

F7A Council's response to Inspectors questions on changes to the Use Classes Order

INSPECTORS QUESTION F4

1. Does the Council consider that the changes to the UCO have any bearing on the soundness of the Plan?
2. Are there any specific implications for policies and allocations involving uses which are now subject to change

Does the Council consider that the changes to the UCO have any bearing on the soundness of the Plan?

1. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 amends the Town and Country Planning (Use Classes) Order 1987 (UCO) and introduces significant changes to the system of use classes. The changes are due to come into effect on 01 September 2020, subject to certain transitional provisions.
2. The core changes include the recalibration of the classification of uses of property. Classes A, B1 and D1, applicable to retail, office and non-residential institutions and assembly and leisure uses respectively, are removed and three new use classes introduced in their place:
 - i. Class E (Commercial, business and service) is the new town centre use. This new class allows for a mix of retail, leisure and business uses to reflect changing retail and business models. It recognises that a building may be in a mix of uses at once (clothes shop and beauty salon) or be used for different uses at different times of the day (office and gym);
 - ii. Class F.1 (Learning and non-residential institutions) is for uses where there is generally wider public use such as schools, libraries and art galleries; and
 - iii. Class F.2 (Local community) class groups together community halls and meeting spaces, uses which provide for physical group activities and small local shops.
3. In addition, some uses which were previously given their own use class have been moved into the 'sui generis' category. Changes to and from these uses will be subject to full local consideration through the planning application process. The residential (C classes), general

industrial (B2) and storage and distribution (B8) use classes remain unchanged in practical terms.

4. The reasons behind these changes are:
 - i. to promote the vitality and viability of town centres by allowing typical high street uses (the new Class E uses) to merge or switch without planning permission, this greater flexibility allows businesses to respond to rapid changes in the retail and leisure sectors;
 - ii. to provide protection against the loss of learning, non-residential and community facilities (the new Class F.1 and Class F.2), including museums public halls and local shops;
 - iii. to protect community assets by taking them out of their own classes and making them ‘sui generis’, meaning that planning permission would be needed to change to a different use.
5. Following the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, the Council has assessed whether changes to the UCO may have any impacts on how the Local Plan performs against the four tests¹, namely:
 - i. Positively prepared;
 - ii. Justified;
 - iii. Effective;
 - iv. Consistent with national policy.
6. It is considered that changes to the UCO have no significant impacts to the Plan’s performance against the soundness tests, but there are minor modifications to be made.
7. Table 1 below explained the Council’s assessment.

Table 1

Tests of soundness	Key requirements	What impacts do the changes to the UCO have on Brentwood Local Plan’s performance
Positively prepared	The NPPF explains that local plans should be based on a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development.	No impact. In terms of retail needs, the NPPF paragraph 85 set out that in meeting anticipated needs for retail, leisure, office and other main town centre uses, planning policies should look at least ten years ahead. Policy PC07: Retail and Commercial Leisure Growth of the Plan sets out the provision for comparison and convenience floorspace over the Plan period. A review of the 2014 Retail and Commercial Leisure Study (evidence document C14) has been undertaken (Brentwood Retail Study Update, document number ref F7B), which suggests that wording of the policy should

