

# All You Need To Know About...

## Change of use for commercial property

In today's volatile economic climate, the ability to make changes quickly to adapt to shifting circumstances is a vital attribute for both commercial landlords and business owners.

Being able to change the use of your commercial premises allows for greater flexibility on who can tenant the property and how it can be used.

### Establishing whether planning permission is required

The first step in the change of use process is to establish whether planning permission is required. There is a basic requirement for planning permission to be obtained if there is a material change of use of any building or land. What constitutes 'material change' is decided on a case by case basis by individual local authorities (or the Courts if the matter is disputed).

To establish if planning permission is required, landlords need to start by consulting the Town and Country Planning (Use Classes) Order 1987 which sets out 15 different use classes for commercial premises.

The categories are as follows:

- **A1 Shops** - there are 11 subcategories ranging from the retail sale of goods (but not hot food) to (in England) an internet café.
- **A2 Financial and Professional Services**
- **A3 Restaurants and cafes** - use for the sale of food or drink for consumption 'on' the premises
- **A4 Drinking establishments** - use as a public house, wine bar or other drinking establishment (but not a night club)
- **A5 Hot food takeaways** - use for the sale of hot food for consumption 'off' the premises
- **B1 Business** - there are three subcategories, including an office falling outside A2, research and



development of products or processes and for any industrial process.

- **B2 General industrial** - use for industrial process other than one falling within class B1
- **B8 Storage or distribution** - use for storage or as a distribution centre
- **C1 Hotels** - use as a hotel, boarding or guest house where no significant element of care is provided
- **C2 Residential institutions** - including use for the provision of residential accommodation and care, as a hospital or nursing home and as a residential school, college or training centre
- **C2A Secure residential institutions**
- **C3 Dwellinghouses** - use as a dwellinghouse in single occupation, or by not more than six residents living together as a single household
- **C4 Houses in multiple occupation** - small shared dwelling houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.
- **D1 Non-residential institutions** - such as clinics, health centres, crèches, day nurseries, schools, art galleries
- **D2 Assembly and leisure** - for example cinemas, music and concert halls, bingo and dance halls (but not night clubs) and swimming baths

If the change of use falls within the same category, planning permission is not required. For example, if you wish to turn your existing furniture shop into a florist, planning permission would not be required as both fall under Category A1 - Shops.

Planning permission may also not be required if the changes to the property fall under 'permitted development' under the General Permitted Development Order 1995. Under this order, changes of use between certain classes, such as Class A3 (restaurants and cafes) to A2 (financial and professional services) is permitted.

If the change you plan to make is minor, you may be tempted to skip applying for planning permission however this is a mistake that could cost you thousands, as a local authority can demand you remove or rectify any changes made without consent. The best strategy is to take legal advice to establish if the changes you plan to make will require planning permission to be applied for.

### Applying for planning permission

Either the tenant or landlord can apply for planning permission. The applicable forms are available on your local Planning Authority website. There are several aspects you will need to consider before and during your submission.

### Does a tenant need the landlord's permission?

The lease agreement is likely to restrict the use of the property specific purpose, and a landlord is under no obligation to grant a tenant permission to change the use of the property. If they do grant consent, there may be a covenant in the lease which provides them with the right to be financially compensated by the tenant for any loss of value and cost relating to the change of use application.

### Should the application be an outline planning permission application or a full planning permission application?

A lot depends on how fast you want the application to go through. An application for full planning permission will require you to make a complete submission; however, once the decision is made, no further engagement with the local planning authority

will be required. An application for outline planning permission will result in a quick decision on the general principles on how the site will be developed but is subject to conditions requiring the subsequent approval of one or more 'reserved matters' which are defined in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

### Can planning permission be changed once granted?

Known as the 'ratchet effect', once planning permission is granted, it cannot be reversed without going through the entire planning process again. Landlords need to be particularly aware of this, especially when granting permission on a relatively short term lease.

### Get legal advice before making changes

Whether you are a tenant or a landlord, it is imperative that you seek legal advice before making any changes to the use of your commercial property. A planning breach in itself is not illegal and the local authority will often permit a retrospective application where planning permission has not been sought. However, proceeding with a previously rejected development can result in a local authority issuing an enforcement notice requiring you to put things back as they were.

Bennett Griffin are award winning solicitors based in West Sussex with offices in central Worthing and Ferring. Our experienced and specialist solicitors offer a comprehensive service and our commercial property department is able to advise in relation to all landlord and tenant matters.

Please contact us on 01903 229999 or by email [info@bennett-griffin.co.uk](mailto:info@bennett-griffin.co.uk).

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