Planning Use Class Orders

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Author: Louise Smith
Section Science and Environment Section

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.

A further regulation, the *Town and Country Planning (General Permitted Development) Order 1995* (SI 418) grants what are called "permitted development rights". Permitted development rights are basically 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.

With a view to encouraging the reuse of empty and redundant existing buildings where the original use was no longer required or appropriate, the Government has *proposed* to create certain new permitted development rights to assist change of use. These include change of use from existing buildings used for agricultural purposes to uses supporting rural growth and a proposal to allow temporary uses of certain existing high street buildings.

Some permitted development rights for change of use have attracted controversy. MPs have called for tighter restriction on change of use to betting and payday loan shops. The Campaign for Real Ale has campaigned for more restrictions on when pubs can be changed into residential housing and supermarkets. Health campaigners have called for restrictions on the number of fast food outlets on high streets, particularly those near to schools.

This note sets out all these issues in more detail.

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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 Government's *Planning Portal website*.

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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 and casinos. 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 need to be a planning application to change the use under the procedures set out in the *Town and Country Planning Act 1990*. Being sui generis does not preclude a change

of use, it just means that a planning application has to be made so that the local planning authority can consider the implications of change of use in detail.

2 Proposed change

In July 2012 the Government published a consultation, *New opportunities for sustainable development and growth through the reuse of existing buildings*. With a view to encouraging the reuse of empty and redundant existing buildings where the original use was no longer required or appropriate, it proposed to create new permitted development rights to assist change of use:

- To create permitted development rights to assist change of use from existing buildings used for agricultural purposes to uses supporting rural growth;
- To increase the thresholds for permitted development rights for change of use between B1 (business/office) and B8 (warehouse) classes and from B2 (industry) to B1 and B8.
- To introduce a permitted development right to allow the temporary use for two years, where the use is low impact, without the need for planning permission.
- To provide C1 (hotels, boarding and guest houses) permitted development rights to convert to C3 (dwelling houses) without the need for planning permission.

The deadline for responses to the consultation was 11 September 2012.

3 Calls for change

3.1 Betting shops and payday loan shops

Betting and payday loan shops are generally classed as financial institutions and so fall into use class A2:

> A2 Financial and professional services - Financial services such as banks and building societies, professional services (other than health and medical services) including estate and employment agencies and betting offices.

Under the *Town and Country Planning (General Permitted Development) Order 1995* (SI 1995/418) planning permission is not required to convert restaurants and cafes, drinking establishments and hot food takeaways into class A2 establishments. Changes from other uses, such as A1 (shops), for example, would need planning permission.

In a debate on Bookmakers and Planning (Haringey) in November 2010, David Lammy regretted that his constituency had 39 bookmakers but no book shop. He argued that modern bookmakers were like mini-casinos, with gaming machines where people could play for high stakes at great speed. He asked for betting shops to be reclassified as sui generis so that a planning application would need to be made to change use from any other establishment on the high street to become a betting shop:

> Will the Minister consider a revision of the classification of betting shops from A2 to sui generis, a category unto itself. After all, the diversity of footfall that they attract is unique. Their economic impact in an area is wholly different from that of almost any other establishment, particularly those in the A2 class. A sui generis planning category for betting shops would not be revolutionary. Casinos and amusement arcades, which have similar characteristics, are classed as such. Being able to consider each planning application in kind would enable councils and residents to consider the cumulative

impact of an additional betting shop, and they could manage the proportion of frontage occupied by them.[1]

The then Planning Minister, Robert Neill, rejected the request and recommended the use of an Article 4 Direction, whereby a local council can suspend permitted development rights in certain circumstances:

> **Mr Lammy**: Does the Minister accept that it is very costly to proceed through an article 4? The main point is that bookmakers should clearly not be in the A2 class with banks. They should be in a separate class of their own. I suspect that the hon. Gentleman understands that because he concentrates his remarks on banks and estate agents. Bookmakers are wholly different; surely they should be somewhere near to casinos and amusement parks.
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> **Robert Neill**: Two or perhaps three points arise. I was interested in the right hon. Gentleman's observation that his local council thinks it would take years to produce the policy for an article 4 direction. I can see nothing on the face of the system that should require such a long period. Secondly, there is compensation. We must have a rule that applies to all article 4 directions because such a direction is-justifiably or otherwise-an interference or at least a restriction on the proprietary rights of the owner of the property. It limits what the owner can do with that property, which can affect its value, so it is reasonable and proportionate that there should be compensation. We cannot say that that should be any difference for an article 4 direction that applies to only one type of use as opposed to another. That would be neither just nor proportionate.[2]

