Retail and Leisure: Latest Planning Permitted Changes
Is everything as it seems?

The Government has recently announced a raft of amendments to streamline the planning system and support economic growth. For the retail and leisure sectors, there are a number of changes in England to the Use Classes Order, changes allowed between classes, certain uses taken out of the Use Classes Order all together and new permitted development rights. The new changes will come into effect on 15 April 2015.

The Use Classes
Retail uses remain categorised into five Use Classes between A1 – A5. They are:
- Class A1 – Shops
- Class A2 – Financial and professional services
- Class A3 – Restaurants and cafés
- Class A4 – Drinking establishments
- Class A5 – Hot food takeaways

The changes also affect uses in Classes C and D. The relevant Classes being C1, C3 and D2 which are:
- Class C1 – Hotels
- Class C3 – Dwellinghouses
- Class D2 – Assembly and leisure

It is important to note that betting shops and pay day loan shops are no longer within any of the retail Use Classes, meaning that they are Sui Generis use. Any existing shops in use as a betting shop or pay day loan shop is now not in Class A2 use. This may have implications in any agreements for lease, and we advise that documents be checked.

Additionally, the changes include the right to use shops for non-shop uses, namely leisure and residential uses.

Changes of Use affecting Different Retail and Leisure Categories
Planning permission is NOT required for the following changes of use (new changes highlighted in red):

<table>
<thead>
<tr>
<th>Existing Use</th>
<th>Change of Use</th>
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<tbody>
<tr>
<td>A1</td>
<td>A2 or A3 or D2 or C3</td>
</tr>
<tr>
<td>A2</td>
<td>A1 or A3 or D2 or C3</td>
</tr>
<tr>
<td>A3</td>
<td>A1 or A2</td>
</tr>
<tr>
<td>A4 (unless the existing use is a community asset or there is an application for it to be a community asset)</td>
<td>A1 or A2 or A3</td>
</tr>
<tr>
<td>A5</td>
<td>A1 or A2 or A3</td>
</tr>
<tr>
<td>Betting shop (Sui Generis)</td>
<td>A1 or A2 or A3 or D2 or C3</td>
</tr>
<tr>
<td>Pay Day Loan Shop (Sui Generis)</td>
<td>A1 or A2 or A3 or D2 or C3</td>
</tr>
<tr>
<td>Casino (Sui Generis)</td>
<td>A3 or D2 or C3</td>
</tr>
<tr>
<td>Amusement Arcades or Centres (Sui Generis)</td>
<td>C3</td>
</tr>
<tr>
<td>Agricultural buildings</td>
<td>A flexible use falling within Classes A1, A2, A3, B1 (business), B8 (storage and distribution), C1 or D2</td>
</tr>
</tbody>
</table>
In addition permitted development rights:

1. For Class A4 uses to Class A1, A2 and A3 uses have been removed where the drinking establishment is a community asset or subject to an application to be made a community asset. An application for prior approval must be submitted for all proposals to change Class A4 uses to other Class A uses in order to check whether the pub is a community asset.

2. To enable up to two Class C3 residential flats to be created in space above existing Class A1, A2 and betting shop and pay day loan buildings have been established and vice versa permitted development rights to enable up to two flats above Class A1 and A2 building to be converted to Class A1 and A2 space have been established.

3. For small-scale extensions to shops have been made permanent.

4. Have been established for ‘click and collect’ facilities.

5. Have been established for development consisting of a modification of a loading bay of a shop.

Snapshot View

The changes are a welcome step forwards for the retail and leisure property industry and continue the Government’s approach to creating a more flexible approach to the planning system to deliver beneficial economic development.

However, the amendments don’t automatically mean a green light for occupiers and owners to make changes. There are still a number of criteria that need to be considered – often matters that would be considered as part of a planning application. Where a prior approval application is required, the timeframes are also similar to the normal application process (56 days or eight weeks). A positive here being that if a LPA does not respond in 56 days, you can commence the change.

The changes are also brought in at the same time as further changes to assist in addressing the housing crisis, including allowing a permitted change from casino and amusement arcade/centre use to Class C3 use, and Class B8 (storage and distribution use to Class C3 use). However, the time period for a permitted change from Class B1 (business) to Class C3 has not been extended past 30 May 2016.

Is everything as it seems?

Of the new permitted changes of use, the only ones that automatically have the green light are a change between:

- Class A1 to Class A2
- Class A2 and betting and pay day loan shops to Class A1 where there’s a display window at ground floor
- Betting and pay day loan shops to Class A2 use

Of the other changes, there are still a number of criteria that are applied meaning that permitted development rights may not be given. The criteria can include:

1. Applying to a Local Planning Authority (LPA) for a determination as to whether prior approval will be required on matters relating to the above matters.

   - Subject to certain size and other restrictions – The increase can’t be more than 25% or 50 square metres of the existing building (whichever is the lesser) on Article 2(3) and Annexes 2(3) and 3.
   - Other restrictions also apply.

2. In some cases the rights apply only to buildings under certain sizes – e.g. permitted changes to Class D2 from Classes A1 and A2 only apply to buildings 200 sq. m and below and Classes A1, A2, betting and pay day loan shops (new Sui Generis use) and casino use to Class A3 only apply to buildings 150 sq. m and below.

3. Removing the rights for buildings that are defined community assets or subject an application to be a community asset, a listed building, a scheduled monument, part of a site of Special Scientific Interest, a safety hazard area or a military explosives storage area.

4. The use being begun by a certain date

5. The type of use that a building may have been in before a certain date.

Where an application for prior approval is required, the change must not occur before:

1. The LPA gives written notice that prior approval is not required

2. The LPA gives written notice of their prior approval

3. The expiry of 56 days following the date that the application was received by the LPA without the LPA notifying the applicant as to whether prior approval is given or refused.

Conclusion

Overall it’s a case of a positive step being taken by the Government to relieve the regulatory burden on businesses to support economic growth and residential development. The flexible approach that the changes aim to support should make the ability to change between uses easier. However, there are still hurdles to jump over and as we’ve already seen with the permitted change from Class B1 to Class C3 brought in two years ago nothing is ever plain sailing.

The Savills National Retail and Leisure Planning Team is well placed to advise on matters relevant to the above so please get in touch with any questions.

For further information, please contact:

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Endnotes

1 Subject to a size limit of 150 sq. m
2 Subject to a size limit of 200 sq. m
3 Subject to a cumulative size limit of the building 150 sq. m
4 The building must have a display window at ground floor level
5 The flexible use is subject to a size limit of 500 sq. m in total for the whole agricultural site
6 "community asset" means a building which has been entered onto a list of assets of community value, including any building which has been subsequently excluded from that list under regulation 23(b) of the Assets of Community Value (England) Regulations 2012
7 The rights are subject to certain size and other restrictions – The increase can’t be more than 25% or 50 square metres of the existing building (whichever is the lesser) on Article 2(3) and Land and Sites of Special Scientific Interest, or in other cases 50% or 100 square metres (whichever is the lesser). Other restrictions also apply.
8 Subject to no more than one facility being provided, a size limit of 20 sq. m, a height limit of 4m. Other restrictions also apply.
9 Development is not permitted if the size of the original loading bay, when measured in any dimension, would be increased by more than 20%. The materials used must be of a similar appearance to those used in the construction of the exterior of the shop. Other restrictions also apply.
10 Subject to a cumulative size limit of the building 150 sq. m. Other restrictions also apply.