

Public Houses - Temporary Change of Planning Use

Can I change the use of my premises during the Corona Virus pandemic?

The normal position:

Planning permission is required for a change in use of any building or land.

Under the *Town and Country Planning Act 1990* (TCPA 1990), planning permission is required for the carrying out on land of any development (*section 57(1), TCPA 1990*). Development is defined as the "carrying out of building, engineering, mining or other operations in, on, over or under the land or the making of any material change in the use of any buildings or other land" (*section 55(1), TCPA 1990*).

As such, there is a basic requirement for planning permission to be obtained if there is a **material change of use** of any buildings or land. This basic requirement is modified:

- Nationally, by a number of statutory instruments and
- Locally, by different development orders (LDO);
- Most recently, there is a temporarily change by The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020

Rather unhelpfully, the TCPA 1990 does not define "material change of use". Materiality is therefore determined by "fact and degree" in each case by the local planning authority (LPA).

The Town and Country Planning (Use Classes) Order 1987 (UCO 1987)

The UCO 1987 specifies 15 different classes such as "shops" and "financial and professional services". Below, I list only those within Part A:

- **A1 Shops** - Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes
- **A2 Financial and professional services** - Financial services such as banks and building societies, professional services (other than health and medical services) and including estate and employment agencies. It does not include betting offices or pay day loan shops - these are now classed as "sui generis" uses (see below)

- **A3 Restaurants and cafés** - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes
- **A4 Drinking establishments** - Public houses, wine bars or other drinking establishments (but not night clubs) including drinking establishments with expanded food provision
- **A5 Hot food takeaways** - For the sale of hot food for consumption off the premises.

A change of use within the same use class does not constitute development and therefore does not require planning permission (*article 3(1), UCO 1987*). For example, planning permission is not required for a change of use from a post office to a hairdresser as both uses fall within class A1 (shops). However, a material change of use from one use class to another will require planning permission.

A change of use of a premises from class A3 use (restaurants and cafés) to class A1 (shops) is highly likely to be considered material by the Local Planning Authority and therefore planning permission would normally be required however, please read on.

A number of sui generis uses are shown at the end of Appendix 1 (attached to this note). These uses do not fall within the traditional use classes and therefore normally planning permission is required. You will see that some permitted changes are allowed.

Permitted permanent changes of use not requiring planning permission

General Permitted Development Orders

Some changes of use do not require specific planning permission from the LPA because deemed planning permission is granted by the General Permitted Development Orders. Deemed planning permission is given, subject to certain exceptions, limitations and conditions to the specified changes of use set out in Appendix 1 below. You will see from this list that you can change the planning use from

- A3 (restaurant) to A1 (shop);
- A5 (hot food takeaway) to A3 (restaurant); but
- you cannot change A3 (restaurant) to A5 (hot food takeaway) however please read the temporary relaxation below.

WARNING: These permitted changes of use are not reversible without planning permission. Equally, a number of conditions do apply to some of the permitted changes (including time limits, necessary reports, etc.). Given the number of permitted changes it is not possible to describe in detail each condition that does apply so if one is sought please consider the legislation or speak to us.

It is important to note that whilst general permitted development does not require a planning application it does require a prior approval application, you cannot simply make the change.

There are limitations to general permitted development:

- a. Past planning permissions and planning obligations**

Exceptionally and subject to proper and adequate planning reasons, a planning permission can be granted subject to conditions limiting future changes of use. Use of Planning Conditions, Planning Practice Guidance makes it clear that there is a presumption against such conditions.

For example, the following wording for a planning condition will prevent future reliance on general permitted development:

"The premises shall be used for [insert permitted use] and for no other purpose (including any other purpose in Class [insert relevant class] of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)."

A covenant in a planning obligation, such as a section 106 agreement, can also be used to the same effect, and so, it is important to look at past planning permissions and planning obligations for a property before relying on general permitted development.

b. Article 4 Directions

An **article 4 direction** is made by the local planning authority. It restricts the scope of permitted development rights either in relation to a particular area or site, or a particular type of development anywhere in the authority's area. When purchasing a property your local authority search will identify if there is an article 4 direction and will provide details. If you already own the property you should make an enquiry with the local planning authority. For details on Canterbury's Article 4 directions please see:

https://www.canterbury.gov.uk/info/20014/planning_and_building/297/conservation_areas

Local Development Orders and Neighbourhood Development Orders

A development order grants deemed planning permission for specific development or specified classes of development within a defined area (*section 61A(2) and section 61E(2), TCPA 1990*).

Development orders are intended to help speed up the planning process. Where there is a development order in force, a separate planning application for development permitted by the development order is not required.

There are no such orders in the Canterbury BID area.

Other Forms of restrictions.