Mary Portas's *High Street Review*, December 2011, recommended putting betting shops into a separate use class:

> 13. Put betting shops into a separate 'Use Class' of their own
>
> I also believe that the influx of betting shops, often in more deprived areas, is blighting our high streets. Circumventing legislation which prohibits the number of betting machines in a single bookmakers, I understand many are now simply opening another unit just doors down. This has led to a proliferation of betting shops often in low-income areas.
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> Currently, betting shops are oddly and inappropriately in my opinion classed as financial and professional services. Having betting shops in their own class would mean that we can more easily keep check on the number of betting shops on our high streets.[3]

In response to a Lords PQ in November 2012 about limiting betting shops on the high street, the Government said that it did not want to risk imposing "ineffective regulation":

> *Asked by* ***Baroness Jones of Whitchurch***
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> To ask Her Majesty's Government whether they will take steps to limit the number of betting shops in United Kingdom high streets.[HL3445]
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> To ask Her Majesty's Government whether they will consider further restricting the number of fixed-odds betting terminals allowed to be sited in each betting shop on United Kingdom high streets. [HL3446]

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1 HC Deb 24 November 2010 c406
2 HC Deb 24 November 2010 c409
3 The Portas Review: *An independent review into the future of our high streets*, December 2011

> **Viscount Younger of Leckie:** The Government are aware of concerns that have been expressed about betting shops and category B2 gaming machines (also referred to as fixed odds betting terminals). However, causal links with problem gambling are poorly understood and to impose new restrictions without clearer evidence of harm risks ineffective regulation that unnecessarily threatens businesses and jobs. The Government has committed to looking at the evidence around B2 gaming machines and problem gambling, and will announce shortly the timing and scope of a review.[4]

There has also been some discussion in the press about whether a new use class should be created for payday loan shops – for example, "Medway Council in legal bid to ban payday loan shops", *BBC News*, 6 August 2012.

In addition, there have been reported arguments in planning application meetings as to whether granting planning permission for payday loan shops could be seen as consistent with the Government's aims for sustainable development in the *National Planning Policy Framework*. See for example, "Tower Bridge Road payday loan shop plan blocked by councillors" *London SE1 website*, 17 April 2012.

3.2 Village pubs

Change of use to residential houses

It is common to find village pubs that the owners wish to close in order to sell the property as a residential house. Owners claim that the pub could not be made profitable. Local critics claim that the owners are exaggerating the problems in order to make money by selling the building. In July 2009 the Campaign for Real Ale (CAMRA) called for a change in planning law to prevent closures of pubs.[5]

Change of use to supermarkets

Under the *Town and Country Planning (Use Classes) Order 1987* (SI 764) pubs generally fall into use class A4 – drinking establishments. Supermarkets generally fall into class A1 – shops. The Town and Country Planning (General Permitted Development) Order 1995 (SI 418) sets out that planning permission is not required for a change of use from class A4 (pub) to class A1 (supermarket).

In November 2012 CAMRA called for the Government to change planning laws to restrict permitted development from change of use from a pub to a supermarket:

> CAMRA, the Campaign for Real Ale, has today urged the Government to change planning laws which are currently allowing the nation's major supermarket chains and developers an easy route to ripping the hearts out of small communities, with new research showing that since January 2010, over 200 pubs across Britain have been converted into supermarket convenience stores.
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> CAMRA has been lobbying hard in recent years to persuade the Government to close arcane planning law loopholes in England and Wales which are allowing pubs - amenities which provide a community centre and a managed environment to consume alcohol - to be demolished or converted without the need for planning permission, and therefore rendering communities powerless in the fight to save their locals.
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> Based on a national pub conversion survey carried out by its members, CAMRA has