¹ NPPF (2019) paragraph 35

		be amended to reflect the updated floorspace capacity projections. This is due to the change to the Plan period rather changes to the UCO.
Justified	<p>The NPPF states that local plans should be an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence.</p> <p>This test is two-fold. Firstly, the Plan should provide the most appropriate strategy when considered against reasonable alternatives. These alternatives should be realistic and subject to sustainability appraisal. The Plan should show how the policies and proposals help to ensure that the social, environmental, economic and resource use objectives of sustainability will be achieved</p> <p>Secondly, the Plan should be based on a robust evidence base involving:</p> <ul style="list-style-type: none"> • Research/fact finding: the choices made in the plan are backed up by facts. • Evidence of participation of the local community and others having a stake in the area. 	<p>No impact.</p> <p>The 2014 Retail and Commercial Leisure Study (evidence document C14) forms the main retail evidence underpinning retail and town centre policy requirements of the Local Plan covering the period between 2015 to 2030. As the Plan period was updated to 2016-2033, an additional Brentwood Retail Study Update (document number ref F7B) was undertaken to update the floorspace capacity projection, as well as to reviews the Local Plan policies and supporting text in terms of their conformity with the new NPPF, proposed changes to the UCO and the recommendations set out in that report.</p> <p>Other evidence documents underpinning retail and town centre related policies of the Local Plan include:</p> <ul style="list-style-type: none"> • the Brentwood Town Centre Regeneration Strategy 2010 (evidence document C10) • the Brentwood Town Centre Design Plan 2017 (evidence document C9), which considers how the Town Centre functions from various aspects, including urban design, buildings, spaces, economic viability and movement. The Design Plan explores future development opportunities to collectively enhance Brentwood Town Centre, strengthening its role as the focus for economic growth; and • The Brentwood Town Centre Design Guide SPD 2019 (evidence document C8).
Effective	<p>The NPPF states that local plans should be deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters.</p> <p>In other words, this test requires evidence demonstrating:</p> <ul style="list-style-type: none"> • Sound infrastructure delivery planning; • Having no regulatory or national planning barriers to delivery; 	<p>No significant impact on the Plan as a whole.</p> <p>It should be noted that there is an inconsistency between the new UCO and the NPPF, which has an effect on Policy PC11: Primary Shopping Areas of the Brentwood Local Plan.</p> <p>Paragraph 85 of the NPPF sets out that planning policies are expected to define the extent of primary shopping areas (PSA). PSA relates to the application of the sequential approach, with retail development focused in the PSA but more flexibility for other main town centre uses in the wider centre boundary. Following the changes to the UCO, with retail and other main town centres uses now included in the same Use Class E, distinction between</p>

	<ul style="list-style-type: none"> • Delivery partners who are signed up to it; and • Coherence with the strategies of neighbouring authorities, including neighbouring marine planning authorities. • Flexibility and ability to be monitored. 	<p>retail and other town centre uses is now unclear. There is a less emphasis on retail as the key attraction of the town centres.</p> <p>Therefore, the changes to the UCO would, to some extent, restrict the role of Policy PC11: Primary Shopping Areas to protect against retail losses in the PSA.</p> <p>Section 3.0 of the Brentwood Retail Study Update (document number ref F7B) reviews the Local Plan policies and supporting text in terms of their conformity with the new NPPF and the UCO and sets out where minor amendments should be considered.</p>
Consistent with national policy	The plan should enable the delivery of sustainable development in accordance with the policies in the NPPF.	<p>No impact.</p> <p>Section 3.0 of the Brentwood Retail Study Update (document number ref F7B) reviews the Local Plan policies and supporting text in terms of their conformity with the new NPPF and the UCO and sets out where minor amendments should be considered.</p>

Are there any specific implications for policies and allocations involving uses which are now subject to change?

8. The changes made to the UCO result in the following implications that need to be considered in planning policies and allocations and future decision making:
- Less emphasis on retail as the key attraction of the town centres;
 - Office and business uses (previously Class B1) are now part of Class E and therefore are encouraged in town centre or designated centre locations;
 - There are also potentially implications on permitted changes of use of out-of-centre office buildings to other E class uses. This could undermine the objective of maintaining and enhancing town centres; however, there are expectations that the retail market is unlikely to seek such development formats and locations in the future.

9. Specific implications on policies and allocations as a direct result of UCO changes are set out in Table 2 below.

Table 2

Policy	Implications of UCO changes on policies / allocations	Reasons
Policy PC05: Employment Development Criteria	<p>Criterion A which reads '<i>Development for employment uses (Class B1, B2 or B8) and any associated employment generating sui generis uses</i>' should be updated to '<i>Development for employment uses (Class B2 or B8) and any associated employment generating sui generis uses.</i>'</p> <p>The aim of this policy is to protect the amenities of residents and other sensitive uses within the vicinity of employment developments. Removal of reference to Class B1 does not affect this aim and effectiveness of policy. Class B1 uses are now part of Class E and will need to comply with policies considering this use class.</p>	Class B1 uses are now subsumed into the new Class E.
Policy PC06: Supporting the Rural Economy	<p>Criterion a which reads '<i>the use does not fall within Class A use classes unless limited small-scale and ancillary</i>' should be updated to '<i>the use does not fall within Class E uses unless limited small-scale and ancillary</i>'</p> <p>This amendment is not considered to alter the aim or effectiveness of this policy, which is to support appropriate, small scale rural enterprise by retaining Class B uses or other 'sui generis' uses of a similar employment nature.</p>	All Class A uses now belong to Class E.
Policy PC10: Mixed Use Development in Designated Centres	Please refer to section 3.0 Policy Review of the Brentwood Retail Study Update (document number ref F7B).	To reflect changes made to the UCO.
Figure 7.8	Please refer to section 3.0 Policy Review of the Brentwood Retail Study Update (document number ref F7B).	To reflect changes made to the UCO.
Policy PC11: Primary Shopping Areas	Please refer to section 3.0 Policy Review of the Brentwood Retail Study Update (document number ref F7B).	To reflect changes made to the UCO.
Site specific policies		
Policy R01 (I): Dunton Hills Garden Village Strategic Allocation	Criteria D.d, D.e and D.f: all references to Use Class D1 to be amended to Class F.1 and E.	Schools and early years and childcare nurseries (previously Class D1) now belong to Class F.1 and E.
	Criterion D.c which requires ' <i>provision of 5.5ha of land for Use Class A1-A5 and appropriate B Class uses</i> ' should be amended to ' <i>provision of 5.5ha of land for Class E uses</i> '.	Use Class A1-A5 and B1 are subsumed into Class E.

