

Chief Planning Officer's Advice Note

Cornwall Council Interim Planning Guidance:

Residential Uses in Town Centres

This is one of a series of notes issued by the Chief Planning Officer to provide clarity on planning changes and to guide greater consistency when making planning decisions. These notes may be updated from time-to-time in response to changing circumstances.

Whilst Class MA is a permitted development right for the conversion of commercial, business and service uses to dwelling houses this note provides guidance to help explain the new permitted development right and further guidance on dealing with planning applications for changes of use in town centres. A further note will be developed for other commercial changes to residential as required. The note also helps explain amended use of policy 4 of the Adopted Cornwall Local Plan and of Neighbourhood Plan policies for retail and town centres alongside the new rights. The note should be used to help reach a decision only and should not be used as a reason for refusal.

Summary:

This note provides guidance on the new permitted development rights for the conversion of commercial premises to residential use as they apply in town centres. It sets out the main points that need to be met to enable the permitted development rights, the exclusions, the additional considerations for Conservation Areas and guidance on how applications for changes to the external appearance of the building might be dealt with.

The text of the new permitted development right and a flow diagram are appended to this note to help work out whether the new permitted development right can be used or whether full planning permission is required.

We recognise that due to the limitations of permitted development rights planning applications will still be advanced for changes of use and this note sets out the approach to be taken, the flexibility to be allowed and the direction of policy travel set by the new rights. In addition to this note, the emerging Climate Emergency DPD contains policies that set out support for diversification of uses and increases in residential uses as part of a more balanced town centre approach. They also set out the need for integrated town centre strategies and place shaping. These policies sit in conformity with Government guidance on Town Centres and will start gain weight in decision making following submission of the document in October.

What is the approach to town centres?

The Government is clearly putting in place a new approach to the planning of town centres. The new emphasis is to put in place policies and measures to encourage greater diversity of uses, and to create a more flexible approach to changes of use. The new Class E use class, which was introduced in 2020 and provides a radical change to use classes in town centres, enabling easier change between uses, without the need for a full planning application, is part of this new approach. Class E includes former classes A, B1 and D1 (retail, office and non-residential institutions and leisure). Therefore, where the Local plan and Neighbourhood Plan policies seek to limit the mix of uses in town centres it would be sensible and reasonable to have regard and give greater weight to the direction of travel and flexibility of uses that is provided by Class E and the new Class MA rights.

The Covid 19 pandemic was the latest of a number of challenges for our town centres. The way that people shop has been changing rapidly, with a move to a greater proportion of online shopping and changed expectations of what town centres are for. Major retail chains have failed over the past few years or become online only and our high streets often have significant gaps as a result. Government's approach to planning for retail has also changed – there is an increased emphasis on flexibility of use and encouraging a mix of uses and residential accommodation in town centres. This position is echoed by the [Climate Emergency DPD](#).

The approach to town centre uses is set out in '[Building Back Better High Streets](#)' which focusses on five key priorities including

1. Breathing new life into empty buildings; and
2. Supporting high street businesses;

There is a clear approach of increasing variety of uses and residential accommodation through changes of use in town centres.

The NPPF sets out that planning policy and practice should “promote [town centre] long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters; b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre

This table provides a quick summary of uses falling into Class E:

Current use of Building	Former use Class	New Class from 1st September 2020
Shops	A1	E
Financial and professional services	A2	E
Food and drink (mainly on the premises)	A3	E
Business (office, research and development and light industrial process)	B1	E
Non-residential institutions (medical or health services, creches, day nurseries and centres)	D1	E
Assembly and leisure (indoor sport, recreation or fitness, gym)	D2	E

Class MA

Class MA comes into effect from 1st August 2021 and introduces a new change of use to go from Use Class E to Residential. This use class is for any building in the use class E, which includes: Shops, Financial and professional services, restaurants and cafes, offices, light industrial, medical or health services, creches, day nurseries and indoor sports. The effect of this new permitted development right is therefore to encourage the creation of more homes in town centres, by making it easier to change the use of commercial buildings which have become vacant.

Class MA will replace existing retail, warehouse and office to residential rights for buildings within Use Class E.

Conversions under Class MA must be for residential use¹ only. They can apply to the whole or only part of the host building and do not require the change of use of the entire building (so a change of use could make the upper floors residential whilst retaining retail use on the ground floor).

Class MA requires the submission of a prior approval application. This gives Cornwall Council 56 days in which to either reject the proposal within that time or allow approval to be granted by default.