You may need to complete some other physical changes to the Property to allow the change of use. These may require planning permission for those physical works. Equally a number of other, general, planning designations could affect what physical changes you make to the Property (eg, the Conversation Area covering Canterbury City Centre; or the fact that the majority of the city centre is also classed as an "Area of Archaeological Importance).

Temporary flexible uses

Class D, Part 4 of Schedule 2 to the GPDO 2015 permits development consisting of a change of use of a building and any land within its curtilage from any use with the first column of the table below to any use within the second column of the table below for a single continuous period of up to three years.

From use:	To use:
<ul style="list-style-type: none"> • Class A1 (shops). • Class A2 (financial and professional services). • Class A3 (restaurants and cafes). • Class A5 (hot food takeaways). • Class B1 (business). • Class D1 (non-residential institutions). • Class D2 (assembly and leisure). • A betting office. • Pay day loan shop 	<ul style="list-style-type: none"> • class A1 (shops), • class A2 (financial and professional services), • class A3 (restaurants and cafes), • class B1 (business), • class D1(a) (medical or health services), • class D1(d) (display of art other than for sale or hire), • class D1(e) (museum), • class D1(f) (public library or public reading room) • class D1(g) (public hall or exhibition hall)

The three year period runs from the date the building and any land within its curtilage begins to be used for the flexible use or on the date given in a notice to the LPA (whichever is the earlier).

Restrictions:

Development is not permitted by Class D, Part 4 of Schedule 2 to the GPDO 2015 if the:

- Change of use relates to more than 150 square metres of floor space in the building;
- Site has at any time in the past relied upon the permission granted by Class D, Part 4 of Schedule 2 to the GPDO 2015 (i.e. one time only use);
- Site is, or forms part of, a military explosives storage area or a safety hazard area;
- The building is a listed building; or
- The building is a scheduled monument.

Conditions:

Deemed planning permission under Class D, Part 4 of Schedule 2 to the GPDO 2015 is granted subject to the following conditions:

- Before the use begins, the developer must notify the LPA of the date the site will begin to be used for one of the *uses* (e.g. *A1*), and what that use will be.
- At any given time during the three year period the site is used for a purpose or purposes falling within just one of the use classes.
- For the purposes of the UCO 1987 and the GPDO 2015, during the period of flexible use the site retains the use class it had before changing.
- The site reverts to its previous lawful use at the end of the period.

Temporary Change of Use during the Coronavirus pandemic

On 24 March 2020, the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 (SI 2020/330) came into force. The Government wanted restaurants, cafes and pubs, that have been required not to offer food for consumption on the premises, to have alternative way in which their businesses can continue to operate and to ensure that an important source of food provision is not lost. The Order amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) (GPDO 2015) by introducing a new temporary permitted development right (PDR) allowing restaurants, cafes and pubs to provide a takeaway or delivery service for hot and cold food (Class DA, Part 4, Schedule 2):

“Class DA

Restaurants and cafes, drinking establishments and drinking establishments with expanded food provision to temporarily provide takeaway food

Permitted Development

DA. Development consisting of a change of use of a building and any land within its curtilage from—

- (a) a use falling within—*
 - (i) Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order; or*
 - (ii) Class A4 (drinking establishments) of that Schedule;*
- (b) a mixed use for any purpose within that Class A3 and Class A4; or*
- (c) a use as a drinking establishment with expanded food provision as defined in Class AA of Part 3 to this Schedule,*

to a use, at any time during the period beginning with 10.00 a.m. on 24th March 2020 and ending with 23rd March 2021 (“the relevant period”), for the provision of takeaway food.

Conditions

DA.1 Development is permitted by Class DA subject to the following conditions—

- (a) the developer must notify the local planning authority if the building and any land within its curtilage is being used, or will be used, for the provision of takeaway food at any time during the relevant period;*

- (b) *for the purposes of the Use Classes Order and this Order, change of use to the provision of takeaway food under Class DA during the relevant period does not affect the use class which the building and any land within its curtilage had before the change of use; and*
- (c) *if the developer changes use to the provision of takeaway food under Class DA during the relevant period, the use of the building and any land within its curtilage reverts to its previous lawful use at the end of the relevant period or, if earlier, when the developer ceases to provide takeaway food under Class DA.*

Interpretation of Class DA

DA.2 For the purposes of Class DA—

the “provision of takeaway food” includes any use for any purpose within Class A5 of the Schedule to the Use Classes Order, and any use for the provision of hot or cold food that has been prepared for consumers for collection or delivery to be consumed, reheated or cooked by consumers off the premises.”.

