

Rolfe Judd

2021 New Permitted Development Rights



New Permitted Development Rights - Town Centre uses to Residential

New permitted development right to change use from the Commercial, Business and Service (Use Class E) to residential use (Use Class C3).

On the 31st March 2021, Government confirmed a new Permitted Development (PD) right to allow the change of use in England from any use within Class E (Commercial, Business and Service Use Class) to residential use (Class C3). This new right is known as 'Class MA'.

Why was this introduced?

Following the introduction of the new 'Use Class E' on 1st September 2020, which incorporates a wide range of uses, including offices, shops, cafes, gyms etc, the Government have taken a step further by enabling Class E premises to benefit from PD to deliver new homes.

What does this new Permitted Development allow?

The Class MA right will provide for the change of use from any use within the Commercial, Business and Service use (Class E) to residential (Class C3) use. The PD rights to change from Class E to Class C3 seeks to support housing delivery, economic recovery and high street regeneration.

Class E. Commercial, Business and Service
Use, or part use, for all or any of the following purposes —
(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public (was A1)
(b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises (was A3)
(c) for the provision of the following kinds of services principally to visiting members of the public— (was A2)
(i) financial services
(ii) professional services (other than health or medical services) or
(iii) any other services in a commercial, business or service locality
(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public (was D2)
(e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner (was D1)
(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public (was D1)
(g) 'business uses' for— (was B1)
(i) Offices,
(ii) research and development
(iii) Light Industrial

How do you secure a Permitted Development?

The permitted development right will be subject to prior approval by the LPA and assessed in respect of:

- flooding
- transport impacts of the development, particularly to ensure safe site access
- contamination
- impacts of noise from existing commercial premises
- adequate natural light in all habitable rooms
- the impact of the loss of ground floor Commercial, Business and Service use on the character and sustainability of a conservation area
- 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, or a mix of such uses; and
- impact of the loss of health centres and registered children's nurseries on the provision of local services.
- 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.

The prior approval application will have a fee of £100 per dwellinghouse, up to a maximum of £5,000.

Are there any restrictions?

Yes, a lot...

- The building must have been in Commercial, Business and Service use (Class E) for two years before benefiting from the permitted development. Time served in former use classes such as A1 (shops), and D1 (non-residential institutions i.e crèche, day nursery or day centre), will count towards this period.
- The building must have been vacant for three continuous months immediately before the date of application for prior approval. (The time that the premises is closed as a result of Government Covid-19 restrictions will not count towards this period)
- No more than 1,500 sqm of floorspace cumulatively in any building may change use.
- 'Part' of the building benefit from permitted development under the right. For example, just the ground floor.
- The permitted development right will apply in Conservation Areas
- The permitted development right will not apply to Listed Buildings or other land listed in Article 2(3) of the General Permitted Development Order, such as National Parks and Areas of Outstanding Natural Beauty.
- The homes delivered are required to meet the nationally described space standards.

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What about the existing office and retail to residential PD Rights?

On the 31st March 2021, Government confirmed a new Permitted Development (PD) right to allow the change of use in England from any use within Class E (Commercial, Under transitional arrangements, the existing rights for the change of use from offices and from retail to residential will continue to apply until 31 July 2021).

What about Article 4 restrictions?

Where there is an existing Article 4 direction on 31 July 2021 in respect of the change of use from offices to residential (under Class O) it will continue to have effect on equivalent development in respect of offices (now under use class E) under Class MA until 31 July 2022.

Any other changes to permitted development rights?

Yes, there has also been an... *Amendment to permitted development right for schools, colleges, universities, hospitals and prisons.*

Class M is amended to allow for the erection, extension or alteration of school, college, university, hospital and prison buildings, where the footprint of any buildings erected, extended or altered would be 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.

The permitted development is subject to several requirements and prior approval process.

When do the new PD Rights Commence?

The new rights come into effect on 21st April 2021 however Class MA can not be applied for until 1st August 2021.

So what does this mean for properties within Class E use?

Although this new PD right is intended to increase flexibility and opportunity for Class E uses, the reality is that many properties within London are unlikely to benefit from the right. Existing Article 4 Directions which remove permitted development from office to residential (Class O) will remain in place until 31 July 2022 and are then very likely to be replaced with new Article 4 Directions which restrict Class MA.

Secondly, where a property is outside an area subject to Article 4, the prior-approval is assessed against 'the impact of the loss of ground floor Commercial, Business and Service use on the character and sustainability of a conservation area'. This places a significant restriction on the prior-approval application on the ground floor. We consider LPA's will place heavy weight on this criteria and will seek to protect the commercial use on the ground floor. The loss of active uses to residential is likely to be considered harmful to the character and sustainability of the Conservation Areas.

It is also important to note that any planning conditions restricting use or particular operations continue to apply. For example, a permission for retail use which includes a condition stating that 'the property shall only be used for Class A1 (retail) and no other use' is still applicable and therefore can not benefit from Class E to Class C3 PD rights.

It is therefore important to review the prospect of the new PD rights on a property by property basis.

Summary

The forthcoming changes to the Regulations will introduce greater freedoms in how owners, investors and developers can use their property and increase opportunities when development is occurring. There are always complications with any new legislation and Rolfe Judd Planning is available to provide expert advice and guidance on any matters.

If you require any advice on on any of the changes highlighted in this document or require any other advice on planning matters, please contact us.

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