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| Report To: | PLANNING COMMITTEE | Date: | 27/01/2021 |
| Heading: | RECENT CHANGES IN PLANNING LEGISLATION | | |
| Portfolio Holder: | PLACE, PLANNING AND REGENERATION | | |
| Ward/s: | ALL | | |
| Key Decision: | NO | | |
| Subject to Call-In: | NO | | |

Purpose Of Report

To advise Members of the recent changes that have been made to planning legislation.

Recommendation(s)

To note the information.

Detailed Information

In 2020 new planning legislation was introduced bringing in new use classes and changes to permitted development rights.

The changes to the use classes system are considered to be the most radical changes to the planning system in recent times. The Government has said it wants the use classes system to better reflect the diversity of uses on high streets and in town centres to give businesses the flexibility to adapt and diversify to meet changing demands. Despite this stated focus, the effect of the changes is to create a new commercial, business and service use class which is not limited to these locations. This means that the reforms will affect and deliver flexibility for any buildings within the relevant uses wherever they are in England.

Permitted development rights are essentially a scheme that allows certain specified developments to be carried out without the need for a full planning application. The recent changes include:

- Upwards extensions to individual homes
- Upwards extensions to flats and other buildings
- The demolition of buildings and the construction of new dwellinghouses in their place.

Use classes

Nine previous classes have been deleted and three new use classes (E, F1 and F2) created. The most significant change is the creation of a new “Commercial, Business and Service” use called “Class E”. This covers a wide variety of uses, all of which are now considered to be in the same use class and therefore changes between the uses is not development and does not require planning permission. A number of uses that were previously in a class are now Sui generis (a use on their own). The local community class F2 is interesting (something can be in this class one week and not the next) dependent upon other uses in the vicinity. An example would be two small local shops exist so both fall within Class E, one shop closes down and the remaining shop then falls in class F2 because it becomes a local community facility, another shop opens close by and the original shop no longer fits the criteria to be a local community facility and they both then fall within Class E. This is just one of the complications with the legislation.

As stated above the changes were introduced to help the high streets, however one implication is that high street businesses may consider moving to other premises that now fall within Class E outside the high street because of lower costs, thus undermining local and central government policies to protect high streets and employment premises. It will however allow changes in high street uses without the need for planning permission. There is a concern that this approach may undermine controls over opening times which protect local residential amenities.

| Pre Sept 2020 use classes | Post Sept 2020 use classes |
|--|---|
| A1 Shops, | E Commercial, Business and Service <ul style="list-style-type: none"> • Retail • Restaurants • Financial, professional or other commercial services • Publicly accessible indoor sport, recreation or fitness • Publicly available medical or health services • Crèches, day nurseries and day centres • Offices, including research and development • Industrial uses which do not harm amenity. |
| A2 Financial and Professional Services | |
| A3 Restaurants and Cafes | |
| A4 Drinking Establishments | |

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| A5 Hot Food Takeaways | |
| B1 Light Industrial | |
| B2 General industrial | B2 General industrial |
| B8 Storage and distribution | B8 Storage and distribution |
| C1 Hotels | C1 Hotels |
| C2 Residential Institutions | C2 Residential Institutions |
| C2A Secure Residential Institutions | C2A Secure Residential Institutions |
| C3 Dwellinghouses | C3 Dwellinghouses |
| C4 Houses in multiple occupation (up to 6) | C4 Houses in multiple occupation (up to 6) |
| D1 Non Residential Institutions | F1 Leisure and Non-residential institutions (generally a wider public use such as school, libraries and art galleries) |
| D2 Assembly and leisure | |
| | F2 Local Community (groups together community halls and meeting spaces which provide for physical group activities such as swimming pools, skating rinks and areas for outdoor sports and includes a small, local shop like one you would find in a rural community or a large residential development. |

The new list of *sui generis* uses are:

- a) theatre,
- b) amusement arcade or centre, or a funfair,
- c) launderette,
- d) the sale of fuel for motor vehicles,
- e) the sale or display for sale of motor vehicles,
- f) taxi business or business for the hire of motor vehicles,
- g) scrapyards, or a yard for the storage or distribution of minerals or the breaking of motor vehicles,
- h) any work registrable under the Alkali, etc. Works Regulation Act 1906,
- i) hostel,
- j) waste disposal installation for the incineration, chemical treatment ... or landfill of hazardous waste ...,
- k) 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) night-club,
- m) casino,
- n) betting office,

- o) pay day loan shop.
- p) public house, wine bar, or drinking establishment
- q) drinking establishment with expanded food provision,
- r) hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises,
- s) venue for live music performance,
- t) cinema,
- u) concert hall,
- v) bingo hall,
- w)
- x) dance hall.