Permitted Use in a lease

For tenants, an additional consideration is the use of the premises permitted in the lease. Often a lease is restrictive in the use it permits the tenant. There are several reasons for this such as to ensure the tenant does not breach planning law, to maintain the value of the property, to not offend neighbours, to not compete with the landlord’s other tenants, etc. In some leases the tenant can change the use within a use class, for example from a pet shop to hairdresser, as both uses fall within class A1. Some leases will permit more than one use e.g. A3 (restaurant) and A5 (hot food takeaway), or an ancillary use may be permitted such as a storage or office where the predominate use is a shop.

For tenants wanting to change the use of their premises they may also have to obtain the written consent of the landlord, which in some cases is stated not to be unreasonably withheld or denied. Always check your lease before taking any action.

For further advice on this topic and other Commercial Property Issues, please contact David Redgate, Partner Commercial Property e davidredgate@girlings.com t 01227768374.

Please note that specialist advice should be taken in relation to any specific queries and the information above is provided for general information purposes only.

Appendix 1 - Part 3, *Schedule 2* to the *GPDO 2015*

From	To	Permitted by class [] of the GPDO 2015
class A1 (shops)	mixed use of class A1 (shops) and up to two flats (subject to certain conditions)	class G(a) Note: this is reversible by class H(a).
class A1 (shops)	class A3 (restaurants and cafés)	class C Note: Prior approval may be required from the LPA. Floorspace restrictions.
class A1 (shops)	class A2 (financial and professional services)	class D
class A1 (shops)	class C3 (dwelling houses)	class Ma(i) Note: Prior approval may be required from the LPA. Floorspace restrictions.
class A1 (shops)	mixed use of class A2 (financial and professional services) and up to two flats	class G(b)
class A1 (shops)	class D2 (assembly and leisure)	class J(a) Note: Prior approval may be required from the LPA. Floorspace restrictions.
class A1 (shops)	class B1(a) (offices)	class JA(a) Note: Prior approval may be required from the LPA. Floorspace restrictions.
mixed use of class A1 (shops) and up to two flats	class A1 (shops)	class H(a)
mixed use of class A1 (shops) and up to two flats	class A2 (financial and professional services)	class H(b)
class A2 (financial and professional services)	class A1 (shops) where display window at ground floor level	class E
class A2 (financial and professional services)	mixed use of class A2 (financial and professional services) and up to two flats	class G(c)(i) Note: this is reversible by class H(c).
class A2 (financial and professional services)	class A3 (restaurants and cafés)	class C Note: Prior approval may be required from the LPA. Floorspace restrictions.
class A2 (financial and professional services)	class C3 (dwelling houses)	class M(a)(i) Note: Prior approval may be required from the

		LPA. Floorspace restrictions.
class A2 (financial and professional services)	class D2 (assembly and leisure)	class J(a) Note: Prior approval may be required from the LPA. Floorspace restrictions.
class A2 (financial and professional services)	mixed use of class A1 (shops) and up to two flats where display window at ground floor level	class G(d)(i)
class A2 (financial and professional services)	class B1(a) (offices)	class JA(a) Note: Prior approval may be required from the LPA. Floorspace restrictions.
mixed use of class A2 (financial and professional services) and up to two flats	class A2 (financial and professional services)	class H(c)(i)
mixed use of class A2 (financial and professional services) and up to two flats	class A1 (shops) where display window at ground floor level	class H(d)(i)
class A3 (restaurants and cafés)	class A1 (shops)	class A
class A3 (restaurants and cafés)	class A2 (financial and professional services)	class A
class A4 (drinking establishments)	mixed use of class A4 with class A3 (drinking establishment with expanded food provision)	class AA Note: Right postponed until 23 November 2018, where Article 4 direction in force immediately prior to 23 May 2017, removing permission for change from class A4 to A3.
mixed use of class A4 with class A3 (drinking establishment with expanded food provision)	class A4 (drinking establishments)	class AA Note: Right postponed until 23 November 2018, where Article 4 direction in force immediately prior to 23 May 2017, removing permission for change from class A4 to A3.
class A5 (hot food takeaways)	class A1 (shops)	class A
class A5 (hot food takeaways)	class A3 (restaurants and cafés)	class B
class A5 (hot food takeaways)	class A2 (financial and professional services)	class A
class A5 (hot food takeaways)	class B1(a) (offices)	class JA(a) Note: Prior approval may be required from the LPA. Floorspace restrictions.
class A5 (hot food takeaways)	class C3 (dwelling houses)	class M(a)(i) Note: Prior approval may be required from the LPA. Floorspace restrictions.

