

Dedicated to my husband, Chukwuma Aneke,
and the girls,
Chinwe and Kanayochukwu Aneke.

PROBLEMS OF LOOPHOLES IN PLANNING LAW:
~~The 1987 Use Classes Order and the 1988 General Development Order~~

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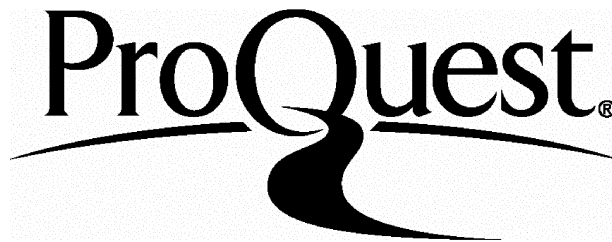
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ABSTRACT

The Use Classes Order and the General Development Order were revised in 1987 and 1988 respectively. The main aim was to reduce the intervention of the planning system in the use of land and buildings by commercial activity, in order to foster enterprise whilst continuing to protect the environment and amenity. The result has been a major shift away from the planning system based on the execution of coherent locally determined policies and towards freer determination of the use of land and buildings by the market. This has meant reduced powers for the local planning authorities in protecting the local environment, its residents and workers.

This thesis is primarily concerned with the experience of London local planning authorities (with particular emphasis on the London Borough of Hackney) with the operation of the revised Orders, particularly as they relate to the shopping area uses, other business and industrial uses and the residential uses.

The effects of the new regulations on the environment, on the quality of life (in terms of amenity, diversity of uses, highway and traffic implications) and on the employment implications for the local residents and users of land are examined. The other areas of interest are the impact of the changes on the local planning authority's ability to carry out one of its main statutory duties of controlling, managing, and regulating land use development in the interests of the public and whether the aims behind the revised Orders are being achieved in practice. This enables identification of the positive and the negative consequences of the new Orders and of the means by which the negative consequences could be curtailed.

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CHAPTER 1

1.0 INTRODUCTION

1.1 Terms of Reference

The current Use Classes Order was introduced in 1987. The Government saw the new UCO as "a means of deregulation to simplify the planning system and reduce the burden of control."¹ This meant reduced powers for local planning authorities in protecting the local environment and its residents. The corresponding General Development Order 1987 (amended in 1988) is seen in the same light by the Government.

The 1987 UCO and the GDO 1988 caused problems for London's local authorities as soon as they were introduced. In 1990 the central government commissioned a review of the orders to report on:

- i) development activity,
- ii) the property market and the providers and users of space,
- iii) amenity and environment, traffic matters and employment mix,
- iv) planning practice.

The results of the study² were published in 1991. It identified several problems with the orders but the Government decided to "leave the basics of the UCO and the permitted development rights relating to it unchanged despite the acknowledgement that some problems exist in the operation of the present arrangement."³

This paper will, therefore, study the experience of local authorities in London (with particular emphasis on the London Borough of Hackney), in relation to the operation of the 1987 UCO. Particular reference will be made to:

- a) shopping area uses,
- b) other business and industrial uses, and
- c) residential uses.

The impacts of these new 'enlarged' classes on the environment, the quality of life (in terms of amenity, diversity of uses, traffic and parking implication) and the employment implications to the local residents and users of land will be analyzed through the use of secondary data, a literature review, case studies and informal interviews.

The Government guidelines on the two Orders are quite clear. They are deregulatory tools which should allow the freemarket mechanism to function reasonably without 'unnecessary' control from planning authorities. For instance, the Government insists that the imposition of conditions designed to restrict future changes of use which would not constitute development by virtue of the order would be regarded as "unreasonable unless there was clear evidence that the uses excluded would have serious adverse effects on the environment or on amenity not susceptible to other control."⁴

On the other hand, many local planning authorities see these Orders not only as deregulatory but also as regulatory tools which should be compatible with their duty of managing and regulating the use of land in the public interest, providing for the wise use of the available resources in order to provide optimum benefit to the public.

This somewhat conflicting view of the same Orders manifests itself in land-use planning policies set out in the Local Plans or Unitary Development Plans and other 'guidance notes' used by the councils. It is also evident in the different decisions and subsequent actions taken by the Department of the Environment (DoE) and its inspectors in cases of appeal.

I intend to trace the evolution of the 1987 UCO, with passing reference to the consequential amendments of the GDO and Government policies. I will then consider whether the operation of the 1987 UCO is compatible with the local planning authority's duty to manage and control the use of land in the public interest and whether the main aims of the UCO are being achieved in practice.

is this really what she means?
yes - gd - see p 117

1.2 The Use Classes Order & General Development Order

The Use Classes Order (UCO) and the General Development Order (GDO) are important regulations for the planning system, because they define large categories of land-use and development which are free from planning control by Local Authorities. They are statutory instruments which can be changed by the Secretary of State for the Environment (SoSE) without the procedural complexities and parliamentary time that changes to other primary legislation require. The Government has made several changes to the GDO since 1979 in order to reduce the scope of the planning system and free much private development from planning control. The controls imposed by the UCO have also been relaxed. The current statutory instruments in force are the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Development) Order 1988.

UCOs have existed since the nationalisation of development rights under the 1947 Town and Country Planning Act (the 1947 Act). They define changes of use which are not development and, therefore, have the effect that, where planning permission (or a lawful use by virtue of having existed for 10 years) exist for a use which falls within any use class, that use can be changed to any other use within the same use class without any further planning permission being necessary, unless conditions restricting a change of use have been imposed by the Local Planning Authorities (LPA).

The main statutory provision for the UCO at present is in Section 55(2)(f) of the Town and Country Planning Act 1990 (the 1990 Act)⁵. Section 55 defines the meaning of development for the purposes of the Act. Section 55(1) of the 1990 Act (see appendix A) defines development as: "The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material

change in the use of any building or other land."

Section 55 (2) sets out several categories of building operations or uses of land which fall outside this definition of development. These include:

- a) the carrying out for the maintenance, improvement or other alteration of any building or works which-
 - i) affect only the interior of the building, or
 - ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;
- b) the carrying out within the boundaries of a road by a local highway authority of any works required for the maintenance or improvement of a road;
- c) the carrying out by a local highway authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- d) the use of any buildings and other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;
- e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
- f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the building or the other land, for any other purpose of the same class;
- e) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.

These seven categories outlined by Section 55 (2) do not require planning permission from local planning authorities since they do not constitute development. They are also immune from enforcement action and, "indeed, fall outside the operation of the Town & Country Planning Act altogether."⁶

The Use Classes are particularly important to owners, developers and users of land, outlining their freedom to develop land without the need for planning permission.

The categories in Section 55 (2) (f) and, therefore, the classes in the UCO, are quite separate and distinct from the classes of permitted development for which the Secretaries of State have granted deemed planning permission under the GDO, although the Use Classes Order and the General Development Order are closely inter-related. The UCO and the GDO have been described as "the bread and butter of development control."⁷

In effect, the UCO and GDO take certain categories of development out of the control of local planning authorities. This freedom granted by the UCO and GDO is widely used and exploited in many cases by owners, developers and users of land often to the detriment of the general public at large.

The ideology of the Town and Country Planning Act 1947 was very much the "ideology of public interest". The aim of the law was to facilitate the formation of policy and the making of decisions about land-use by Government, whether at central or local level in the interest of the public. Private property rights, to a large extent, were subordinated to this aim, with the exception of the permitted development rights granted by the GDO and the changes of use allowed by the UCO.

When the freedom created by these two Orders is largely abused, then, the main aim of the planning system, of controlling and regulating land-use developments in the interest of the public becomes questionable.

1.3 History

The first UCO was introduced in 1948, but the origins of the Use Classes can be traced to the so-called Model Clauses under the Town & Country Planning Act 1932.

Under that Act, the Minister was authorised to issue model clauses to assist the local planning authority in preparing draft planning schemes (which preceded the bringing of all land under planning control in 1947).

The identification of use classes became important for defining the existing development rights in land with the creation of a national planning framework under the 1947 TCP Act. Two UCOs were passed on the 5 May 1948 and came into operation on 1 July the same year. They were identical in content but different in purpose. SI 1948, No. 954, passed under the provision of section 12 (20 of the TCP Act 1947) was to become the forefather of all UCOs. There were 22 classes in this order. The other UCO, SI 1948, NO. 955, was specifically concerned with compensation matters.

Soon afterwards, SI 954 was changed by the 1950 UCO (SI 1950, No. 1131), which came into force on 21 July 1950. This was a precursor to current deregulation measures because it reduced the number of classes and so liberalised the use class provisions. As the accompanying circular (No. 94 of 1950) said, it:

...represents a further step in the simplification of planning procedure. The amalgamation of certain of the Use Classes specified in the 1948 Order will allow a wider range of changes of use to take place without involving "development" for the purpose of the Act, and therefore without requiring planning permission or payment of development charge.⁸

The number of use classes was reduced from 22 to 18, but the 1950 UCO tightened control in other respects. The specific changes (some of which reappear as issues in the current 1987 UCO) were as follows:

- i) 'shop' and 'office' definitions were altered in order to distinguish between classes I and II;
- ii) the breadth of Class V was widened to take account of the Alkali etc. Works Order 1950;
- iii) the old Class X, ('wholesale warehouse'), and Class XI, ('repository'), were brought together into one class;
- iv) hostels were excluded from the group covering hotels, boarding houses

and residential clubs "in view of the wide range of uses covered by this term." (They were re-grouped together in 1987 UCO);

- v) the institutional uses formerly encompassed by Classes XIII, XV, XVII and XVIII were grouped in two classes, XIV and XVI. Class XIV included the generality of such uses and class XVI those uses which demand particular care in the siting e.g. mental hospitals. Boarding schools and residential colleges were placed in a separate class XIII, (1987 UCO changed this class);
- vi) the uses previously included in Classes XIX, XX, XXI and XXII were regrouped in two classes, XVII and XVII.

The 1950 UCO remained in force for 13 years although with two minor amendment orders in 1960 (SI 1960, No. 282, with effect from 24 February 1960 and SI 1950, No. 1761, with effect from 27 September 1960). The first excluded the sale of motor vehicles from the uses within Class I (this has been retained in the 1987 UCO). The accompanying Circular 10/60 stated:

In making this amendment the Minister is concerned primarily with the effects which these changes of use may have on road traffic and, in certain circumstances, on local amenity. It is not his intention that unnecessary restrictions should be placed on the development of the motor trade in response to public demand. Accordingly, he asks planning authorities to examine proposals strictly on their merits, and to withhold permission only if satisfied that the particular proposal is objectionable on traffic grounds or for some other substantial reason.⁹

The GDO was amended at the same time in order to allow a change of use from car sales back to shop use without the need for specific planning permission. The second amendment UCO passed in 1960 concerned betting offices, (they were excluded from the definition of offices) and Classes V-VII, IX and XVI.

The 1950 and 1960 UCOs were revoked under the 1962 TCP Act and replaced by the consolidated 1963 UCO (SI 1963 No.708), with effect from 29 March 1963. A minor amendment followed in 1965 (SI 1965 No.229), restoring a separation that formerly existed between Classes XVIII and XIX (assembly and sporting uses), but which had been abandoned in the 1987 UCO assembly and leisure class.

The 1963 UCO was replaced by the 1972 UCO under the then newly consolidated 1971 TCP Act. The major amendments made were as follows:

- i) laundrettes, cafes and restaurants were excluded from the definitions of a shop;
- ii) Special Industrial Groups A,B and C were recasted;
- iii) the former Class XVI, (use as a hospital, mental institution, prison or probation centre) was omitted;
- iv) minor changes were made to the wording in classes XVI, XVII and XVIII;
- v) leather dresser, parchment maker and tanner were omitted from Class IX.

The 1972 UCO was both a restrictive and deregulatory measure. It increased control in some areas and relaxed it in others. The accompanying circular (97/72) stated:

Account has been taken of increasing public concern about the freedom to establish certain kinds of premises under the previous Orders without development being involved. Accordingly, the present Order excludes certain uses from particular Use Classes (e.g. in the case of restaurants, cafes, snack bars and laundrettes by amending the definition of 'shop',; in the case of shops for the sale of hot food, by substituting this expression for 'fried fish shop'; and by amending the definition of shop; in the case of amusement arcades by omitting the reference to a building for indoor games in a new Class XVIII and substituting 'sports hall'). The new order also takes account of some changes in attitude and of modern processes which justify minor relaxations (e.g. in bringing together all kinds of hospital in a single class, and by deleting leather making from Class IX). The special industrial classes have been regrouped taking account of the character of offence likely to arise from the process, rather than relying wholly on the criterion whether the works are registrable under the Alkali etc Works Orders. Other changes have been made for the purpose of clarifying the position (e.g. in the definition of shops and offices).¹⁰

The 1972 UCO remained in force for fifteen years until the principal changes introduced by the 1987 UCO (this will be discussed in the next chapter).

Notes & References

1. Redman, M., *Planning Uses and Use Classes*, 1989, p.2.
2. Wootton Jeffreys Consultants and Bernard Thorpe, "*An Examination of the Effects of the UCO 1987 and the GDO 1988*", DoE, 1991.
3. *Planning*, June 1991, 'Department Rules Out Use Class Amendments', 923, p.2.
4. *DoE Circular 1/85: The Use of Conditions in Planning Permissions*, January 1985.
5. Formerly Section 22(2)(f) of the Town & Country Planning Act 1971 & Section 12 (2)(f) of the Town & Country Planning Act 1947.
6. Home, R., *Planning Use Classes*, 1989, p.2.
7. Response by the Institute of Environmental Health Officers to DoE consultation paper, letter dated 17 September 1986, cited in Thomas, P.E., *JPEL*, Occasional Papers, No. 16, 1986, p.6.
8. Circular 94/50: Town and Country (Use Classes) Order 1950.
9. Circular 10/60: Town and Country Planning General Development (Amendment) Order, 1960, Ministry of Housing and Local Government.
10. Circular 97/72: Town and Country Planning (Use Classes) Order, 1972, Department of the Environment.

