 2021*
- Amendment to permitted development right for schools, colleges, universities, hospitals and prisons.
 - New and expanded rights for new buildings and extensions on existing Hospital sites.
 - *Amended Class M of Part 7 of Schedule 2*
 - *From 21st April 2021*

Background: Updated Use Class Order

Our previous note (July 2020 – see [here](#)) provided a summary of the new use classes order, including the introduction of the new Use Class E (commercial, business and services).

Importantly for the NHS, Health Centres and Clinics (formerly Class D1) were incorporated within the new Use Class E. A summary of the range of uses within Use Class E is provided below. Hospitals, residential care homes, and nursing homes were not included within Class E and remain within Use Class C2 (residential institutions).

DESCRIPTION	CURRENT USE CLASS	NEW USE CLASS (From 01/09/2020)
Shops	A1	E
Financial and Professional Services	A2	E
Food & Drink	A3	E
Offices, R&D & light industrial	B1	E
Health Centre, Clinics, Creches, Day Nurseries	D1	E
Gyms, indoor recreation	D2	E
Education, Museums, Places of Worship, Law Courts, Public/Exhibition Halls, Public Libraries	D1	F1
Outdoor sport/recreation, swimming pool, skating rink, Community Hall	D2	F2
Shop <280sqm (primarily essential goods & 1km+ away from similar shop)	A1	F2
Drinking Establishment	A4	Sui Generis
Hot Food Take Away	A5	Sui Generis
Cinemas, Bingo Halls, Concert Halls, Music Venues	D2	Sui Generis

Figure 1: Summary table of changes to the UCO from 1st September 2020

New permitted development right to allow for the change of use from the Commercial, Business and Service use (Class E) to Residential use (Class C3)

Class MA in Part 3 of Schedule 2

From 1st August 2021

Article 6 of the order introduces a new PD right (Class MA in Part 3 of Schedule 2), to allow for the change of use from Commercial, Business and Service use (Class E) to residential use (Class C3), subject to conditions and the need for prior approval consent. This is intended to support housing delivery, economic recovery and high street regeneration.

By way of a summary, the new PD right can be applied to existing lawful Class E buildings subject to meeting the below requirements:

- the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;
- the use of the building fell within one or more of the qualifying Class E uses for a continuous period of at least 2 years prior to the date of the application for prior approval;
- the cumulative floor space of the existing building changing use under Class MA does not exceed 1,500 square metres
- The building is not covered by any of the following designations:
 - i. is or forms part of a site of special scientific interest; a listed building or land within its curtilage; a scheduled monument or land within its curtilage; a safety hazard area; or
 - ii. is or forms part of a military explosives storage area;
- The building is not within:
 - i. an area of outstanding natural beauty; an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(3); the Broads; a National Park; or a World Heritage Site;
- if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

Before beginning development under Class MA, the applicant must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the following matters. If issues or concerns from any of the below matters are likely to arise, additional technical supporting information may be required as part of the submission:

- Transport impacts of development, particularly to ensure safe site access;
- Contamination and flooding risks in relation to the building;
- Impact of noise from any commercial premises on future residents;
- Where the building is located in a conservation area, and the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
- Adequacy of natural light in all habitable rooms of each new dwelling house

- Impact on future residents from introduction of residential use in an area the authority considers is important for heavy industry, waste management, storage and distribution, pre-mix of such uses;
- Impact of the loss of health centres and registered children's nurseries on the provision of local services.

How does this new right relate to existing PD rights and Article 4 directions?

The existing PD rights for the change of use from office to residential (Class O) and for the change of use from retail to residential (Class M) will continue to apply until 31st July 2021. They will then be phased out to be replaced by the new Class MA.

Prior approval applications under Class MA can only be submitted on or after 1st August 2021. Existing Article 4 directions that currently exempt areas from existing office-to-residential use (Class O), will continue apply to the equivalent development in respect of Offices (now under Use Class E) under Class MA, until 31st July 2022.

What does this mean for health buildings (E use class)?