class B1 (business)	class B8 (storage/distribution)	class I(b) Note: Floorspace restrictions.
class B1 (business)	state-funded school or registered nursery	class T Note: Prior approval may be required from the LPA. The change of use is reversible by class U.
class B1(a) (offices)	class C3 (dwelling houses)	class O Note: Prior approval may be required from the LPA.
class B1(c) (light industrial)	class C3 (dwelling houses)	class PA Note: Prior approval may be required from the LPA.
class B2 (general industrial)	class B1 (business)	class I(a) Note: Floorspace restrictions.
class B2 (general industrial)	class B8 (storage/distribution)	class I(b) Note: Floorspace restrictions.
class B8 (storage/distribution)	class B1 (business)	class I(a) Note: Floorspace restrictions.
class B8 (storage/distribution)	class C3 (dwelling houses)	class P Note: Prior approval may be required from the LPA. Temporary time limit. Floorspace restrictions.
class C1 (hotels)	state-funded school or registered nursery	class T Note: Prior approval may be required from the LPA. The change of use is reversible by class U.
class C2 (residential institutions)	state-funded school or registered nursery	class T Note: Prior approval may be required from the LPA. The change of use is reversible by class U.
class C2A (secure residential institutions)	state-funded school or registered nursery	class T Note: Prior approval may be required from the LPA. The change of use is reversible by class U.
class C3 (dwelling houses)	class C4 (houses in multiple occupation)	class L(b)
mixed use dwelling house and class A1 (shops)	class C3 (dwelling houses)	class M(a)(iii)(bb) Note: Prior approval may be required from the

		LPA. Floorspace restrictions.
mixed use dwelling house and class A2 (financial and professional services)	class C3 (dwelling houses)	class M(a)(iii)(bb) Note: Prior approval may be required from the LPA. Floorspace restrictions.
class C4 (houses in multiple occupation)	class C3 (dwelling houses)	class L(a)
class D2 (assembly and leisure)	state-funded school or registered nursery	class T Note: Prior approval may be required from the LPA. The change of use is reversible by class U.
agricultural buildings	flexible commercial use: class A1, A2, A3, B1, B8, C1 and D2	class R Note: Prior approval may be required from the LPA. Floorspace restrictions.
agricultural building	state-funded school or registered nursery	class S Note: Prior approval may be required from the LPA. Floorspace restrictions.
agricultural building	class C3 (dwelling houses)	class Q(a) Note: Prior approval may be required from the LPA. Floorspace restrictions.
amusement arcade or centre (<i>sui generis</i>)	class C3 (dwelling houses)	class N(a)(i) Note: Prior approval may be required from the LPA. Floorspace restrictions.
betting office or pay day loan shop (both <i>sui generis</i>)	class A1 (shops) where display window at ground floor level	class E
betting office or pay day loan shop (both <i>sui generis</i>)	class A2 (financial and professional services)	class F
betting office or pay day loan shop (both <i>sui generis</i>)	class A3 (restaurants and cafés)	class C Note: Prior approval may be required from the LPA. Floorspace restrictions.
betting office or pay day loan shop (both <i>sui generis</i>)	mixed use of class A1 (shops) and up to two flats where display window at ground floor level	class G(d)(ii)
betting office or pay day loan shop (both <i>sui generis</i>)	mixed use of class A2 (financial and professional services) and up to two flats	class G(c)(ii)
betting office or pay day loan shop (both <i>sui generis</i>)	mixed use as a betting office or pay day loan shop and up to two flats	class G(e)
betting office or pay day loan shop	class A2 (financial and	class H(c)(ii)

and up to two flats	professional services)	
betting office or pay day loan shop and up to two flats	class A1 (shops) where display window at ground floor level	class H(d)(ii)
betting office or pay day loan shop and up to two flats	betting office or pay day loan shop (both <i>sui generis</i>)	class H(e)
betting office, pay day loan shop or laundrette (all <i>sui generis</i>)	class C3 (dwelling houses)	class M(a)(ii) Note: Prior approval may be required from the LPA. Floorspace restrictions.
betting office, pay day loan shop or laundrette (all <i>sui generis</i>)	class B1(a) (offices)	class JA(b) Note: Prior approval may be required from the LPA. Floorspace restrictions.
betting office or pay day loan shop (both <i>sui generis</i>)	class D2 (assembly and leisure)	class J(b) Note: Prior approval may be required from the LPA. Floorspace restrictions.
mixed use as dwelling house and betting office, pay day loan shop or laundrette	class C3 (dwelling houses)	class M(a)(iii)(aa) Note: Prior approval may be required from the LPA. Floorspace restrictions.
casino (<i>sui generis</i>)	class D2 (assembly and leisure)	class K
casino (<i>sui generis</i>)	class A3 (restaurants and cafés)	class C Note: Prior approval may be required from the LPA. Floorspace restrictions.
casino (<i>sui generis</i>)	class C3 (dwelling houses)	class N(a)(ii) Note: Prior approval may be required from the LPA. Floorspace restrictions.