CHAPTER 2

2.0 CURRENT LEGISLATION AND POLICY

The Government has been committed to preserving the planning system, but also to reducing what it sees as the bureaucratic burdens of planning control. However, the UCO remained unaltered despite the widespread reforms introduced by the Local Government, Planning and Land Act 1980. (This Act introduced enterprise zones, modified the GDO and made other minor amendments to the planning system). Nevertheless, the Government recognised that the 1972 UCO required updating; by the early 1980s the Order no longer reflected the nature of many modern business and social activities. The UCO's growing inadequacy stemmed from the following changes:

- a) Industrial activity had declined in many parts of the country. Modern industrial needs differ substantially from those of the post-war years, with an upsurge in so called 'hi-tech' operations.
- b) The pattern of retailing has changed, with the decline of the traditional High Street and the introduction both of the superstore with its large surface car park on the fringe of populated areas and also of the out of town centres. The face of the High Street has also changed: banks and building societies now provide a far different and expanded range of services to the general public and banks in particular in recent years, promoting a 'retail type' image.
- c) Some of the uses in the old Use Classes Order had simply ceased to exist, while at the same time the number of *sui generis* uses was increasing¹.

Furthermore, the Government noted that UCO was being used to restrict the spirit of enterprise that existed abroad and, therefore, targeted the UCO as an important area for reform.

Deregulation was a fundamental tenet of the central government philosophy in the early 1980s. It began with the issue of the DoE Circular 22/80: Development Control Policy and Practice which was seen as giving the private developer a free hand to develop land in accordance with market forces. Because of their deregulatory capacity, the UCO and GDO were identified as useful instruments to achieve this objective and free the spirit of enterprise. The 1987 UCO, therefore, became one of

the major Government deregulation initiatives which were launched in the White Paper, 'Lifting the Burden', published in July 1985.² This included proposals for reducing the bureaucratic burdens on business in town and country planning, transport, customs and exercise and agriculture amongst other areas of Government regulation. As the White Paper stated in paragraph 3.1:

The town and country planning system has not changed in its essentials since it was established in 1947. In many ways, it has served the country well and the government has no intention of abolishing it. But it also imposes costs on the economy and constraints on enterprise that are not always justified by any real public benefit in the individual case. It can cause delay and uncertainty even where applications are eventually approved. Too often the very wide discretionary power that the system affords is used to apply excessively detailed and onerous controls of a kind that would not be tolerated in general legislation. If the system is to remain effective, it must be used in a way that does not impose an unnecessary degree of regulation on firms and on individuals.

Paragraph 3.2 of the White Paper went on to say:

The Government's policy is to simplify the system and improve its efficiency. A good deal has been done but there is ample scope for further progress. An efficient and simple system can speed the planning process and facilitate much needed development which helps create jobs - in construction, in commerce and industry, and in small firms.

The DOE issued a new Circular on Development and Employment (14/85) at the same time as the White Paper. The circular urged the planning system to "respond positively and promptly to proposals for development...unless that development would cause demonstrable harm to interests of acknowledged importance." It also stressed the importance of helping small firms by avoiding "unnecessarily onerous and complex controls." The White Paper went on to propose the creation of Simplified Planning Zones (a development of the Enterprise Zone concept, introduced in 1980), changes to the GDO, Advertisement Regulations and the 1971 Act (now the 1990 Act), simplified appeals procedures and guidance on planning in relation to small firms. In paragraph 3.6 (iii) it announced a review of the UCO and also identified a fundamental purpose of the review:

A review of the Use Classes Order (UCO) has been set in train and the results will be published for consultation later this year.The UCO enables land and building to be used for various purposes without the need for planning

permission, and is thus a means of deregulation like the GDO. Unlike the GDO, however, the UCO has not been substantially changed since it was first introduced in 1948, and is clearly overdue for review in the light of today's conditions. In particular, it needs to take account of the requirements of the typical "high-tech" firms where manufacturing offices, research and development, warehousing and other activities may be carried on in a single building and where the mix of uses and space utilisation may need to be constantly changed and adapted to the needs of the business. Since the UCO is intended to permit and not restrict compatible uses, it is essential that it should be designed to do this effectively.

2.1 Property Advisory Group (PAG) Review

The task of reviewing the UCO was entrusted to the Property Advisory Group of the Department of the Environment. The Secretary of State's brief to PAG was to carry out a "wide ranging and fundamental review of the Order, with the object of modernising and recasting it within the basic framework of Part III of the 1971 Act, in the light of the circumstances and needs of the present and the foreseeable future."

The brief went on:

The aim is to reduce the number of classes to the minimum compatible with keeping within specific control changes of use, which, because of their environmental consequences or relationships to other uses, need to be subject to prior authority; to permit, without the need for specific application, changes in the proportion of 'mix' of uses of different kinds within a single building; and, where possible, to permit change of use between Use Classes from a more 'noxious' type of use to a less noxious one (the escalator concept). Overall, the intention is to enable the occupiers of land and buildings to enjoy the maximum practical flexibility in the use of their property, free from public control. Proposals for amendments to Section 22 of the 1971 Act to allow the Order to be cast in a different way, if necessary, are not excluded.³

With this exhortation, the PAG sub-group set to their task with gusto. The sub-group, recognising the political context of its investigation, saw the UCO as:

essentially a de-regulatory instrument. In a wide range of cases it frees occupiers or potential occupiers of land or buildings who wish materially to change the use to which the property is currently being put from the necessity of applying for planning permission. The Group is nevertheless aware that the view is erroneously held in some quarters, and even by some professional planners, that a change of use from one class to another must constitute development. This mistaken view was rejected by the courts in Rann...To

look at the UCO in this erroneous way is to run the risk of transforming it from a liberalising into a restrictive measure. We consider it important to emphasise in this Report that the UCO is, by its very nature, a means of allowing freedom from, and not strengthening or formalising statutory control.⁴

With this 'definition' of the UCO, the sub-group began its examination by questioning whether a change of use need require planning permission in the first instance; or put in another way, whether a material change of use should constitute development. It concluded that it should, and that planning authorities should retain control in order to:

- i) protect the general environment and the living and working conditions of the public;
- ii) ensure that some important land uses are established and maintained in convenient locations where they can be carried on appropriately.

The first reason given for retaining control over changes of use is concerned with amenity. The aspects of amenity on which PAG believed development can have some impact, and hence which should be taken into account when considering changes to the UCO were:

- i) physical nuisance such as noise, smells, fumes and dust which, still require the type of control provided by the planning system even though they are addressed by other legislation;
- ii) visual amenity, which though only controlled by planning powers, is often incidental to change of use considerations;
- iii) the generation and type of traffic and the requirement for parking.

The second reason for control concerns efficient land use. Some land uses need to be serviced and supported by others. Such relationships are a fundamental planning concern. The sub-group cited the need for schools, shops, social services and recreational facilities to be associated with residential areas as one such example.

The PAG report was published by the Government on 2 December 1985, and views were invited from a wide range of bodies. This was the first consultation exercise on

the UCO.

The main findings and recommendations of the PAG sub-group were that:

- i) the shops class was outdated and in need of rearrangement and expansion; a new definition could include certain types of service uses commonly found in or near shopping streets and which provide services for the public who visit the premises for that purpose. In other words, it proposed a single retail class, comprising all uses now incorporated in Part A of the schedule to the 1987 Order;
- ii) a new general business use class should be introduced to incorporate offices and light industry in order that owners or users of commercial buildings are able to decide what combination of activity could most profitably be carried on in their property;
- iii) a new residential institutions class should be created to include boarding/ guest houses and hotels, residential schools and colleges, hostels, residential homes and institutions providing care for such groups as children and the elderly;
- iv) a new residential use class should be created to include, *inter alia*, collective living, for example, of the elderly or mentally ill, and where care does not have the full institutional character of a residential home, by no more than ten people;
- v) the use of a building for the purpose of residence should expressly include the use for any activity compatible with that principal use, subject to amenity and traffic consideration, and provided that not more than five persons are engaged in business in the property at any time.⁵

The PAG sub-group full recommendation is attached as Appendix B.

The response to the PAG report was mixed although most commentators agreed that change was long overdue.⁶ The three areas which attracted the most criticism were PAG's recommendations on the shopping areas, the new business class and the home-based business activity which attracted much hostile reaction.

The Royal Town Planning Institute (RTPI) had this to say on the proposed home-based business activity;

The only clear threshold is one that requires permission for non-residents to work in the home other than for purposes directly related to the residence. Applications can then be considered on their individual merits with full recognition of the factors of amenity, noise, traffic etc. In considering such application, a useful indicator can be the proportion of the residence used for business purposes. This allows for the differential impact of the nature of the

residential property e.g. a large detached house in substantial grounds of a terrace house sub-divided into one bedroom flats.⁷

The Royal Institution of Chartered Surveyors'(RICS) view was that:

The proposal....goes beyond the boundary of that which we believe to be acceptable in a wide range of circumstances encountered in practice. We also believe that it would be impossible to enforce the conditions relating to traffic and that the detrimental effects on those living nearby could be quite considerable.⁸

2.2 Government Response to the PAG Proposals

Having considered the responses to the PAG report, the Government issued its proposals to modernise the UCO 1972 in a consultation paper in June 1986.⁹ The proposed changes varied from the sub-group recommendation on a number of significant points, as did the UCO itself when it came into effect.

The Government rejected the radical changes proposed for shopping areas and home-based business activities, but accepted the recommendations for a new business class without modification.

In rejecting the PAG sub-group proposal to merge shops and financial/professional services into one class, the Government said this:

The Government has considered these options very carefully in the light of the representations received. The character of a shopping centre depends on many factors such as size, location, access, number and range of shops and other facilities. The vitality of a shopping centre depends on the number of people it can attract and this will often be its main planning characteristic, together with the consequential vehicular and pedestrian traffic, and requirements for parking, loading and public transport facilities. Many local authorities have policies designed to maintain and strengthen the retail element in primary areas dominated by shops for the retail sale of goods. Adoption of either Stage 3 or Stage 4 of the sub-group recommendations would take away the ability of local planning authorities to implement these planning policies.¹⁰

The Government also dropped the recommendation for home-based business activity following substantial opposition from the local planning authorities and other interested bodies. However, the Government issued a circular 2/86 (now PPG 4) to clarify the position of carrying out business activities from dwelling houses. The circular stated that planning permission for working at home "is not usually needed where the use of part of a dwellinghouse for business purposes does not change the overall character of its use as a residence."¹¹

In the business sector proposals, the most important recommendation of the PAG sub-group: that light industrial and office uses be merged in one business use class along with some business uses not previously in any class, was accepted for both the Government consultation paper and the 1987 Order. Despite considerable opposition from local authorities in the South East, who felt that insufficient attention had been paid to employment implications and, in particular, to the loss of control that would result from the new class, paragraph 18 of the consultation paper¹² stated that:

The Government is persuaded of the case to introduce the new wider Use Class. Not all the uses proposed by the sub-group will always fall within a light industrial definition and thus within the new Class, but the net result should be a substantial benefit to modern commerce and industry. In reaching this conclusion, the Government has discounted arguments based on the effects of such a change on the rental values of business premises. That is not relevant to the operation of the town and country planning system.

The Government reiterated this view in February 1987 in the face of protest by the Saville Row tailors who secured an adjournment debate to no avail in the House of Commons. The tailors recognised the fact that their premises would be ideally suited for office use and were concerned that the changes to the UCO would result in their eventual displacement from their traditional premises.

2.3 The Government Proposals, 1986

As already mentioned, the Government did not accept all of the PAG recommendations. A summary of the main changes are as follows:

- i) separate use classes for shops and for premises from which financial or professional services are provided direct to the public visiting the premises (e.g. building societies and banks);
- ii) the creation of a new use class for premises used for the preparation and sale of food;
- iii) the introduction of a GDO freedom to permit both financial and professional services premises and hot food premises to become shops but not *vice versa* without specific planning permission;
- iv) the creation of a new "business" class by merging light industrial uses with office uses other than those for financial and professional services provided direct to the public visiting the premises;
- v) no change to the current general and special industrial classes, Classes IV-IX, but a separate technical review of the latter leading to a later amendment of the Order;
- vi) no change to the current wholesale class, Class X;
- vii) the retention of the current separate use class covering uses as a hotel, or a boarding or guest house (including those residential homes where no special care of maintenance is provided);
- viii) the creation of a residential institutions class by merging the current Classes XII and IIV;
- ix) the creation of a new single "non-residential institutions" class covering the current Class XIII, XV and XVI, and including non-residential schools and colleges, and churches and church halls;
- x) the creation of an "assembly and leisure" class covering theatres, cinemas, music and concert halls, dance halls, and all indoor and outdoor sports and leisure uses;
- xi) the creation of a new "private residential" use class to include use as a dwellinghouse and use as a home provided that no more than 6 people are normally resident; the revised Order will not alter the current requirement that planning permission for working at home is needed if the overall character of the use of the premises as a residence would be changed;
- xii) the inclusion of uses of open land in the same class as the use of building for the same purpose;
- xiii) clarification that planning permission is not required to sub-divide non-residential buildings, provided that the existing use of the whole building and the proposed use of the parts fall within the same use class. (This proposal required amendment of primary legislation.) Planning permission will continue to be required for the sub-division of dwellinghouses.¹³

Following the publication of the Government proposals, views were again invited from a wide range of bodies. There was continued opposition to the proposed business class but the Government resisted the opposition. However, the final version of the Order was little different from the proposals in the Government Consultation Paper.