Limitations and exclusions:

Existing use:

The building must have been in use for Class E (or one of the old use classes that has been absorbed into Class E) for two years from the date of application. A guide to the Use classes order showing which old use classes fit within Class E may be viewed at: <https://lichfields.uk/media/6158/guide-to-the-use-classes-order-in-england.pdf>

The new permitted development right regulations require that the property has to have been vacant for three months before any application can be made. This is different from existing Class M and O rights. Proof of marketing will be expected.

The floorspace being proposed cannot exceed 1,500 square metres

¹ The right does not allow for conversion to a House of Multiple Occupation

Quality of spaces created:

- All new dwellings must conform to the national space standards². A one bedroom unit for one person must have a floor area of at least 39 square metres if the home has a bathroom, or 37 square metres if the space has a shower room.
- All rooms should have adequate natural light. This means that there should be a window in every room (and the window should have access to light that is not blocked by a nearby wall). Please note, a new window to conform would usually require full planning permission and therefore the proposal could not be permitted development.

Changes to the exterior of the building:

- The development right does not include provision for any external changes. Therefore planning permission will be required for new openings or the removal, replacement or alteration of the existing shopfront or openings. A design guide is being produced by the Council to help applicants think about how planning applications can deal with changes to the appearance of buildings. It will set out the Council's approach to whether and how shopfronts should be retained or altered, or indeed whether removal will be supported. This consideration will largely depend on the location and importance of the building.

Designations:

- The new right does not apply to:
- Article 2(3) Land – AONB, the Broads, National Park, World Heritage Site
- Site of Special Scientific Interest (SSSI)
- Safety Hazard Zone or Military Explosives Area
- Listed Buildings
- Scheduled Monuments
- An area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981 (enhancement and protection of the natural beauty and amenity of the countryside).

Conservation Areas:

If the development involves a change of use of the whole or part of the ground floor an impact assessment will be undertaken to understand the impact of that change of use on the character or sustainability of the conservation area. A fuller exploration of this is set out below.

Prior Approval

This permitted development right requires the applicant to apply to the LPA for a determination on whether prior approval is required. The LPA will consider such applications against the following questions:

- Is the proposed shop to residential conversion situated in a flood area? Will the mitigation strategies suggested by the applicant be effective enough?
- Transport and safe access considerations - Is there safe access to the new conversion?
- Where it is a conversion of an industrial building, whether any industrial contamination would pose a health risk to future residents. If the proposed conversion is in an area that still has a large number of neighbouring commercial premises whether those uses create noise which would impact on future residents. In addition, whether there will be an impact on the residents in an area considered important for heavy industry and waste management.
- Whether the plans provide adequate natural light in all habitable rooms. This is a minimum requirement for any residential conversion. This could be a significant barrier, especially for larger conversions. Rooms will also have to meet minimum standards.
- If the site is a registered nursery or a health centre whether there is a lack of nurseries or clinics nearby.

² By Statutory Instrument from 6th April 2021, all new dwellings delivered through Permitted Development Rights will need to ensure they: Have a gross internal floorspace of at least 37sq.m (or 39 sq.m where there is a bathroom); or Meet the minimum space standards set out within the NDSS (2015).

- If the site is in a conservation area and the proposals involve changing part of the ground floor to residential the Council can take into account the effect of the change on the character and sustainability of the conservation area.

The application under Class MA has a time limit, like several other prior approvals, of 56 days. Once granted you have three years from the date of the prior approval to carry out the works.

Any external works that you wish to carry out to the building will need the benefit of planning permission and you should seek advice on the appropriateness of the changes.

A note on Conservation areas

In Conservation Areas there is an additional test set out in the Prior Approval matters. This allows the Council to consider the impact of the proposed change of use of part or the whole of the ground floor of buildings to residential on the Character or Sustainability of the Conservation Area. The starting point for any consideration of proposed changes of use in Conservation Areas will still be that the aim of the new Class MA is to create a greater diversity of uses in town centres and a more flexible approach to change of use. The extra considerations to apply in Conservation Areas will include:

- The statements of character in the Conservation Area Appraisal and Management Plan and descriptions of the area. For instance, is the character of the conservation area described as being defined or shaped by its commercial/retail nature?
- The current character of the area that the application relates to. Are ground floor units predominantly in active commercial/retail uses and does this give the area a special character or feel that would be lost with incremental changes to residential and loss of shop frontages? Is this special character or feel something that is of critical importance to the description of the Conservation Area?
- Has the Conservation Area reached a stage where a detrimental change of character is occurring due to the piecemeal loss of active frontages (is the nature of that part of the conservation negatively impacted)?