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4 HL Deb 29 Nov 2012 cWA76

5 CAMRA Press Release, *Amend planning law to save pubs*, 8 July 2009

> found that since the beginning of 2010, a staggering 130 pubs have been converted into convenience stores by supermarket giant Tesco, and 22 by Sainsbury's, with a further 54 by other companies such as The Co-Operative, Asda and Costcutter.
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> With a further 45 pubs reported to be under threat of conversion across Britain at present, Mike Benner, CAMRA Chief Executive, said:
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> *'Weak and misguided planning laws and the predatory acquisition of valued pub sites by large supermarket chains, coupled with the willingness of pub owners to cash-in and sell for development, are some of the biggest threats to the future of Britain's social fabric. For years, large supermarket chains have shown a disregard for the wellbeing of local communities, gutting much-loved former pubs in areas already bursting with supermarket stores.*
>
> *'Pubs are being targeted for development by supermarket chains due to non-existent planning controls allowing supermarkets to ride roughshod over the wishes of the local community. At a time when 18 pubs are closing every week this is damaging a great British institution. Unless action is taken by the Government to address obvious loopholes in planning legislation, more local communities will be forced to give up their local pub without a fight, and seeing the pub signs of Red Lions and Royal Oaks being corporately graffitied over by supermarket empires will become an all too common sight.'*[6]

In response to a Parliamentary question on 7 January 2013 the Planning Minister, Nick Boles, said that local authorities could restrict when a pub could turn into a supermarket by putting in place an Article 4 Direction.[7]

Local planning authorities have powers under Article 4 of the *Town and Country Planning (General Permitted Development) Order 1995* (SI 1995/418) 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.[8] Further information about article 4 Directions is available in the Department for Communities and Local Government guidance, *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, June 2012.

In the PQ response, the Minister said that his Department had been notified of one proposed article 4 direction to restrict the permitted development rights for a pub to change to retail, financial and professional services and restaurant uses, but he was not aware of any article 4 directions currently restricting conversion to a pub. He also said that the key issue here was the economic situation, not the planning system:

> More broadly, pubs do not turn into supermarkets because of the planning system. Rather, the key issue is that pubs may close and the premises are sold because they are not economically viable. In that context, I refer the hon. Member to the answer of 18 September 2012, *Official Report*, column 610W, on the steps the Government is taking to support community pubs—including tackling unfair competition by some supermarkets by selling alcohol below cost price.

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6 CAMRA, *Community pubs taken to the checkout by major supermarket chains*, 19 November 2012

7 HC Deb 7 January 2013 c129W

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

> Moreover, one of the public policy objectives that we also need to consider is avoiding premises standing empty. Disproportionate restrictions on change of use would result in more empty buildings, harming local amenity and the broader local economy.[9]

3.3 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.[10]

An adjournment debate in September 2010 heard complaints of the way that small shops are converted into urban supermarkets under permitted development rights.[11]

3.4 Hot food takeaways

The *Town and Country Planning (Use Classes) Order 1987* (SI 764) puts hot food takeaways for consumption of food off the premises into use class A5.

In March 2009 the Health Select Committee reported on health inequalities.[12] It recommended that local councils should be given greater planning powers to restrict the number of fast food outlets on high streets.

Case law has shown that proximity to a school and the existence of a school's healthy eating policy can be a "material consideration" for a local authority taking a planning decision in relation to an A5 takeaway establishment.[13] Further decisions on appeal by Planning Inspectors have shown however, that in order to successfully refuse planning permission on these grounds a local authority must also show that there is an over-concentration of A5 establishments in the area and provide evidence to show a link between childhood obesity and the proximity of A5 establishments to schools. It was also found that a policy explicitly seeking to control proliferation of fast-food outlets near schools, would make it easier for a planning inspector to uphold a decision to refuse an application.[14]

Following these decisions, several councils have now published supplementary planning guidance relating to takeaway establishments. This guidance examines the concentration of A5 establishments near to schools in their areas, as well as the link between childhood obesity and proximity to takeaways and puts in place a clear policy to exclude A5 establishments from a certain distance around schools. An example is the *Supplementary Planning Guidance from St Helens Council*, adopted in June 2011. Section 5 (pages 9 -10) of the guidance gives reasoned justifications for this policy and has established a 400 metres exclusion zone around schools in which A5 establishment planning applications will be refused.

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9 HC Deb 7 January 2013 c129W
10 HC Deb 10 July 2007 c1430W
11 HC Deb 13 September 2010 cc712-20
12 Health Committee, *Health Inequalities*, 15 March 2009 HC 286 2008-9
13 Planning Portal, *Landmark ruling over takeaway consent near a school*, 17 June 2010
14 Tower Hamlets 2011, *Tackling the Takeaways: a new policy to address fast-food outlets in Tower Hamlets*, 2011