2.4 The Use Classes Order 1987

The new Use Classes Order was made on April 28, 1987 and came into effect on June 1, 1987. The Order reduced the number of classes from 18 in the 1972 UCO to 16, with numerous other changes (See Annex C). The classes were grouped in four parts which broadly corresponded with:

- a) shopping uses;
- b) other business and industrial uses;
- c) residential uses; and
- d) social and community uses of a non-residential kind.

A summary of the changes is given below and illustrated in Figure 1, page 29.

- a) **Shopping area uses:** The definition of 'shop' was modernized. Retail uses, such as retail warehouses, showrooms, dry cleaners, and hairdressers became class A1. However, use for the sale of motor vehicles is still excluded. Class A2, a new class of financial and professional services was created. Combined in this class are uses which were previously defined as 'offices' and others which were defined as 'uses appropriate to a shopping area'. As such Class A 2 includes betting offices, banks, estate agents and other services which are provided principally to visiting members of the public. However, health and medical services are both specifically excluded from this use class. A new class, A3, 'food and drink' was introduced where shops for the sale of hot food, on or off the premises, are joined by those involving consumption of any kind of food or drink on the premises. This includes hot food take-away shops, public houses, cafes and restaurants.
- b) **Other Business and Industrial Uses:** A new business class B1 was created. This class amalgamates the former two classes of 'offices' and 'light industrial use'. It was introduced to allow interchange

between office, research and development, and light industrial use including laboratories, studios and hi-tech uses. Use for light industry is subject to a test that the use could be carried out in any residential area without detriment to the amenity of that area. In the 1972 UCO offices were in the same class with banks, estate agents and building societies (now in Class A2), while light industry was in a separate class.

Class B2, General Industry and the various special industrial groups (Classes B3 to B7) are in a similar arrangement to the previous Order. Warehousing is now in Class B8, storage and distribution, and extends to the use of open land and use as a distribution centre. However, warehousing will generally fall within the shops class where the main purpose is the sale of goods direct to visiting members of the public.

c) Residential Uses: Hotels and Hostels where no significant element of care is provided are now amalgamated in a new class, Class C1. They were in separate classes previously. There is now greater flexibility with regard to residential institutions which are now class C2. This class is a combination of two classes, XII and XIV, of the 1972 Order. Except for schools, the principal distinction between uses in this class, and those in Class C1, is the provision of residential accommodation and care where required. It includes residential schools, colleges, training centres, hospitals, nursing homes and other institutions providing residential care. Class C3 "Dwellinghouses" defines a dwellinghouse as a use where up to six people live together as a single household, including those situations where an element of care is provided.

d) Non-Residential Institutions and Leisure: Class D1 combined three former classes (XVIII, XV and XVI) of the 1972 Order, bringing together a specified range of communal and community uses dealing

with public buildings, health centres and religious buildings. Various leisure facilities previously contained in two separate classes (XVII and XVIII of the 1972 Order) were combined in a single Class D2 and the class was extended so as to include all indoor and outdoor sports except those involving motor sports and firearms. Bingo halls and casinos are specifically included in the new class, while theatres are now excluded from this class.

The 1987 Order made the concept of *sui generis* uses (ie. those uses excluded from any class) official for the first time, in that a specific list of such uses is given. These include theatres, amusement arcades or centres, launderettes, sale of fuel, sale or display for sale of motor vehicles, taxi business or hire of motor vehicles.

The Use Classes Order 1987 was accompanied by Circular 13/87¹⁴ which provided guidance and interpretation. The Circular emphasises impact on amenity. Paragraph 3 sets out the aim of the UCO as being two-fold:

- i) to reduce the number of classes while retaining effective control over changes of use which, because of environmental consequences of relationship with other uses, need to be subject to specific planning application; and
- ii) to ensure that the scope of each class is wide enough to take in changes to use which generally do not need to be subject to specific control

The Circular went on to state that:

It serves no-one's interest to require planning permission for types of development that generally do not damage amenity. Equally, the Secretaries of State are in no doubt that effective control must be retained over changes of use that would have a material impact, in land-use planning terms, on the local amenity or environment.

In addition to giving guidance and interpretation to the UCO, the Circular emphasises the advice of Circular 1/85¹⁵, that there is a presumption against conditions designed to restrict future changes of use which would, by virtue, of the Order, not otherwise constitute development. Such conditions, it states, would be regarded as unreasonable unless there was clear evidence that the uses excluded would have serious adverse effects on the environment or on amenity, not susceptible to other control.

The Evolution of the 1987 Use Classes Order

Figure 1

1972 USE CLASSES	USES	P.A.G. PROPOSALS	1987 USE CLASSES
CLASS I	Shops for sale of goods by retail (inc. retail warehouses) • hairdressers • undertakers • travel & ticket agencies • post offices • receivers of goods to be washed, cleaned or repaired		A1
	Sale of hot food, public houses, cafes and restaurants		A3
SUI GENERIS	Tripe shop Pet shop Cats-meat shop	NEW RETAIL CLASS	A1
	Other "retail services"		A1
	Sale of motor vehicles		sui generis
CLASS II	Banks Building Societies Estate Agencies Employment Agencies Solicitors		A2
CLASS II	Offices		B1a
SUI GENERIS	Research and Development Laboratories Studios	NEW BUSINESS CLASS	B1b
CLASS III	Light Industry		B1c
CLASS IV	General Industry	GENERAL INDUSTRIAL BUILDING CLASS	B2
CLASS V-IX	Special Industry	SPECIAL INDUSTRIAL CLASSES	B3-B7
CLASS X	Warehouses	WAREHOUSING CLASS	B8
CLASS XI	Hotels, etc		C1
CLASS XII	Residential Schools and Colleges	NEW RESIDENTIAL INSTITUTIONS CLASS	C2
CLASS XIV	Hospitals Homes		C2
SUI GENERIS	Hostels		C1
SUI GENERIS	Non-residential education and training	NEW NON-RESIDENTIAL INSTITUTIONS CLASS	D1
SUI GENERIS	Dwellings Communal housing of elderly and handicapped	NEW PRIVATE RESIDENCES CLASS	C3

SOURCE: DoE, (1991) An Examination of the effects of the Use Classes order 1987 and the General Development Order 1988, Wooton Jeffreys consultants & Bernard Thorpe.

Changes Proposed to UCO 1987

The existing UCO is currently under review on one main issue; the Special Industry Use Classes (SIUCs) Classes B3- B7. The former Class C1 (Hotels and Hostels) has already been changed.

1993
The Government issued a Consultation Paper¹⁶ proposing changes to the UCO, deleting Classes B4 to B7. Annex 3 of the consultation paper notes that "the government considers that the continued existence of these classes serves no useful purpose, and is satisfied that their deletion will not weaken controls over polluting substances".¹⁷

The Government commissioned Roy Waller Associates to carry out research into the SIUCs. The main findings were that:

- i) the industrial uses falling within the SIUCs has been declining over the years;
- ii) the clarity of uses falling within the SIUCs from uses in Class B2 has diminished due to the technological change and the improved levels of environmental control;
- ii) the provision to change use within the SIUCs was rarely used and they felt that the flexibility provided by the UCO was of little use to the industry and to planning authorities.

With the outcome of this research, the Government issued another consultation paper in 1989 and also canvassed for views on how to change or deregulate the SIUC uses in its White Paper "This Common Inheritance". However, there was no consensus on the best option to adopt. Hence this current consultation paper.

Paragraph 8, Annex 3 of the 1993 Consultation Paper states that:

The Government is committed to reducing the administrative burden on industry by removing all unnecessary controls and by eliminating duplication.

The purpose of the planning system is to regulate the development and use of land in the public interest, having regard to the impact on amenity and the environment. It is not the function of the planning system to duplicate or supplement other controls. ✓

The Government considers the existing SIUCs anachronistic and of little actual benefit to anyone. It believes that the new legislation, including some provisions of the Environmental Protection Act 1990, the Water Resources Act 1991; and the Planning (Hazardous Substances) Act 1991, "which applies to SIUC processes is now sufficiently comprehensive to control potential pollution arising from changes to and from these uses. It, therefore, proposes to delete classes B4 to B7, and to include all the processes therein in class B2."¹⁸

Depending on the responses to this consultation paper, the number of classes in the UCO 1987 could be further reduced to just 12; with Special Industrial Use Classes subsumed into Class B2 of the existing UCO.

This proposal is likely to have far reaching implications for landuse planning if it is implemented. The GDO 1988 under Class B, Part 3 of Schedule 2, allows a change without planning permission from B2 uses to B1 uses. This means that, if Special Industrial Uses are amalgamated into Class B2, then Special Industrial Uses can change into Class B1 uses without the need for planning applications, as long as the 'amenity-test' criteria under Class B1 in respect of the use being suitable in a residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust, or grit are met. The Government considers that these criteria are stringent enough to ensure that the provision will only allow changes to 'less' polluting uses.

On the financial and other resource implications, the Government believes that the proposal will simplify the UCO; improve the flexibility of industry to adapt to changing demands, provide a modest net benefit to industry and local authorities through some reduction in the number of planning applications.

The other part of the UCO 1987, which the Government has changed is the Residential Use Class with particular reference to "Hotels and Hostels" (Class C1).

The Planning Minister David Curry announced on the 14th of March 1994 that planning permission will be required for changes of use from hotel to hostel accommodation. He said that "temporary measures" will be taken to prevent the further erosion of the character of traditional holiday resorts caused by the spread of hostels in such areas, which have been attracting large numbers of social security benefit claimants. The Government has decided to act to stop local tourist industries being damaged by concentration of hostels."¹⁹

The Government then made an Order removing hostel uses from Class C1 Use where they were grouped together in the 1987 reforms of the Use Classes Order. The Order took effect from the beginning of April 1994.

The Minister explained why the Government was taking this measure when he answered written questions from Roger Gale and David Atkinson, the MPs for Thanet North and Bournemouth East. He said that "the Government is satisfied that there is a real and specific threat to the amenity of tourist areas from the establishment of such hostels in traditional hotel areas."²⁰

2.5 The General Development Order 1988

With the introduction of the 1987 UCO, a consequential amendment to the GDO became necessary. The GDO 1977, as amended in 1981, granted planning permission to certain changes of use set out in Class III of Schedule 1.

The necessary amendment order was made on 28 April, 1987 and came into force on 1 June, 1987, the same date as the UCO 1987 was made and came into effect. This amendment has been cited as the "most significant change in the new GDO."²¹ The amendment allowed certain changes of use between the A1, A2 and A3 Classes and

between the B1, B2 and B8 Classes. Permitted Development rights to change from General Industrial and Warehousing to Light Industrial had existed under Class III of previous GDOs, and the new GDO substituted the new classes for the old, thus allowing unrestricted change of use from B2 and B8 into B1. However, the 235 square metres restriction, which formerly only applied to interchange between Classes III and X, was applied to all changes to B1 because of a mistake in the drafting. This mistake was later corrected in the GDO 1988 which consolidated the GDO 1977 and the nine amending Orders. A summary of the changes allowed by the GDO 1988 is given below, the full list including details of exclusions is given in Annex D.

- a) A change of use to a use falling within class A1 (shops) from a use falling within Class A3 (food and drink) or from a use for the sale, or display for sale of motor vehicles.

- b)i) A change of use to a use for any purpose falling within Class B1 (business) from any use falling within Class B2 (general industrial) or Class B8 (storage and distribution) with no limit on floorspace in the case of B2 to B1, but a limit of 235 square metres for B8 to B1.

- b)ii) A change of use to a use for any purpose falling within class B8 (storage and distribution) from any use falling within Class B1 (business) or B2 (general industrial) provided the total floorspace does not exceed 235 square metres.

- c) A change of use to a use falling within class A2 (financial and professional services) from a use falling within Class A3 (food and drink).

- d) A change of use of any premises with a display window at ground floor level to a use falling within class A1 (shops) from a use falling within class A2 (financial and professional services).

- e) Class E contemplated a situation where planning permission has been granted for alternative uses after 5 December, 1988 (the date the GDO came into force), and one of the permitted uses has been implemented. A specific planning permission is not therefore required to change from the first use to the second permitted use, provided that the change takes place within 10 years of the original permission and there are no conditions on the original permission which would restrict the change of use.

These changes, especially Classes A and B, have had a dramatic effect on landuse planning. The combination of a wider use classes (UCO 1987) and the new permitted development rights under the 1988 GDO means that a planning unit can move between a variety of uses without coming under planning control. As Home (1989) noted, it is theoretically possible for a factory or warehouse to become a shop without the need for planning permission, through a process of actions. For example, a warehouse or general industrial use can become light industrial under permitted development rights (GDO 1981); light industrial can now become an office (both are Class B1); an office with services principally to members of the public joins the financial and professional services Class A2 (which may or may not require planning permission, following Rann's case); Class A2 can become a shop under permitted development rights.