Considerations will vary across conservation areas in Cornwall and will normally take into account the feasibility of the building being brought back into use for an active or community use before conversion to residential.

Prior Approval is only likely to be refused as an exception, where there is a clearly detrimental impact on the character and appearance of the conservation area. Town centres which are Conservation Areas still need to be able to change and adapt to changing circumstances and shopping patterns, so still need to be able to diversify in a flexible and pragmatic way, and this should still be the guiding principle for considering changes of use.

Relationship to Policy 4 of the Cornwall Local Plan, Neighbourhood Plans and the Climate Emergency DPD

The new permitted development rights affect buildings that are currently in Class E. In this way permitted development rights will affect both Policy 4 of the Cornwall Local Plan and policies of NDPs where:

- They seek to limit changes of use between specific use classes that are now Class E (for example the uses set out in Policy 4 (2) and (3) are replaced by Class E);
- They seek to prevent the change of use of ground floor uses to residential or other uses; and
- They set specific periods for how long the space/building must have been empty. Evidence that property is vacant and cannot be filled by a suitable, alternative use will be sought from applicants. This should include evidence of sustained marketing for at least the preceding 3 months.

In applications where the new use class and permitted development rights are a consideration, it would be sensible and reasonable that the Government's new policy direction be given greater weight. The emerging Climate Emergency DPD contains policies that set out support for diversification of uses and increases in residential uses as part of a more balanced town centre approach. They also set out the need for integrated town centre strategies and place shaping. These policies sit in conformity with Government guidance on Town Centres and will gain weight in decision making following submission of the document in October. Once adopted, these policies will be the most recently adopted part of the development plan in Cornwall.

How will we consider planning applications where the permitted development right can't be used?

The new permitted development right provides considerable freedom, but the requirement for Nationally Described Space Standards and windows in habitable rooms and a prohibition on extension or external alteration means that many proposals in our towns and for larger premises will still proceed via planning application. Where this is the case the Council will bear in mind the Government's policy aims behind the permitted development right and the flexibilities promoted by it and the use class order. This includes giving significant weight to the benefits of bringing vacant premises back into use, particularly upper floors of buildings. We will expect applications for change of use and associated extensions and external changes to use the required floorspace and liveability standards of the PDR as a benchmark for proposals.

Proposals for change of use/conversion that require planning permission will still take into account Policy 4 of the Cornwall Local Plan, however the Government's direction of travel for high street uses is clearly intended to relax the controls in place and to encourage a mix of uses. It effectively means that there is now almost complete flexibility of uses within high streets. Where the Local plan and Neighbourhood Plan policies seek to limit the mix of uses in town centres it would be sensible and reasonable to have regard and give greater weight to the direction of travel and flexibility of uses that is provided by Class E and the new Class MA rights.