Importantly for health, there is an additional 'condition' (see below) where the Council must consider "the impact of the loss of health centres and registered nurseries on the provision of such local services". It is not yet clear how this will work in practice but does give the Council a mechanism to challenge the applicant if there are concerns about an under-provision of health facilities in the locality.

The reference to that particular category of health centres is specific to health centres which are either maintained pursuant to the general power under the Section 2 or 3 of the National Health Service Act 2006, or health centres maintained pursuant to the duties of CCGs to commission health services. This would not cover all medical and health uses, but where the provision of services at the health centre can be traced back to either of those two sources, the loss of those services would be material for the purposes of the prior approval process.

The wording as presently drafted does not have regard to ownership at all; it simply assesses how the health centre was maintained, and where that criteria is fulfilled, the prior approval process will consider the loss of that provision.

The impact of this new PD right on the NHS's ability to identify and secure alternative sites will need to be considered, where this may be an attractive option for third party commercial landlords reducing the overall supply of suitable Class E spaces. The above 'condition' should however offer some protection against third party owners which would give the NHS an opportunity to 'object' on loss of qualifying health floorspace grounds.

The Government's Explanatory Memorandum further explains that "separate legislation later in the year will amend the right to introduce an additional prior approval in relation to the fire safety of the building changing use. Prior approval applications will attract a fee of £100 per home, up to £5,000 maximum, which will be introduced via separate secondary legislation at the first available opportunity.

The full legislation can be read [here](#).

Notably, The Royal Town Planning Institute (RTPI), Royal Institution of Chartered Surveyors (RICS) and the Royal Institute of British Architects (RIBA) have written a joint letter to the Prime Minister recommending an urgent rethink or amendment to these proposals, alongside other stakeholders. Our guidance will be updated, should any amendments be made prior to the 1st August 2021.

Amendments to PD Right for schools, colleges, universities, hospitals and prisons

Amended Class M of Part 7 of Schedule 2

From 21st April 2021

Article 9 of the Order amends Class M in Part 7 of Schedule 2 to the General Permitted Development Order. From 21st April 2021, Class M is amended to allow schools, colleges, universities, hospitals and prisons to expand to a greater amount. The changes to Part 7 Class M of the GDPO, increases the threshold of new floorspace permitted and increases the height limit.

Focusing on the impact on the NHSPS and wider health estate, this Order amends the right to allow for the erection, extension or alteration of a hospital building (within use Class C2) by up to 25% of the cumulative footprint of existing buildings on site on the 21st April 2021, or up to 250 square metres whichever is greater.

It is important to note that this PD right applies only to 'Hospital' uses (Class C2) within the curtilage of an existing hospital site. This right does not extend to existing GP Surgeries and Health Centre sites (Class E).

The criteria are summarised below:

- The right does not cover any development within 5m of a boundary of the curtilage of the premises – development within 5m of the curtilage would require planning permission.
- New buildings under Class M are allowed up to 6 metres in height, unless within 10 metres of the boundary where development of new buildings is allowed to 5 metres in height.
- Extensions or alterations to an existing buildings are limited to the height of the existing building, unless within 10 metres of the boundary where development is allowed to 5 metres in height or the height of the existing building being extended.
- The height of any rooftop structures, such as for the purposes of ventilation, are allowed up to 1.5 metres in height beyond the height limit of the building. This is in addition to the height of the building as erected, extended or altered, as set out above.
- The development must not be within the curtilage of a listed building
- The development can only be used as part of, or for a purpose incidental to, the use of that hospital.
- Buildings already extended/installed under the previous Class M are excluded.

It is important to note that no prior approval from the local planning authority is required for development under Class M on hospital sites.

The full legislation can be read [here](#).

This is a general guide only and is not intended to be comprehensive or a substitute for taking detailed professional advice. No liability is accepted for the information it contains or any errors or omissions.

For further advice or more support, please feel free to contact a member of the Town Planning Team via: planningteam@property.nhs.uk