Furthermore, it is now possible for a public house (Class A3) to become an office (Class B1) because any use falling within Class A3 could be changed into any use falling within Class A2 without planning permission. The deemed permission for A2 use leads to pressure for conversion to B1 office (due to greater financial returns) which the local authorities may find very difficult to resist especially as "many have gone on to argue that if a change could be made to A2 offices, then why not B1 offices."²²

The exploitation of the regulations in this way would be quite legitimate, and highlights the particular difficulty of distinguishing a business class use (B1) from a

financial and professional services use (A2). It also highlights the difficulties faced by the local authorities in balancing the land use planning policies in relation to the deemed permissions and permitted development rights granted by the two Orders, which could be easily exploited.

Planning Authorities can, however, restrict the developments permitted by the GDO with the use of Article 4 Directions. This measure is subject to approval by the Secretary of State and can be liable for compensation. It is, therefore, unlikely to be popular with the local planning authorities.

Proposed Changes to the General Development Order 1988

The Government is also proposing further changes to the GDO in the consultation paper, "Streamlining Planning"²³, in order to grant permitted development rights to commercial premises.

It proposes to extend permitted development rights for the first time to shops and banks. It is offering an automatic right to enlarge premises at the rear of shops by up to ten per cent (10%) of the existing building's volume, provided the new section is not more than one hundred cubic metres (100m³) in volume, over four metres (4m) high; and not within one to two metres of the site boundary; that the development did not involve roof alterations which would materially affect the view from the front. A similar right is proposed for shop outbuildings, subject to the same height, and perimeter restrictions; and that, they do not occupy more than fifty per cent (50%) of the area surrounding the building.

The Government is also proposing to introduce permitted development rights for schemes to convert space above shops into flats, as long as the development does not entail alterations to the roof which would materially affect the external appearance of the building.

These relaxations would apply to all Class A2 uses under the Use Classes Order, including banks, employment agencies, betting offices, building societies, estate agents, under the terms of the consultation paper. The DoE claims that "such services are a well-established part of the high street scene, and the land-use considerations relevant to them are broadly similar to those of shops."²⁴

With regards to schools and hospitals, the DoE is suggesting permitted development rights for ancillary uses like storage space, administrative offices or parking provision provided the resultant enclosed floorspace does not exceed ten percent of existing floor space by area; the height is not over four metres and that the development is at least twenty metres away from the site boundary.

It is, however, not within the ambit of this thesis to consider these proposed changes or the resultant effects of the proposals if implemented. Nevertheless, it is to be noted that these proposals are likely to increase the floor spaces of uses falling within Classes A1 and A2 of the Use Classes Order without the need for specific planning permission.

2.6 Other Government Policy Instruments

There are other Government documents which buttress the workings of the UCO, the GDO and the Planning system as a whole. These include the Circulars and the Planning Policy Guidance Notes (PPGs).

The Circulars and the PPGs are designed to give guidance to all those involved in the planning process on various aspects of planning policy and "are seen by the Department of the Environment as a necessary component of the planning framework, a system of policy documentation that covers national, regional, county and local levels, each level of which is intended to interlock as far as possible to make up a coherent whole."²⁵ Their subject matter is consequently diverse and ranges from advice on the use of conditions in planning permissions²⁶ to advice on town centres

and retail developments²⁷.

These government documents are "in fact attempting to add flesh to the bare bones of the relevant planning legislation"²⁸, and, therefore, are usually taken as important interpretative planning documents by those using them.

Local planning authorities are required to have regard to the contents of these policy documents in the carrying out of both their development control and forward planning functions. The courts have ruled that the Government planning statements are material considerations to which regard should be paid in development control decision making. The Secretary of State or one of his inspectors is likely to adopt the Department's policy position at appeals. So, PPGs and Circulars are influential form of policy guidance and "whilst they do not place local authorities under any statutory obligation, their significance in development control decision making should not be under-estimated."²⁹

Numerous Circulars exist on various aspects of planning issues while "twenty-five PPG notes now exist in either draft or final formats."³⁰

Some of the PPGs and the Circulars are particularly relevant to effective operation of the UCO and the GDO. These include PPG1, General Policy and Principles.³¹, which states in paragraph 5 that:

The planning system should be efficient, effective and simple in conception and operation. It fails in its function whenever it prevents, inhibits or delays development which should reasonably have been permitted. It should operate on the basis that applications for development should be allowed, having regard to the development plan and all material considerations, unless the proposed would cause demonstrable harm to interests of acknowledged importance.

PPG 4, Industrial and Commercial Development and Small Firms³², reminds local planning authorities in paragraph 7 that UCO 1987 and GDO 1988:

present an opportunity for development plans to provide positively for enterprise and investment, whilst affording effective environmental protection. To preserve the flexibility afforded by the UCO and the GDO, development

plans should not generally contain policies advocating the imposition of general restrictions on the freedom they provide.

It went on to say:

save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the UCO would otherwise allow. The Secretaries of State would regard such condition as unreasonable...

PPG 6, Town Centres and Retail Developments³³, encourages planning authorities to be realistic in planning for the future town centres. It urges the authorities to provide positive policies in plans in order to encourage uses that will contribute to town centre vitality and viability. It emphasises the need to sustain the vitality of shopping areas through the flexibility in the use of retail floor space provided by the UCO (Class A uses). Circular 1/85³⁴ stresses that conditions should only be imposed where they are both necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. It advises local planning authorities not to impose unnecessary conditions or restrictions on permitted uses or developments allowed by the UCO and other development Orders. It states in paragraph 67 that:

Both development orders and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. There must therefore always be a general presumption against limiting their application in a particular case, and it would be contrary to the general principles of control for an authority to prevent such permitted development or other changes of use by the widespread imposition of conditions.

Furthermore, the Circular urges local planning authorities to use alternative and more specific conditions if it is justified to impose conditions restricting changes of use. It suggests that the condition should be drafted so as to prohibit a change to a particular unacceptable use or uses, rather than in terms which prevent any change of use in the future; and requested the authorities to give proper, adequate and intelligible reasons for the conditions they impose at any time.

Circular 13/87³⁵ which accompanied UCO 1987 reiterated the advice given in Circular 1/85 in addition to providing guidance and interpretation to the Order.

Officially these statements and advice amongst others amount to "other material considerations" which decision-makers must adhere to in the planning process. PPG 1³⁶ makes it clear that decision-makers must have proper regard for them. Where they decide not to follow relevant statements of the Government's planning policy, they must give clear and convincing reasons.

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CHAPTER 3

3.0 SHOPPING AREA USES - PART A

The Use Classes Order 1987 and General Development Order 1988 each resulted in major changes to the operation of planning control over retailing activities. "They modernised the legislation in the light of the changes seen in shopping centres in the previous two decades and brought greater freedom for the market to determine the use of property in the high street and elsewhere."¹ Three classes, A1, A2 and A3, which "will generally be found in shopping areas" were grouped together for the first time as Part A in the 1987 UCO.

The Government did not accept some of the PAGs radical recommendations in this section (especially on merging retail and non-retail uses in one class) because of the widespread opposition to this suggestion and "the complex planning issues which shopping areas raise."² The Government explained its reasoning for creating three separate classes in paragraphs 15 and 16 of Circular 13/87, as follows:

The character and vitality of shopping centres depend on many factors such as size, location, access, number and range of shops and other facilities, and thus on the number of people who can be attracted. Service uses, including fast food restaurants, contribute to that vitality. In addition, fast food restaurants often help to create employment opportunities, particularly for young people.

The separate use classes will enable the local planning authority to influence the broad composition of shopping areas in terms of land-use; they should not be used in the absence of good planning to keep particular uses out of shopping areas. Indeed, the separation of the office uses in the financial and professional services class from other office uses not directly serving the public visiting the premises should allow local planning authorities to grant permission more readily; this is because the new order will not permit a subsequent change to offices with blank facades and not directly serving the public.³

The three new classes defined by the UCO in Part A and the permitted development right granted by the GDO are shown in Figure 2.

good

SHOPPING AREA USES

FIGURE 2

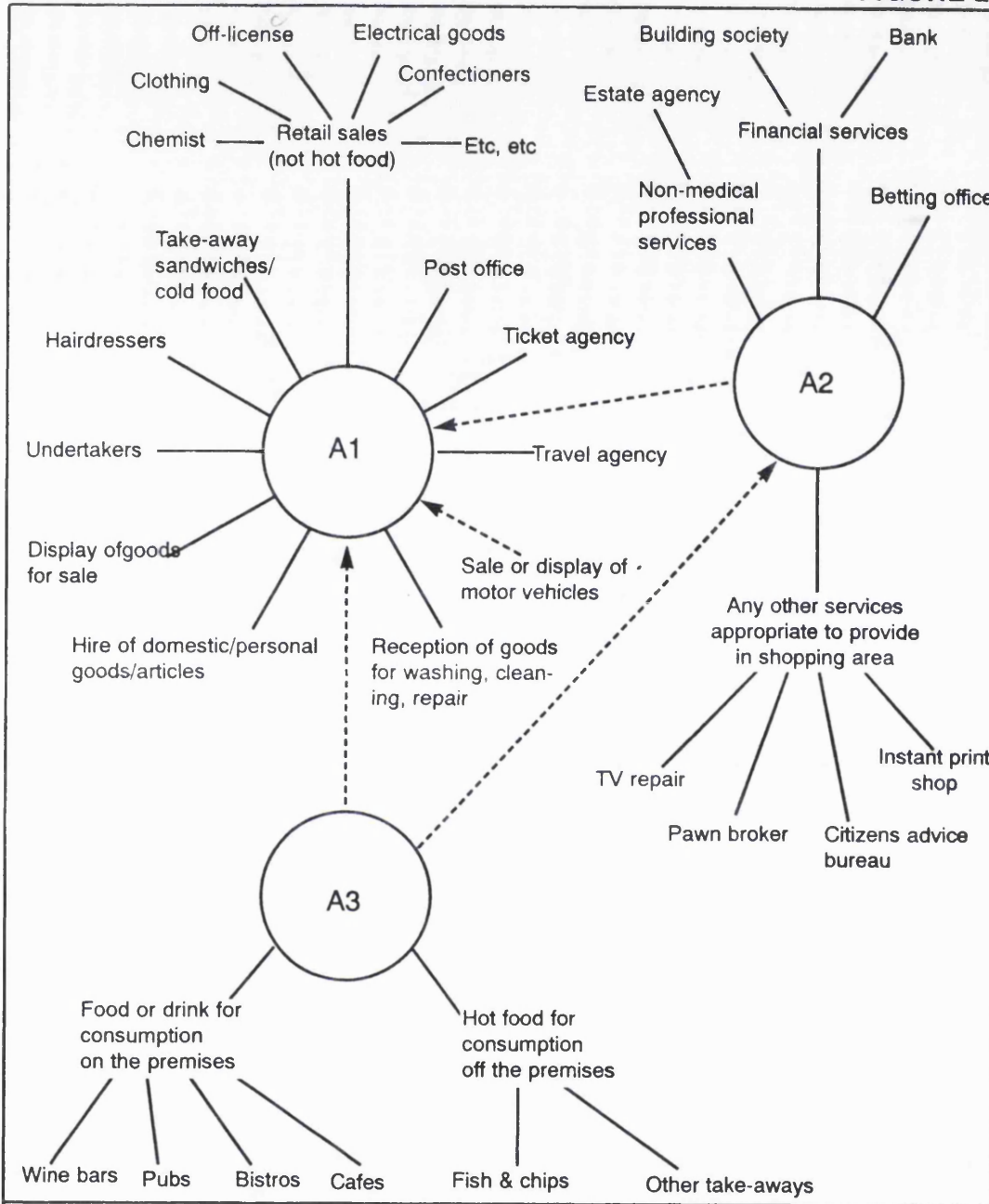
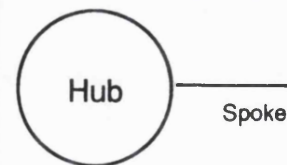


Figure 2:
This illustrates the changes of use which do not require planning permission by reason of the new Use Classes Order or the current General Development Order.

General notes to Fig.2 & Key:
• The change of use between activities linked via 'spokes' to a 'hub' is not development, and does not need permission.

- Changes in the direction of the arrows are granted deemed consent by General Development Order (the deemed consent can be withdrawn in a particular locality by an Article 4 direction);
one way \dashrightarrow
two way $\dashleftarrow \dashrightarrow$ where?
- Uses one 'spoke' from the hub are mentioned in the order itself. Others have been added for illustration.



A1: Sale display or service is to visiting members of the public.
A2: Services principally to visiting members of the public.

Source: Waters B, 'Use Classes Order 1 Guide', (adapted by the author), Architects Journal, No. 30, Vol. 186, 29 July 1987a, P.62

3.1 Class A1. Shops

These are defined as follows:

Use for all or any of the following purposes-

- a) for the retail sale of goods other than hot food,
- b) as a post office,
- c) for the sale of tickets or as a travel agency,
- d) for the sale of sandwiches or other cold food for consumption off the premises,
- e) for hairdressing,
- f) for the direction of funerals,
- g) for the display of goods for sale,
- h) for the hiring out of domestic or personal goods or articles,
- *i) for the washing or cleaning of clothes or fabrics on the premises,
- *j) for the reception of goods to be washed, cleaned or repaired, where the sale, display or services be to visiting members of the public.

*Paragraphs i) and j) were substituted from July 31 1991 by the Town and Country Planning (Use Classes) (Amendment) Order 1991, (No. 1567).

This differs from the 'extended definition' of a shop set out in the corresponding 1972 Use Class by not encompassing "uses for any other purpose appropriate to shopping areas".

In relation to the A1 use class, the GDO provided for the following changes to be permitted development:

- a) a change from any class A2 (financial and professional) use to any A1 (shop) use;
- b) a change from any A3 (food and drink) to any A1 (shop) use;
- c) a change from any premises used for the sale of motor vehicles to an A1 (shop) use.