Until 31 July 2021, permitted development rights enabling a change of use will continue to be applied based on the existing use classes, as they existed on 31 August 2020. For example, the office to residential permitted development right will continue to have effect pursuant to the existing system. Further legislation is expected before 31 July 2021.

Planning applications submitted before 1 September 2020 that cite the current use classes must continue to be decided by the local planning authority using the former use classes after 1 September 2020, so there will be no change there.

In order to change the uses within a class, there must have been actual and lawful use (i.e. if the building is not being used or occupied for the use permitted under an existing planning permission, it will need to be bought into that use before it can then change to another use within Class E).

Permitted development rights

It is stated these changes have been introduced to cut red tape and to help the delivery of new homes.

They include the construction of up to two additional storeys of residential accommodation (or one storey if the existing premises only has one storey). Similar extensions to flats and other buildings and the demolition of buildings and the construction of new dwellinghouses in their place, are also permitted.

These developments may not require the submission a full planning application but are subject the prior approval by the local planning authority prior to commencement of any development. This process requires the approval of the traffic and highway matters, air traffic and defence asset impacts, contamination risks, flood risk, the external appearance of the building, the provision of adequate natural light in all habitable rooms of the new dwellings, impact on amenity of the existing building and neighbouring premises including overlooking, privacy and loss of light, and the impact on any protected views.

The key constraint is that the upward extension rights will only apply to existing residential dwellings or purpose-built detached blocks of flats. Mixed-use buildings do not benefit from these new rights. Further restrictions include that the old building

has been constructed between 1 July 1948 and 28 October 2018. Premises cannot have been developed as a result of a change of use in accordance with other parts of the legislation and the building must not be located on a site of special scientific interest, a safety hazard area, a military explosives area or within 3km of the perimeter of an aerodrome. Additionally, the rights do not apply to listed buildings or scheduled ancient monuments.

The red tape is therefore still present and the process is considered to be more confusing than previously and it can lead to significant delays in commencing development because the process is followed when it is not appropriate. A major practical consequence is that infrastructure contributions cannot be sought in relation to the matters approved through the prior approval process which would have a significant impact if the Community Infrastructure Levy applied.

Conclusion

Taken together, the changes represent a very significant shift in control away from local authorities and the communities they represent, into a significantly less regulated environment.

Overall, local planning authorities will lose a significant degree of control over changes of use and may seek alternative routes to manage changes of use (including imposing more restrictive planning conditions, or the use of Article 4 directions). There is a silver lining for authorities in this respect, in that the changes may result in increased take-up of otherwise disused units, which in turn may have a beneficial impact in terms of business rates.

One downside is a reduction in application fees, prior approvals attract less fees than planning applications, but the processing of prior approval applications can be just as costly. This could however be balanced against the number of applications over all increasing.

In addition, the changes are considered to be very significant, but are only the tip of the iceberg for potential planning changes on the immediate horizon. The Government's recent White Paper foreshadows the possibility of swinging changes to the entire planning system over the coming months, including the potential implementation of a consolidated infrastructure levy, and it may well be that further permitted development reforms follow in kind.

Implications

Corporate Plan:

There could be wide ranging implications due to the changes in legislation especially the impact on the town centres and the economy, with some benefits possible but also some potential disadvantages because of the lack of control and thus impacts on the objectives of the plan.

Legal:

There are no known legal implications directly from these changes.

Finance:

No financial implications resulting from this report.

| Budget Area | Implication |
|---|---|
| General Fund – Revenue Budget | Unknown - there could be some downturn in application fees, or there could be more proposals which results in an increase in fees received. This will need to be kept under close review. |
| General Fund – Capital Programme | None |
| Housing Revenue Account – Revenue Budget | None |
| Housing Revenue Account – Capital Programme | None |

Risk:

| Risk | Mitigation |
|-------------|-------------------|
| none | |

Human Resources:

No implications.

Equalities:

No implications.

Other Implications:

None.

Reason(s) for Urgency (if applicable):

None.

Background Papers

None.

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