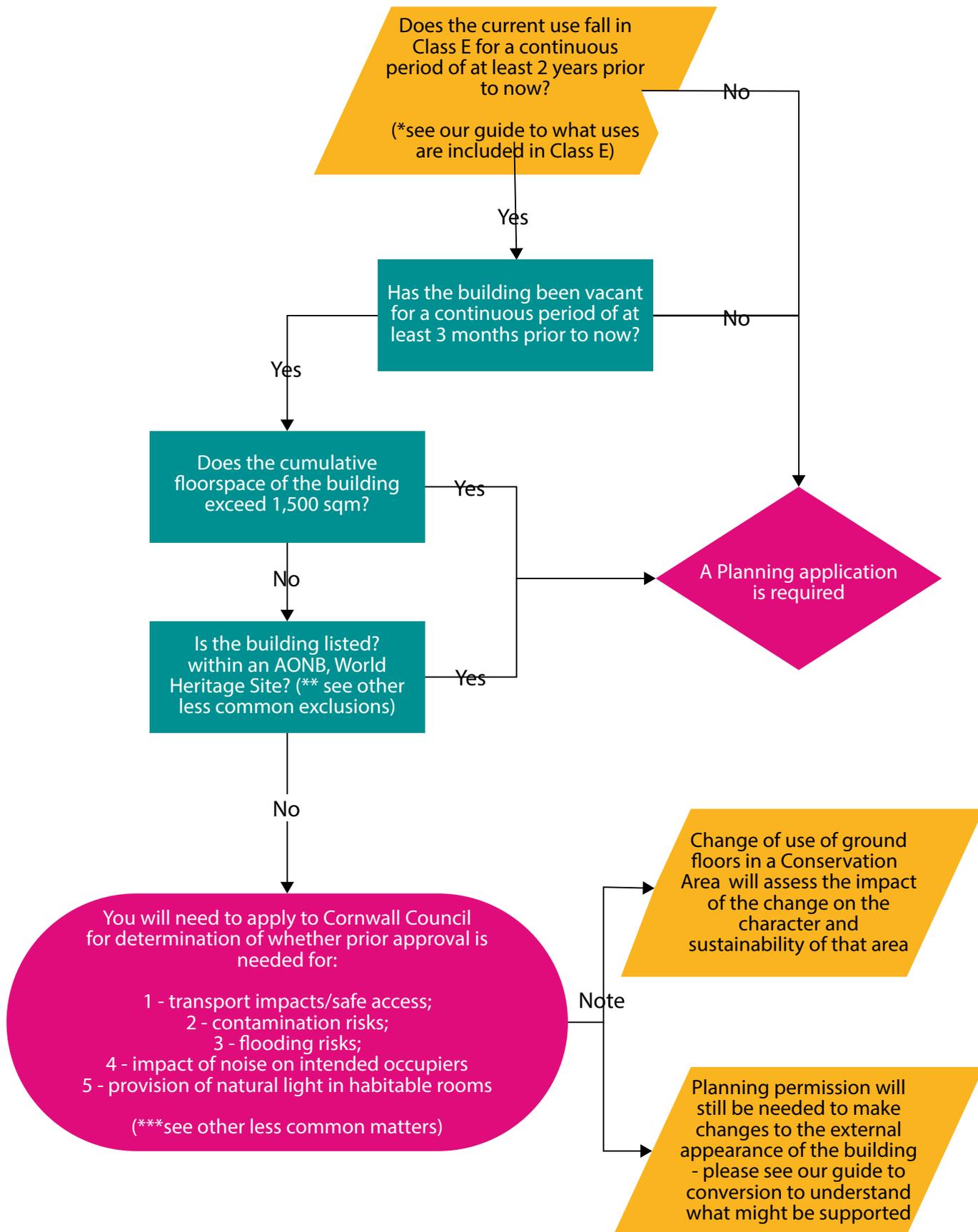
Article 4 Directions

The NPPF states that the use of Article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to avoid wholly unacceptable adverse impacts such as the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area. The Council will only consider advancing proposals for an Article 4 direction where there is robust evidence of negative impact and a limited geographical cover.

Class F2 – Local Community uses

Class MA does not replace class F2 and the conversion to residential use of a shop of less than 280sqm selling essential goods and at least 1km from a similar shop will still require planning permission.

Appendix 1 – flow diagram on the new MA class rights – am I likely to require planning permission?



Appendix 2 – Legislation

MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

Development not permitted

MA.1.—(1) Development is not permitted by Class MA—

- (a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;
 - (b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;
 - (c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;
 - (d) if land covered by, or within the curtilage of, the building—
 - (i) is or forms part of a site of special scientific interest;
 - (ii) is or forms part of a listed building or land within its curtilage;
 - (iii) is or forms part of a scheduled monument or land within its curtilage;
 - (iv) is or forms part of a safety hazard area; or
 - (v) is or forms part of a military explosives storage area;
 - (e) if the building is within—
 - (i) an area of outstanding natural beauty;
 - (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
 - (iii) the Broads;
 - (iv) a National Park; or
 - (v) a World Heritage Site;
 - (f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or
 - (g) before 1 August 2022, if—
 - (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
 - (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.
- (2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—
- (a) the following classes of the Schedule as it had effect before 1st September 2020—
 - (i) Class A1 (shops);
 - (ii) Class A2 (financial and professional services);
 - (iii) Class A3 (food and drink);
 - (iv) Class B1 (business);
 - (v) Class D1(a) (non-residential institutions – medical or health services);
 - (vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);
 - (vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;
 - (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

Conditions

MA.2.—

- (1) Development under Class MA is permitted subject to the following conditions.
- (2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
 - (a) transport impacts of the development, particularly to ensure safe site access;
 - (b) contamination risks in relation to the building;
 - (c) flooding risks in relation to the building;
 - (d) impacts of noise from commercial premises on the intended occupiers of the development;
 - (e) where—
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
 - (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
 - (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and
 - (h) where the development involves the loss of services provided by—
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost.
- (3) An application for prior approval for development under Class MA may not be made before 1 August 2021.
- (4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if in the introductory words in sub-paragraph (5), for “and highways impacts of the development” there were substituted “impacts of the development, particularly to ensure safe site access”.
- (5) Development must be completed within a period of 3 years starting with the prior approval date.
- (6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.”

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