Thus, "the GDO establishes the principle of uncontrolled movement in one direction- towards shops- and retains within planning control movement in the opposite direction, emphasising the primacy of retail uses within shopping centres."⁴

Shopping is considered to be an important feature of everyone's life. "The provision of an adequate and accessible range of shops is essential if an area is to be an attractive place to live and work."⁵ For this reason, local planning authorities tend to adopt policies which protect shops from changing to other 'non-retail' uses, which will generally be found in shopping areas.

3.2 Class A2. Financial and Professional Services

These are defined as follows:

Use for the provision of-

- a) financial services, or
- b) professional services (other than health or medical services), or
- c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

This class is one of the major changes introduced by the 1987 UCO because of the "specific recognition that some financial and professional services have a place in shopping areas,"⁶ if they provide services principally to visiting members of the public. The Government justified the creation of this class in Circular 13/87, paragraph 18:

The new financial and professional services class is designed to allow flexibility within a sector which is expanding and diversifying. Banks and building society offices are part of the established shopping street scene. Other newer financial and professional services need to be accommodated in shop type premises. The new class will enable planning control to be maintained over proposals involving the conversion of shops for purposes other than for the retail sale of goods while permitting free interchange within a range of service uses which the public now expects to find in shopping areas.

The separation of this class in 1987 UCO from the group offices - B1, was intended to lessen the burden of planning authorities in determining applications for the financial and professional services accommodation. It was also intended to allow greater flexibility and, thereby, increase the access of users to this type of accommodation. This assistance given by the UCO and the GDO to providers and users of A2 property "represents a significant shift in favour of the market."⁷

Local planning authorities, however, do not seem to be having many difficulties with the changes allowed by the UCO within the financial and professional services class. The only problem here is the definition of the uses within this class as "uses which will generally be found in shopping areas." This definition is at odds with most local planning authorities policies on retailing and/or shopping centres. As a survey carried out by Kirby and Holf⁸ revealed, few authorities adopt a policy of outright resistance towards all non-retail uses in specified areas, supporting the policy with appearance conditions and restrictions on use and/or properties. Many authorities encourage the location of service uses above retail units, while others apply some sort of quota system on the number or extent of non-retail use development. "Generally it is felt that the proportion of retail frontage in a centre should not go below two thirds."⁹ The resistance to corner sites being used for non-retail uses because of their prominence is a familiar theme, with the London Borough of Hackney, for example, refusing planning permission for a fast food outlet at a corner site on the junction of Kingsland High Street with Boleyn Road, London E8. An appeal on this decision was allowed by the DoE inspector.¹⁰ The inspector's opinion was that the proposed development would enhance the centre and help increase activity and interest in that particular part of the shopping area. He said that the "loss of opportunity for retaining an A1 use is outweighed by the benefits of the proposed development, not

least its employment potential." Eight conditions were however, imposed on the use. These include one prohibiting the use (A3) to change to A2 use without prior planning permission and another removing the right to change the use of the premises to a public house or wine bar. The first condition was imposed in the light of the inspector's reasons for permitting the development as an exception to the Council's policy of not allowing non-retail uses in the core shopping frontage, while the reason for the second condition was to avoid undue disturbance to the residents living above the shop premises.

The inclusion of A2 uses within shopping area uses has put great pressure on A1-shop-premises. "The majority of major A2 players- the building societies, banks and, to some extent, the estate agents- rely on presence and footfall much as the multiple retailers do, so that in the primary locations in which the A2 users wish to locate, they are more likely to be competing with A1 users for space than A3 users."¹¹ The phenomenal growth of this service sector in the 1980's also increased the pressure on local authorities for the conversion of A1 units to non-retail use. For instance, the number of building societies branches grew from 2000 in 1970 to nearly 7000 in 1988.¹² With regards to estate agents, only one company had more than 40 branches in 1970, yet the number of branch offices peaked in 1988 at between 16 500 and 17 000.¹³

The most contentious planning issue has generally been the mix of retail and non-retail uses in shopping centres and particularly in traditional high street centres. "Whilst the UCO sought to assist in the handling of A2 proposals when planning permission is needed, planning authorities appear to be unchanged in their views and in the way applications are considered. Building societies and banks continue to be regarded as a potentially negative element in retail frontages."¹⁴ For instance, Policy R6 of Hackney Unitary Development Plan (Deposit Draft) states that, "In the strategic and main shopping centres, the council will not normally permit change of use involving a loss of ground floor retail floorspace within the core shopping areas shown on the proposals map."¹⁵

The Council's justification for this policy is that it is important to protect the central areas of retailing in the Borough's strategic and main shopping centres. The Council considers that changes of use which break up these central areas will adversely affect the vitality, character and appearance of each centre as a whole. However, the Council will permit changes of use of retail premises to non-retail use in other shopping centres if an appropriate window display is maintained.¹⁶

Local planning authorities have continued to look at the Development Control Policy Note 11, "Service Uses in Shopping Areas"¹⁷, as the planning guidance when considering applications for A2 uses and in drafting retail area policies. The aims for the planning of shopping areas where there is pressure from non-retail uses are set out in this note. The concept of primary and secondary frontages are introduced in paragraph 11 of this policy note:

it may be convenient for planning purposes to divide the larger shopping centres into two types of area: primary areas, dominated by shops for the retail sale of goods, and secondary areas where shopping and service uses are more mixed. Policies designed to maintain or strengthen the dominant retail element by controlling or restricting the non-retail use of shop premises may be justified in primary shopping areas but will not normally be justified in secondary shopping areas.

Many authorities adopt this concept as a basis for policies¹⁸ on shopping centres. Hackney Council actually quoted the latter part of paragraph 11 in its justification for adopting Policy R6. Yet, the UCO and the accompanying Circular 13/87 which seek to provide assistance to the users of A2 property and to planning authorities, does not refer to primary and secondary areas in commenting upon the appropriateness of A2 uses in shopping areas. This glaring inconsistency by the DoE has been the main cause of the difficulties experienced by local authorities in relation to A2 uses accommodation.

interesting

3.3 Class A3. Food and Drink

This class covers the use for the sale of food or drink for consumption on the

premises or of hot food for consumption off the premises.

This is a new class created for uses which were not in any class in the 1972 UCO.

The justification for this is given in paragraph 19, Circular 13/87:

The food and drink class groups together a range of uses not included in any class of the 1972 Order- for example hot food shops, restaurants, cafes, snack bar, wine bars and public houses. The new class reflects the breaking down of the traditional boundaries between different types of premises. It will enable the catering trade to adapt to changing trends and demands with greater speed and certainty in premises where the potential environmental nuisances such as smell, traffic and parking have already been accepted. Local planning authorities should continue to treat planning applications for new premises falling within this class on their merits in the light of the general presumption in favour of development. Granting permission subject to conditions designed to alleviate a particular difficulty should always be considered as an alternative to refusal where serious environmental problems are envisaged.

The A3 use class has remained the most controversial class within the shopping area uses. A London wider survey carried out by the London Boroughs Association (LBA) with the Association of London Authorities (ALA) and the London Planning Advisory Committee (LPAC) revealed that changes allowed by the 1987 UCO within this class were causing widespread problems to London's local authorities. These include amenity problems such as noise, litter and smell, adverse impacts on the character of areas and traffic impacts.¹⁹

"The survey provided the first opportunity to assess the effect of changes to the UCO and the GDO across the whole of London".²⁰ "The 100% response rate to the survey is, in itself, a clear indication that London boroughs are deeply concerned about the changes" says LBA.²¹ A very high proportion of the authorities (twenty five out of thirty three) stated that they were experiencing problems with the changes of use within the A3, food and drink class.²² These relate mainly to changes to hot food take-away premises particularly from restaurants and cafes, and from public houses to take-aways in some other boroughs. As Wootton and Thorpe noted, "the main amenity issue which the revised Orders have raised amongst planning authorities has been the possible nuisance arising from hot food take-aways which can now appear without the opportunity for planning control."²³

The LBA survey found that the Environmental Health department of Kingston upon Thames was of the view that a large number of complaints had been received in connection with noise, fumes, odours and litter associated with take-aways since 1987. Wandsworth council also stated that hot food take-aways cause problems of noise, disturbance and general loss of amenity. Environmental Health officers in Hackney are under the impression that complaints on A3 uses are often associated with cooking smell, fumes, smoke and/or noise from hot food take-away establishments.

3.3.1. Use of Restrictive Conditions

In Hackney Council conditions are frequently used in restricting the use of new premises for any A3 use. It is considered by the council that the various uses within A3 class do not share the same amenity problems in contrast to the DoE's view. A hot food take-away shop with a flat above is likely to have a different impact on the amenity of the resident living above, from that of a sit-in restaurant, or a wine bar which is likely to have more customers or even a public house where amplified music is likely to be played often.

Although restrictive conditions are normally used for new A3 uses in Hackney, the Council is aware that the DoE will "regard the imposition of such conditions as unreasonable". Due to this, the Council has tended to remove such a condition from planning permission where the applicant is not agreeable to it. A typical example is a case at No. 15 Stoke Newington Church Street, N16²⁴. Here an agent applied for a 'change of use of ground floor from Estate Agents to use as a hot-food take-away shop'. The authority granted conditional planning permission, based on the consideration that the imposed conditions (five in all) should adequately control and minimise any adverse effect the use will have on the adjoining residential amenity. Condition No.2 specifically stated that, "The premises shall be used only as a hot food take away and not for any other use (eg. restaurant, wine bar) in class A3 of the 1987 Use Classes Order unless a fresh planning permission is obtained."

good example

The reason for this condition was, "to allow the Local Planning Authority to exercise control over the use of the premises with regard to the need to protect amenity-including that of adjoining residents."

The agent was not pleased with this particular condition and on the 8th October 1993, he submitted a further application for the removal of this condition.²⁵ In a letter accompanying the application, he threatened to appeal against the authority's decision if this condition was not deleted. Despite strong objections from the ward councillor and the owner of the flat above the shop, the Council felt that the DoE or the inspector would not be likely to uphold this condition if the applicant were to appeal against it. The authority, therefore, granted planning permission for the same use but without the restrictive condition.

Hackney Council is not the only authority to face this dilemma. Indeed, the use of restrictive conditions on class A3 uses is common among local authorities. A survey of local planning authorities in Yorkshire/Humberside and much of South Wales in 1990 revealed that 30% of the responding authorities were using conditions as a matter of course, to restrict the use of the premises when granting permission for an A3 use.²⁶ A report on the DoE review of the Orders in 1991 by Wootton Jeffreys Consultants and Bernard Thorpe also found the use of restrictive condition on A3 uses common. They noted that:

the high street sector appears more than any other to be drawing conditions from planning authorities which seek to modify the potential consequence of the UCO and GDO. The example most frequently encountered from the survey of authorities is the restriction of the A3 class. Whilst a cafe or restaurant might be considered acceptable in a given location, a condition may then be imposed removing the ability to change to a fast food or takeaway facility without planning permission.²⁷

The LBA survey also found that the use of restrictive conditions on A3 uses is common with London local authorities.

As mentioned earlier, the DoE made it eminently clear in Circulars 1/85 and 13/87 that the use of conditions designed to restrict the freedom granted by the UCO and the

GDO will be regarded as unreasonable by the Secretaries of State. Yet, local planning authorities have continued to use restrictive conditions as a means of protecting the local amenity.

It is not surprising given that they have little or no other quick and reliable means of controlling the adverse impacts of A3 uses. Local authorities actually "feel that the measures for controlling the problems of nuisance that may subsequently arise" from the freedom to change to a hot food takeaway "are ineffective."²⁸

Generally, the use of restrictive conditions is "against the spirit of UCO", but the local authorities have been unchallenged in most cases. It is suggested that this is partly because "the applicants for A3 uses, and hot food take-aways, in particular, are likely to be small businesses, often not represented by agents".²⁹ They are, therefore, "unlikely to consider appealing against a restrictive, and perhaps unreasonable condition on a planning permission."³⁰ The DoE review of the Orders noted from evidence of its study, that "no test of such conditions is known through the appeal process." It is possible, it suggested "that they have been little tested on appeal because such applications are often made by the individuals who intend to use the property for the purpose specified."³¹

3.3.2 Use of Other Types of Conditions

Apart from the imposition of restrictive conditions on A3 uses, the use of other different conditions were found to be common with the local planning authorities. Table 1 below confirms this finding.

Table 1.

Proportion of local planning authorities using a particular standard or common conditions attached to planning permission for hot food take-aways.	
	%
Restriction on hours	91
Fume extraction	44
Restriction of Use to hot food take-away	30
Provision of litter bins	30
New application to change external appearance	13
Other	17

Source: Thomas R. and Thomas H., "Local Planning Policies, the Use Classes Order and Hot Food Take-Aways", *JPL*, 1991, p.713.

As a matter of course, Hackney council uses standard conditions on hours of use, the installation and maintenance of an external fume extraction flue and the provision of litter bins in all new applications for Class A3 uses. Provision of sound insulation is also required in some cases. Attached as Appendix E is Hackney Council's standard conditions on A3 uses.

Two paragraphs in a report on Hackney Unitary Development Plan (Deposit Draft) policy on A3 uses encapsulates the issues taken into consideration by the council in deciding on new applications for various uses within A3 class.³²

Current practice....is to assess all applications rigorously and permissions are not granted until satisfactory details of pollution control measures are submitted and agreed (as opposed to conditioning them for subsequent approval). This requirement has been incorporated in Policy R10. The aspects examined are fume extractions (where high level discharge and carbon filtration are insisted upon), type and location of ventilation motor housing (which should be located internally and fitted with anti-vibration mountings), details of refuse storage areas (conditions requiring internal storage are imposed), and noise insulation measures.