Policy R02: West Horndon Industrial Estate Strategic Allocation	Criterion A.d which requires ' provision of 2ha of land for employment purposes ' should be amended to ' provision of 2ha of land for Class E uses '.	Employment uses (previously B1/B2/B8) now comprise of B2/B8 uses only, which are not appropriate in residential-led development.
Policy R03: Land North of Shenfield	Criterion A.b which requires ' ...a co-located primary school and early years and childcare nursery (Use Class D1) ' should be amended to " ...a co-located primary school and early years and childcare nursery (Use Class F.1 and E) ".	Schools and early years and childcare nurseries (previously Class D1) now belong to Class F.1 and E.
	Criterion A.e which requires ' provision of 2ha of land for employment purposes ' should be amended to ' provision of 2ha of land for appropriate Class E uses '.	Employment uses (previously B1/B2/B8) now comprise of B2/B8 uses only, which are not appropriate in residential-led development.
Policy R04 & R05: Ford Headquarters and Council Depot	Criterion A.d which requires ' provision of 2ha of land for employment purposes ' should be amended to ' provision of 2ha of land for appropriate Class E uses '.	Employment uses (previously B1/B2/B8) now comprise of B2/B8 uses only, which are not appropriate in residential-led development.
Policy E08: Land adjacent to A12 slip road	Criterion A.a which requires ' 2.06 ha of employment land (principally use classes B1, B2, B8 and any associated employment generating sui generis uses) ' should be amended to ' 2.06 ha of employment land (principally Class B2, B8 uses, supporting Class E uses and any associated employment generating sui generis uses) '.	All Class B1 uses now belong to Class E.
Policy E10: Codham Hall Farm	Criterion A.a which requires provision of ' 9.6 ha of employment land (principally use classes B1, B2, B8 and any associated employment generating sui generis uses) ' should be amended to ' 9.6 ha of employment land (principally class B2, B8 uses, supporting class E uses and any associated employment generating sui generis uses) '.	All Class B1 uses now belong to Class E.
Policy E11: Brentwood Enterprise Park	Criterion A.a which requires provision of ' at least 25.85 ha of land for employment use (principally use classes B1, B2, B8 and any associated employment generating sui generis uses) ' should be amended to ' at least 25.85 ha of land for employment use (principally Class B2, B8 uses, supporting Class E uses and any associated employment generating sui generis uses) '.	All Class B1 uses now belong to Class E.
	<p>Criterion B. a.ii which requires 'use classes A1 to A4 including small shops and eateries'</p> <p>and</p> <p>Criterion B.a.iii which requires 'use class D1 including day nurseries, creches and health services'</p> <p>should be merged to state:</p> <p>'appropriate Class E uses including small shops and eateries, day nurseries, creches and health services'.</p>	<p>Use Class A1-A5 now belong to Class E.</p> <p>Clinics, health centres, creches, day nurseries, day centre (previously Class D1) now belong to class E.</p>

<p>Policy E12: Childerditch Industrial Estate</p>	<p>Criterion A.a which requires provision of '20.64 ha of employment land (principally use classes B1, B2, B8 and any associated employment generating sui generis uses)' should be amended to '20.64 ha of employment land (principally Class B2, B8 uses, supporting Class E uses and any associated employment generating sui generis uses)'.</p>	<p>All Class B1 uses now belong to Class E.</p>
<p>Policy E13: East Horndon Hall</p>	<p>Criterion A.a which requires provision of '5.5 ha of employment land (principally use classes B1, B2, B8 and any associated employment generating sui generis uses)' should be amended to '5.5 ha of employment land (principally Class B2, B8 uses, supporting class E uses and any associated employment generating sui generis uses)'.</p>	<p>All Class B1 uses now belong to Class E.</p>