Hours of opening are also subject to conditions and additionally it is possible to tie down the use to only take-away use (for instance to avoid noise to flats above where adequate internal sound insulation cannot be provided) or to restaurant use only, with no take away (for instance if parking outside would cause a disruption to traffic flow).

Hackney Council, like the majority of London boroughs, considers that the amenity and traffic implications of a hot food take-away shop are different from that of a restaurant and other A3 uses. The same applies to the amenity and traffic implications of a wine bar or a public house in comparison to a restaurant or take-away shop. Hillingdon³³, for instance, applies different parking standards to wine bars because they found that the use is particularly intense.

3.3.3 Use of Policy Documents

Other policy documents are also used by local planning authorities to control the effects of A3 uses particularly hot food takeaways on amenity, traffic and the environment as a whole. The survey of local planning authorities in 1990³⁴ revealed that 44% of responding authorities had adopted formal policies to deal with hot food take-away applications. All those who had formal policies had approved them before 1987. Yet the policies were not formally reconsidered by the local planning authorities in the light of alterations to the UCO except in two cases only. The survey also found that 54% of the planning authorities without formal policies brought different considerations to bear on applications for hot food take-aways compared with applications for other uses within Class A3. This was mainly due to the parking and highway implications, the hours of operation, potential disturbance, litter and smells associated with a hotfood take-away establishment. Acceptability of the use to the residents was also a matter for consideration. It is obvious, therefore, that most planning authorities are not being swayed by the spirit of the Use Classes Order with respect to Class A3 uses, especially the hot food take-away shops.

Development Control Policy Note 11³⁵ which was written by the DoE prior to 1987 (when hot food take-aways required planning permission) notes the potential differences between various types of food outlets and recognises the sensitivity of local factors. Traffic issues can be important, especially with hot food shops. Hot food shops tend to give rise to short-term on-street parking in greater volumes and later into the evening than other 'convenience shops'. It notes that this type of parking can

interfere with the free flow of traffic on primary roads and, therefore, suggests that hot food shops should be best located on secondary roads or sites not fronting directly onto a highway. It acknowledges also that the adverse effects of cooking smells and fumes, for instance, may be more acceptable in towns and districts centres than in local shopping areas containing residential flats or surrounded by residential streets.

It is surprising that the DoE noted these differential factors in the advice it gave to the local planning authorities in 1985, yet in 1987, it amalgamated 'hot food shops' with the other uses in Class A3. Of course, planning authorities have lost the opportunity to consider these locational matters (recognised by the DoE) for some new hot food take-aways due to the inclusion of hot food take-aways within the broad food and drink use class.

3.3.4 Public Houses, Wine Bars or Inns

The other aspect of the A3 use class which has caused great concern to local planning authorities is the inclusion of public houses (pubs) and wine bars within the broad food and drink class. Control on their uses is made much more difficult by the permitted development right (given by 1988 GDO) which allows any A3 use to change to any A2 use or A1 use without the need for planning permission.

The LBA survey found that eight London planning authorities were experiencing problems as a result of public houses changing to take-aways, restaurants or cafes without any planning control, while nine planning authorities were having problems as a result of cafes changing to wine bars or public houses without any planning control. It also revealed that seven London authorities were experiencing problems with the changes of A3 uses to A2 uses. The problems associated with these changes include increased traffic generation, increased parking congestion, adverse impact on the character of an area, detriment to amenities and inappropriate location of some new uses. ✓

Simmie suggests that "the basic mistake that was made was to include public houses and inns in the A3 Class....Breweries, free house owners and property speculators were quick to spot the financial advantages presented by this apparently innocuous administrative decision."³⁶ Wootton and Thorpe noted that "the value of relatively unsuccessful public houses may have increased now that they can be regarded as a potential A2 property, provided their location is good".³⁷ This, in turn, can make resistance to changes from A3 (which is potentially A2) to B1 difficult.

A survey by Simmie of local planning authorities in the Thames Valley alone, suggests that "since 1987, between 200 and 300 public houses have been closed down already or are currently the subject of planning applications to change their use to offices."³⁸ He is of the view that the DoE and local planning authorities "up and down the country" should be very concerned at the speed with which the new Orders have been used to close down the traditional British pubs and replace them with offices.

The loss of these traditional pubs represent a loss of valuable community facilities. It means that local people might have to travel further away (possibly by cars) to get to any other public house. This, in turn, will exacerbate traffic and parking problems. Simmie is also of the view that the loss of these pubs could have serious implications for the British tourist industry since "one of the irreplaceable assets of this industry is its historic inns." The Campaign for Real Ale³⁹ argues that pubs are of great social and economic importance to the nation and, therefore, urges planners to protect the traditional British pubs against permitted development conversions. What the Campaign for Real Ale fail to appreciate is that planners have little or no power to stop public houses from changing to any use within Class A2 or any other use within Class A3.

3.4 Summary

In summary, the operation of A1 use class has not caused problems for local planning

authorities. The Government's reasoning behind the creation of this class is clearly in line with established planning policies.

Class A2 uses to some extent, have caused difficulties for local authorities, owing to the divergence of opinion between the Government and planning authorities on the inclusion of these financial and professional services' premises in shopping streets. A2 users require prominent sites with good footfall and, therefore, often look at A1 properties for conversion. Conversely, local authorities regard A2 uses as a potentially negative element in retail frontages and, therefore, devise various policies to protect shop premises from changing to 'non-retail' uses in the shopping streets and, in particular, in the main shopping centres. These policies have not always been supported by the SoSE or his inspectors on appeal because he sees A2 uses as uses which the public expect to find in shopping areas.

Class A3 has been very controversial. Local planning authorities, contrary to the governments belief, insist that the various uses within this class have different land use implications, and, depending on location, use, hours of operation and intensity of use, one use can be suitable while another will not be. The unlimited interchange of the wide range of uses within this class has been causing various problems for local planning authorities. These include adverse impact on amenity, that is, noise, smell and litter, on environment, highway and traffic implications, in addition to change in the character of the area. Most problems seem to arise with the common conversion of restaurants, cafes, wine bars or public houses to hot food take-aways. The amenity impact of these changes is greatest in residential areas and district centres.

The situation is made worse by the permitted development rights conferred by the 1988 GDO which allows any A3 use to change to A2 use without planning permission. This has resulted in the unprecedented loss of traditional public houses, wine bars and inns to the detriment of the local communities.

Contrary to the Government's advice, various restrictive conditions and policy documents are used to limit the scope of this class. However, this can only apply in

new developments and not in established A3 uses with no condition as to use.

In all, the efficiency of the planning system has not been improved, nor the development control workload reduced by the changes facilitated in this part by the 1987 UCO and 1988 GDO. This is in direct contrast to the Government's assertions.⁴⁰ On the "positive" side the operators of hot food take-away establishments have benefitted through their inclusion in the broad A3 use class. The same applies to other operators/owners of A3 uses (notably pubs) who have used the freedom provided by the two orders to change to what is possibly a more profitable use.

good chapter
with balance of theory, discussion
& example & v. interesting.

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CHAPTER 4

4.0 OTHER BUSINESS AND INDUSTRIAL USES-PART B

This part covers all the B Classes, that is, from B1 to B8. The greatest impact of the 1987 UCO has been that resulting from the introduction of a new business class in this section. ✓

4.1 Class B1. Business

This is described as:

"Use for all or any of the following purposes-

- a) as an office other than a use within class A2 (financial and professional services),
- b) for research and development of products or processes, or
- c) for any industrial process,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."

This class combines the former two classes of offices and light industrial use. The change was prompted partly by the changing relationship between industrial and office uses, particularly in high technology uses; and partly because light industrial uses, which were always, by definition, uses which were capable of being carried out in a residential area, appeared to have no significantly different environmental impact from office use.¹

The Government reasoning behind the creation of this class is given in paragraphs 20 and 21 of Circular 13/87 as follows:

The new business use class brings many of the uses described in the office and light industry classes of the 1972 Order together into a single class with other uses which are broadly similar in their environmental impact. Provided that the limitation specified in the class is satisfied, this class will also include other laboratories and studios and 'high-tech' uses spanning office, light industrial and research and development (for example, the manufacture of computer hardware and software, computer research and development,

provision of consultancy services and after sales services, as well as micro-engineering, biotechnology and pharmaceutical research, development and manufacture, in either offices or light industrial premises, which ever are more suitable).²

As can be seen from the above quotation the emphasis is on the provision of flexible space for "high-tech" uses.

The Circular notes in paragraph 21 that the new Order alters the approach to the consideration of whether a use is capable of being carried on within a residential area.

In the 1972 Order it was the processes carried on or the machinery installed which had to be such as could be carried on or installed without detriment to the amenity of a residential area. In the new Order, all aspects of the use fall to be considered against the criteria of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.³

The application of the 'amenity-test' to all aspects of the use represented a fundamental change from that of the 1972 UCO (Classes II and III) in which only the processes carried on or the machinery installed had to be considered against the specific criteria. Thus, the UCO 1987 effectively introduced an 'amenity-test' which should generally be applied to an assessment of the suitability of new B1 development. The emphasis, however, is on amenity and not on inter-related economic and social issues like local structure and employment skills which local planning authorities take into consideration as well. ✓

With the Governments emphasis on the 'high-tech' aspect and less damage to amenity alone, the 1988 Planning Policy Guidance Note on Industrial and Commercial development and Small Firms (former PPG 4) reinforced the B1 point in paragraphs 8 and 9:

...It is now generally recognised that the rigid separation of employment and services-especially those that are small scale- from the residential communities they support can be a mistake. The rigid application of zoning policies can have a very damaging effect.

Light industry, offices and many forms of small businesses can generally be accommodated within residential areas without creating unacceptable increases in traffic, noise or other adverse effects. The definitions in the Use Classes Order 1987 reflect this. The fact that an activity is a nonconforming use is not

sufficient reason in itself for refusing planning permission or taking enforcement action.⁴

These views are reiterated in the current 1992 PPG4 in paragraph 15, albeit in a less exonerating and explicit manner as in the previous PPG4.

The 1987 UCO was supplemented by the revised 1988 GDO. In relation to Class B1 use, the GDO permitted changes of use to B1 (Business) from B2 (General Industry) or B8 (storage or distribution), and changes of use to B8 from B1 or B2; providing that the changes to and from B8 does not exceed 235 square metres in total floorspace. (See figure 3)

OTHER BUSINESS & INDUSTRIAL USES (Excluding Classes B3-B7 SUC) FIGURE 3

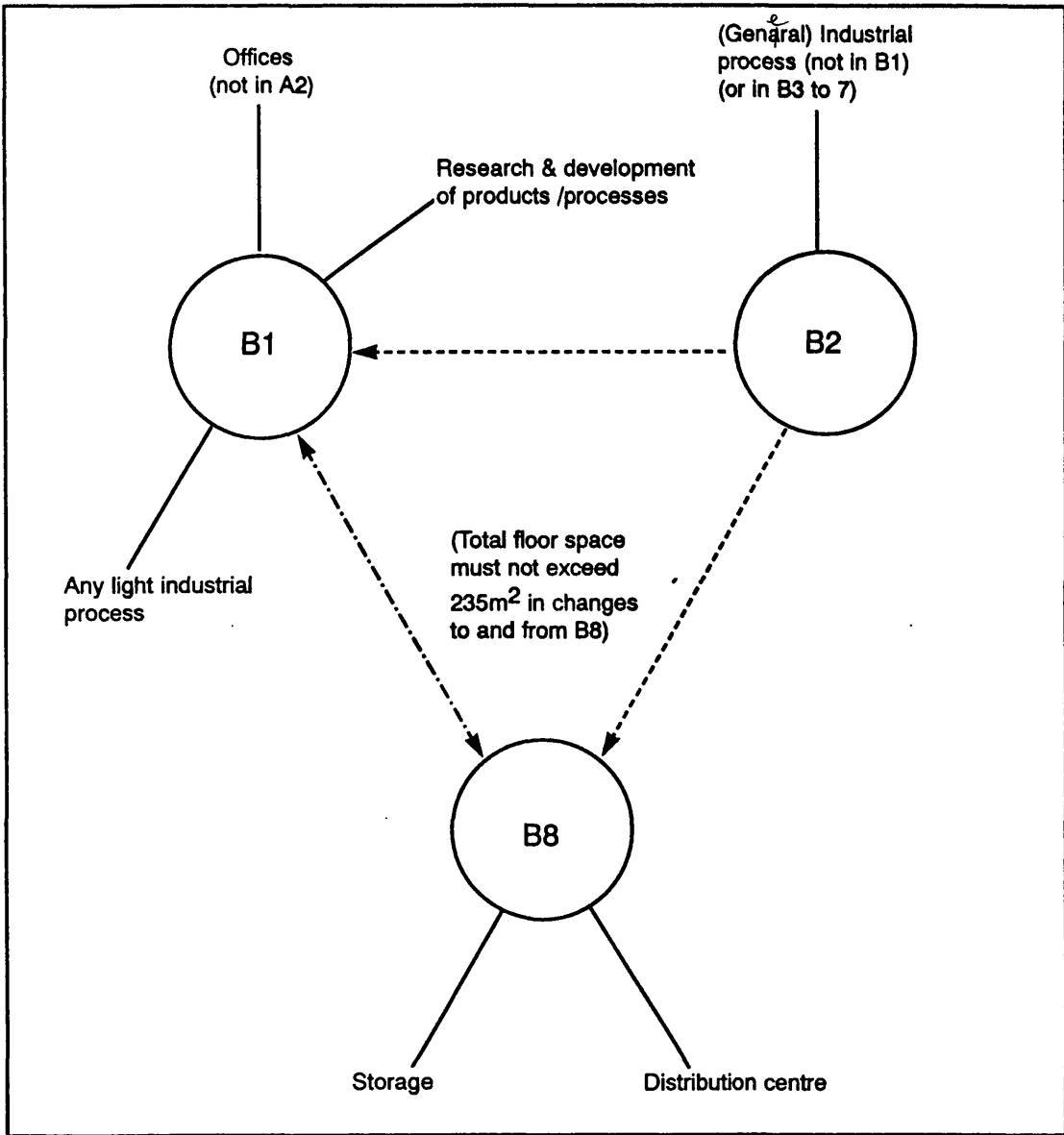


Figure 3:

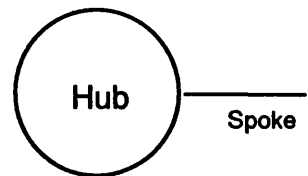
This illustrates the changes of use which do not require planning permission by reason of the new Use Classes Order or the current General Development Order.

General notes to Figure 3 & Key:

- The change of use between activities linked via 'spokes' to a 'hub' is not development, and does not need permission.

- Changes in the direction of the arrows are granted deemed consent by General Development Order (the deemed consent can be withdrawn in a particular locality by an Article 4 direction);
 one way ----->
 two way <----->

- Uses one 'spoke' from the hub are mentioned in the order itself. Others have been added for illus-



B1: Can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes smoke, soot, ash, dust or grit. Special industrial use classes B3-B7 not shown (beyond the scope of this thesis).

Source: Waters B, 'Use Classes Order 1 Guide', (adapted by the author), Architects Journal, No. 30, Vol. 186, 29 July 1987a, P.62

The philosophy behind these changes was to allow more freedom and flexibility in the use of land and buildings where this would not have adverse environmental consequences, thereby, removing 'unnecessary' obstacles to businesses.⁵ However, opinion as to what constitutes 'unnecessary' obstacles to businesses in the public interest may vary widely and can be a judgement with political overtones.

The introduction of the Business Use Class and the related permitted development rights allowed by the 1988 GDO was greeted by the development industry as a "boon to future business"⁶ and the "answer to developers prayers".⁷ On the other hand, the RTPI and local planning authorities criticised the changes for being "biased in favour of developers and owners of property, giving little attention to the concerns of tenants, users, neighbours and the public as a whole."⁸ One particular area of concern was that the introduction of the B1 class would hasten the loss of light industrial uses (and employment) to higher value uses such as offices. There was also concern about the traffic and parking implications of industrial uses changing to higher density office uses without any planning restrictions. The reservations of the local planning authorities with regard to traffic issues are captured in the RTPI response to the consultation paper prior to adoption of the 1987 UCO:

These activities have inherently different vehicular generation characteristics. Office uses can generate greater demand for car parking than would the same building in light industrial use. Many car parking standards reflect this difference. If changes occur from light industry to office without the need for planning permission, a prudent local planning authority when granting permission for a light industrial building would require parking provision appropriate to an office user. This would be objectionable to a light industrial user who would argue that such a requirement was not necessary. If permission were granted on the basis of industrial car parking standards, a subsequent change to office use would create parking difficulties for the occupiers of the building and those adjacent. Alternatively, a change from office to light industry within a residential area could cause problems because of the size of vehicles servicing the premises. Such vehicles are likely to be larger and to call more frequently than for office uses. Light industrial uses often have incidental open land uses for storage, loading and service which can be visually and environmentally unacceptable at a site on which an office use would be suitable.⁹

These concerns have now turned into real life problems for local planning authorities as are evident from various reported studies and surveys.

The London-wide survey carried out by LBA in 1992¹⁰ revealed that the majority of local planning authorities in London are experiencing difficulties with the operation of the B1 use class. The most common impacts associated with the problems were adverse impact on the character of the area, increased traffic generation and parking congestion together with changes in the nature of employment opportunities available to local residents and loss of specialised/traditional industries. ✓

Nineteen London LPAs said that they were experiencing problems as a result of light industrial uses changing to offices without planning permission, while seventeen London LPAs are having difficulties as a result of the permitted development right conferred by the GDO to change from B2 uses and B8 uses (subject to 235 square metres maximum floorspace) to any B1 use without planning permission. ✓

The survey found that Westminster City Council is now facing the predicted difficulty of retaining its traditional industrial uses. The Council and the members of its traditional businesses (symbolised by the Savile Row Tailors) objected strongly to the then proposed new Class B1. The Savile Row tailors were concerned about the increase in rental levels that would follow the introduction of the Business Use Class as their premises would be well suited for office use. They secured an adjournment debate to no avail in the House of Commons in February 1987. Mr Richard Tracey, the then Parliamentary Under-Secretary of State for the Environment, responded for the Government and disagreed with the suggestion that the introduction of the Business Use Class could lead to the quadrupling of rents. He said: ✓

Will this lead to the quadrupling of rents which the federation fears? My Right Hon. Friend the Secretary of State and I think not. For a start, many of the individual leases held by the tailors limit the use of the premises to manufacturing purposes. It may be anything up to 25 years before the terms of such leases come up for renegotiation. Only then will free market rents mean office rents. Even then, will the premises be of the sort which command the premium office rents that have been quoted? Again, we think not. Rental levels to office uses in Savile Row currently range from £12 to £20 a square foot, not very much above workroom and showroom rentals. There is evidence of tailors coming into Savile Row being prepared to pay those prices today.¹¹

A few years on, in spite of this robust assurance, the LBA survey found that a number of firms were paying over £30 a square foot in 1989, and pressure for businesses to move due to site redevelopment had increased significantly. The higher rents offered by offices makes redevelopment more attractive to owners. Moreover, over 25% of the businesses were to have their leases terminated during 1989 while rents were increased for the buildings which remained in workshop use. ✓

Furthermore, a survey of 95 businesses by the Soho Society in the latter part of 1988 found that recent rent reviews for light industrial tenants showed an average rent increase of nearly 140%. In central London a review by the Investment Property Databank showed that growth in industrial rental levels rose sharply in 1987- from 1.8%, 2.2% and 16.1% in the preceding three years to 50.3% in 1987, 78.8% in 1988 and 16.1% in 1989. The sharp rise in rent is attributed mainly to the changes introduced by the 1987 UCO and the 1988 GDO and does tend to suggest that the changes have had a negative impact on the availability of affordable industrial floorspace.¹² So the 'fears' of the Savile Row tailor have come true, contrary to the Governments' assertion. ✓

The pressure and difficulties faced by the light industrial users in the West End are captured and explained by Parmiter thus:

The booming central London office market has seen a doubling of floorspace take-up in the three years to the end of 1987- reaching record levels. this resultant shortage has meant that occupiers and developers have therefore, sought out new parts of the West End and its immediate fringe. As a result, such light industrial areas as do remain have come under considerable pressure.

Areas of mixed and non-office uses such as Covent Garden, Savile Row, Soho and East Marylebone have lost the protection of the old Order and district plan policies.

Light-industrial and craft tenants are likely to be pushed out by rising costs as the central office core expands into the buildings and streets which have traditionally been the preserve of small-scale manufactures. The rag trade's sweat shops could finally disappear from the West End- and their employment opportunities with them.¹³

However, the City of Westminster has acted to curtail the losses of these traditional industries because of the contribution of the workshops to the character, function vitality and viability of the West End. It has designated these areas as 'Special Industrial Areas', within which it aims to retain and provide for those industries which require a central London location and are an integral part of its functioning. These include studios, bespoke tailors, jewellers, recording, advertising and publishing industries.

It is apparent that the fate of these traditional industries could not have been left to the market forces to decide otherwise the character and diversity of the West End would have been destroyed by the effects of the new B1 class over time. "It is clear that without some form of protection, industrial firms are unable to compete with offices for floorspace."¹⁴

Camden is experiencing a problem similar to that of Westminster. Its main traditional industries, found in Hatton Garden, Holborn, (famous world-wide for jewellers for the last five centuries) have come under considerable pressure with the changes to the UCO. As LBA noted:

Diamonds tend to be the first item struck off shopping lists when people are watching the pennies...But the jewellery trade has survived recessions before. The threat to its way of life now is from developers, not slow to notice how usefully Hatton Garden is placed for the West End and the City...Many leases are about to expire, and as offices these buildings could quadruple their rents.¹⁵

In this area, the light industrial uses such as setters, polishers and engravers are dependent on each other in a sort of symbiotic relationship. The loss of a few of these industries to pure office use would be likely to be harmful to the successful operation of other users who will normally rely on these services.

The pressure to convert light industrial accommodation to office space is also affecting the space available for high-technology developments. As Oatley noted the consequent high rents have meant that more office and mixed use occupiers have relocated out of town where land is cheaper and there is greater flexibility with

respect to accessibility, parking and potential for development. This has put some pressure on the conversion of 'high-tech' development to pure offices, especially in areas along the M4 and M25, where a vital enhancement of value in such developments could be realised.¹⁶ This practice obviously contradicts the intention behind Class B1 which claimed to pay specific attention to the needs of the 'high-tech' firms.

The continued loss of industrial premises/floorspace to office uses, with its consequent loss of employment (blue-collar) and the local authorities' inability to tackle this problem was recognised by the London Planning Advisory Committee (LPAC) in 1990. LPAC commissioned Llewelyn Davies Planning consultants to carry out a study¹⁷ on the impacts of B1 and B2 Use Classes on the supply of industrial land and buildings in London. The study focused on the three London boroughs of Islington, Kingston-upon-Thames and Hillingdon.

They found that 17.3% of the units surveyed had been converted from industrial use to office use between 1987 and 1990. The most significant change was in Islington where 34% of the floorspace had been changed to office use. The affected units in Hillingdon (6.4% and 13.2% of the floorspace) and Kingston-upon-Thames (8.3% of the units and 1.6% of the floorspace) were smaller but still material. This suggests that in Islington the trend for offices to replace industry has already taken a firm hold because it is close to the city and "the possibility that the regulations will bite more deeply into the supply of industrial floorspace in the future cannot be ruled out."¹⁸

The report found that the majority of industrial floorspace affected was in light industrial use in 1987 rather than general industrial use. Most of the changes have, therefore, occurred under the provisions of the new UCO rather than through the new GDO. The common factors which characterised the units which had been converted to office use were their:

- i) location close to the city fringe,
- ii) location within a mixed commercial area,
- iii) location close to a tube station,

iv) upper storey floorspace.

Of the fifty seven new offices in Islington, for instance, forty four were located in the City fringe areas of Pentonville and Kings Cross.

In addition, the consultants report did not find any evidence that the planning regulations had brought vacant industrial floorspace into productive use. In fact, the survey found that there had been an increase in the vacant floorspace. Within the period of the survey, the vacancy rate increased from 5.5% to 16.5% of the sample's total floorspace and from 9% to 15% of the units. Most of the vacant units were being advertised as office space which suggests that the "new regulations may have encouraged speculation by the owners of industrial buildings", thereby, resulting in an element of "speculative blight".¹⁹

The report also noted that much industrial floorspace was lost to office use through the grant of planning permissions as those losses occurring without planning control. However, the majority of the permissions were granted grudgingly. The decisions were principally influenced by the likelihood of a successful appeal by the applicant together with the possibility of costs being awarded against the local authority- not the usual 'public interest' issue. In fact, most of the permissions were contrary to the adopted policies of the authorities "all of whom seek by various means to retain an adequate supply of industrial floorspace."²⁰

The report concluded that the changes in the UCO and the GDO have had an adverse impact on the availability of affordable industrial floorspace and a disproportionate impact on small industrial units. The changes have also removed the means by which local planning authorities' policies on office and industrial uses can be implemented as a matter of fact. Nevertheless, the legislation has achieved greater flexibility in the use of land and buildings.

A study²¹ of the effects of the UCO 1987 and the GDO 1988 by Wootton Jeffreys Consultants and Bernard Thorpe for the DoE supports these findings.

The report found that owners of industrial land and buildings in areas of constrained land supply have seized the freedom provided by the 1987 UCO and the 1988 GDO to develop higher value accommodation. On the one hand, the supply of office specification space, in particular, and mixed use space has increased to the advantage of the users of this space, together with greater choice. On the other hand, industrial users have been displaced and the choice for these users has diminished especially in high demand areas with limited land. In the City areas, studio and office uses are replacing workshops in the mixed use areas, while manufacturing industry is being lost. The report states that these losses will affect both local employment structure and economic linkages and may cause damage to the character of mixed use areas particularly in central and fringe city locations. Of course these losses are effectively irreversible because of the expense of fitting out office premises.

The report also found that the change in the business use class has disrupted the existing strategic planning policies which sought to maintain a balance between employment numbers and housing land and infrastructure. This may, in turn, increase the pressure for land release including green belt land for employment or residential purposes. This would have undesirable environmental consequences in some areas.

It recognised that the ability of planning authorities to exercise any influence over the type of employment in their areas, in response to socio-economic factors such as the skills base in the local population has been greatly reduced. And notes that the new business class are contributing to land use changes by providing greater proportion of employment activity outside the traditional centres than would otherwise be the case. Hence, inhibiting future opportunities to discourage private car use. Obviously, "we have here a fundamental clash between Whitehall's recent espousal of measures to remedy the factors that are causing global warming and its refusal to take measures to clamp down on a planning-assisted policy instrument running in the opposite direction".²²

The consultants found that there has been little overall effect on local amenity, despite the evidence of adverse environmental effects arising from greater traffic generation

and generally intensified activity. It states that the changes in the business sector have been almost universally in the direction of cleaner activity. This statement contradicts the LBA survey finding that very few authorities (in fact 3 out of 33) had found that changes of use to offices provided an "environmentally cleaner use" and that some of the authorities like Westminster regards light industry as being environmentally 'clean' as offices.²³

In addition, the report found that the introduction of the new business class has had no material effect on the efficiency of the planning system nor on the development control workload, contrary to the Government's expectation. In fact, increased staff time had gone into negotiating conditions and agreements, dealing with determination applications and in revising policies in pre- 1987 structure and local plans in the early years of the new Order.

Notwithstanding these adverse impacts, the revised business use class has achieved greater flexibility in the use of buildings and land and reduced the intervention of the planning system in a variety of commercial activity. The consultants contend, however, that "the introduction of the business use class has been neither a necessary nor an appropriate mechanism for increasing the supply of flexible business space and it is now acting contrary to the interests of this objective."²⁴

These findings also apply to the London Borough of Hammersmith and Fulham. In a survey it carried out in 1991²⁵ it found that the "changes to the Use Classes Order and General Development Order have reduced the power of the council to control changes of use of land from industrial and storage uses to office use."²⁶ As much as 14% of the sample sites in industrial use in 1987 had changed to B1 use involving a substantial office content by 1990, while 20% in storage use had changed to B1 use by 1990. The changes had occurred mainly in Employment Zones and Residential Areas where the council will not normally permit office uses.

All the changes in industrial sites and most of those in storage sites had occurred through the grant of planning permission. The council lost control on the

development because it was unable to refuse permission for B1 office developments solely on landuse grounds in locations it considers inappropriate for offices. These developments have displaced industrial uses which the council would otherwise have wished to protect. They have also led to excessive traffic generation and parking congestion especially on the existing built-up sites which are not specifically designed for office use. "The infrastructure that has developed to serve such premises (industrial) is commonly unable to serve the needs of different uses without detriment to amenity due to wide variations in traffic congestion."²⁷

Another Research Note on Hammersmith and Fulham²⁸ found that between 1988 and the beginning of 1993, seventy developments were completed in the borough, comprising 240, 220 square metres of gross office/B1 space. This displaced at least 24, 170 square metres of industrial space and 21, 430 square metres of storage and warehousing space. Development under construction as at January 1993 or permitted but not yet commenced amounts to 276, 315 square metres of office or B1 space and this would displace at least 89, 100 square metres of industrial space and 26, 330 metres squared of storage and warehousing space.

There is now a shortage of industrial and / or storage and warehousing space while there is an oversupply of office premises. This view is supported by the fact that 30% of the completed office space is currently vacant. So as LPAC found, the new regulations may have led to an element of 'speculative blight' to the disadvantage of small industrial firms and storage and distribution firms.

The introduction of B1 use class has also had effects outside of London. In Bristol, it has been reported that the strategic policies for industrial land, for the north fringe has been disrupted by the new business use class. A report submitted to the Bristol Economic Development Forum²⁹ by a group made up of the district, county and business representatives stated in paragraph 3.1 that, "North Fringe sites are now changing hands at £750 000 an acre-2-3 times the value of conventional industrial land. The owners/ developers of at least one of the business parks have placed an embargo on further industrial and warehouse developments."

The report went on to state in paragraph 3.5 that, "...the UCO is likely to have effect in some areas, including Avon, of hastening the decline of industrial employment and increasing the imbalance between industrial and office based employment."

Cambridge has also had difficulty in meeting its chosen employment strategy of seeking to attract companies in the 'high-tech' sector because of losses of land earmarked for this purpose to offices. This is rather ironic in that the UCO and the GDO have had the opposite effect to that intended, - which is to provide for the needs of the 'high-tech' market.

Pressure for conversion to higher value uses has also posed problems for the lace market in Nottingham. As reported in Planning³⁰ Nottingham City Council's efforts to preserve manufacturing jobs in the heart of the lace market suffered a setback when an inspector allowed a disused factory and warehouse of some 35, 000 square feet to change to office use on appeal and also awarded costs against the council for not "attaching sufficient weight to a government policy of which it was aware of."

Other areas have also tried to monitor (and, if possible, control) the impacts of the B1 use class carefully. Hampshire County Council, for instance, undertook research³¹ to monitor the employment and floorspace effects of the B1 use class in the county. It concluded that some developers have taken advantage of the amendments to the UCO 1987 to develop sites originally designated for industry to offices. This has led to an oversupply of B1/office units and a shortage of traditional light industrial accommodation in many parts of the County. Moreover, the price of industrial land has risen due to the potential for office development. Hence, the industrial firms might be priced out of their preferred locations and pushed towards peripheral sites or even out of the county altogether. The council is very concerned that this could result in a structural change of the local economy with detrimental implications for local labour markets. The rise in industrial land rental has fuelled fears that B1, rather than fostering business, is helping to speed up the shift from manufacturing to service-based firms because land cannot be obtained at suitably economic figures to build warehouses and industrial space.³²

So as could be seen from the above discussion and reported surveys, the effect of the new Business Use Class, to allow free interchange between offices, research and development and light industry, is causing great difficulties for London local authorities and other authorities outside London. The situation is made worse by the changes allowed by the 1988 GDO without the need for planning permission.

Together these Orders have made it practically impossible for most local authorities to :

- i) implement strategic planning policies which sought to maintain a balance between employment numbers, housing land and infrastructure,
- ii) monitor business space,
- iii) channel office development to appropriate locations,
- iv) monitor and control the traffic implication of some office developments,
- v) maintain the diversity of employment sources and mixed uses in their areas,
- vi) retain the traditional specialist industries which add to the character, attractiveness and vitality of their areas,
- vii) retain land earmarked for 'high-tech' sector contrary to UCO intention.

With these problems, local authorities have sought to minimise the adverse impacts of the new legislation. They are exploring a variety of ways to protect their stock of industrial floorspace and the various jobs it supports. They are also using a variety of methods to curb the amenity implication of the varying uses within B1 class. They consider, as did the RTPI, that the wide range of uses produce wide variations in traffic generation and the efficient and intensive use of some of the old buildings will invariably cause detriment to the area, primarily because of inadequate urban centre infrastructure which could not cope with additional traffic generation.³³

Montagu Evans³⁴ documented the reactions of nineteen local authorities in London and the South East after the first year of the new B1 Use Class. Most local authorities involved in the study had policies designed to protect existing industrial

floorspace and encourage the provision of new industrial space, as well as directing office development to "preferred office locations ". Generally their policies were adopted in order to protect the overall public interest.

These policies were made redundant with the 1987 UCO and 1988 GDO but contrary to Government advice, "many authorities are seeking valid and sustainable means of resisting" the free changes allowed by those Orders because "in many instances the changes are in conflict with their established planning policies."³⁵ They are still "actively committed to the restriction of the B1 Class and to the preservation/promotion of employment of a kind which they consider to be suited to the needs and skills of local work people."³⁶ The various measures used in attempting to achieve these aims are as follows.

4.1.1 Conditions

In practice, the most popular strategy has been to impose restrictive conditions on planning permissions even though it is generally against the spirit of the UCO and the GDO. The LBA survey³⁷ found that twenty eight of thirty three London local authorities use conditions to restrict a use within a class when granting planning permission, while seventeen use conditions to restrict a use to one class. Others impose a condition restricting the amount of ancillary office floorspace, storage floorspace, industrial floorspace or a combination of the two or the three uses backed up by a variety of 'justifications'. This has led to an "increasing number of appeal cases where inspectors have refused to uphold conditions restricting uses within the UCO in spite of local plan policies which might have justified them."³⁸ In a typical case in Hackney³⁹ the applicants appealed against the council's decision to grant conditional planning permission for the "use of basement, ground, and first floors for light industrial or general industrial purpose (ie, for purposes within Class B.1 (c) or B.2 of the Town and Country Planning (Use Classes) Order 1987), and use of the second and third floors for purposes within Class B1 of the same Order."

The appeal was against condition No. 2, which provides that, "the basement, ground and first floors shall be used for industrial purposes and for no other purposes (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987."

The reason for this condition was, "to ensure that the proposed industrial accommodation is actually provided in accordance with the policies contained within the Draft Hackney Local Plan."

The inspector found that the council's aim to protect industrial uses conflicted with the Government's policy to permit a flexible approach whilst retaining effective control over changes of use that have a material impact in land-use planning terms on the local amenity or environment. The inspector said in paragraph 8 that:

It is clear in my view that the council have not had in mind environmental or amenity effects as a reason for excluding office uses and the processes of research and development permitted by Class B1 as required by the circular. The paramount reason advanced by the council for limiting the basement, ground and first floors of the appeal premises to industrial use is the aim, embodied in the draft plan policy to sustain and promote the industrial employment of the South Shoreditch area. I accept that this aim is an important aspect of the evolving policies of the council but in many respects this conflicts with a policy of the Secretary of State in introducing a class of development that is designed to permit a flexible approach, whilst retaining effective control over changes of use that have a material impact in land-use planning terms, on the local amenity or environment.⁴⁰

The inspector also found that to retain industrial uses in only a part of the premises would give rise to the strongest objections on amenity grounds. The condition was, therefore, discharged.

However, in spite of the overwhelming weight of case law, an important precedent was set when Malcolm Spence QC decided that the provision of a diversity of jobs is a material planning consideration. In this case, Camden refused to grant planning permission to use premises for a B1 purpose without the restrictive condition on a site in Fitzrovia (the area of London that stretches from Oxford Street to Euston Road, just north of Soho). The applicants appealed successfully. The inspector had

concluded (inter alia) that the council's decision to refuse the application because it was contrary to the then recently approved employment policy in the Local Plan went "beyond strict land use planning concerns " and as such, was contrary to Government policy as expressed in Circular 13/87. Camden challenged the decision in the High Court on the ground that the Secretary of State and the Inspector failed to have proper regard to the material consideration in the first instance because they were wrong in describing the employment matters as "being beyond strict land use planning concerns".

Camden argued that, "the application of national policies in any area must take into account local circumstances and that the retention of light industrial uses to protect the balance of uses in a particular area directly concerned the use of land, served a planning purpose and was therefore a landuse planning consideration."⁴¹

On the other hand, the inspector argued that the new Class B1 was intended to foster enterprise and that the council's policy would frustrate the achievement of this aim.

The Deputy Judge found this to be:

a broad brush approach which could be applied in every case. That would not be right. Not only did the government policy expressly admit of exceptions, but also it was manifest that whereas the broad aim was to foster enterprise there might be parts of the country where enterprise would not be fostered by this Government policy or indeed actually retarded. Each case, including a case of this kind, always had to be considered on its individual merits. Nowhere did he see anything in this reasoning to the effect that Camden's assertion that there were special factors appertaining to Fitzrovia were in truth no different from circumstances obtaining elsewhere; nor did he see it anywhere said that there was in truth no case, as Camden were pleading for treating their circumstances in Fitzrovia as an exception to the general policy.⁴²

Although this case has made it clear that the aim of providing a diversity of jobs is a material planning consideration, this can only apply to new development where planning permission is needed. Given that a lot of changes occur without the need for planning control, local authorities do not even get the opportunity to consider this issue and/or other relevant planning considerations.

Ironically, the widespread use of conditions is likely to place high restrictions on buildings as local authorities try to cover all possible uses in the class for which it is granting planning permission.

4.1.2 Traffic and Parking Issues

Another source of restriction used by some authorities is to base refusals or restrictions on the environmental impact of vehicular traffic. Circular 13/87 states that the only ground upon which restrictions on B1 use might be acceptable are adverse impact on environment or on amenity. A number of authorities have argued that office uses have a higher density of employment than industrial uses and consequently a higher level of traffic generation; and that B1 uses should, therefore, be restricted on amenity grounds due to the lack of control over office content. As LPAC pointed out, large, medium and small scale industries are likely to reduce the need to travel because of the local nature of the workforces associated with these types of industry.⁴³

all of them?

On this stance, Spelthorne Borough Council has contended as a matter of legal interpretation that, "only small premises, ie below 235 metres squared, could be included within use class B1, since all others would be ruled out on the grounds that they would not satisfy the UCO test of being capable of being carried out in any residential area without detriment to the amenity of that area....."⁴⁴

This contention is not supported by the Secretary of State. In a total of six appeal decisions relating to Spelthorne policy, four were dismissed on the grounds of insufficient car parking provision, but the SoSE did not find any other ground on which consent should be refused or the flexibility of the B1 class restricted. The SOS made its view clear on Spelthorne's interpretation of the B1 class in all the six decision letters. The SOS stated that:

The Secretary of State has had regard to the interpretation of the B1 Use Class put forward by the Council but he takes the view that it is unduly restrictive

and that office use (other than use within class A2) will normally fall within Class B1, being a use "...which can be carried out in any residential area without detriment to the amenity of that area...". In this connection he agrees with the Council that the area to be considered is not the actual area contiguous with the appeal site, but any hypothetical residential area, and he has considered the appeals on this basis. He also agrees with the council that traffic noise likely to arise from the development is relevant for the purpose of applying the B1 criteria, but he does not agree that as a consequence office uses will normally fail to fall within Class B1. In his opinion the traffic associated with most office uses will be unlikely, in practice, to give rise to levels of noise or other detriment such as to make the use outside Class B1. In any case, he sees no justification for implying a maximum floor space limit into the legislation so as to be able to rule a priori that buildings over a certain size are incapable of being put to a B1 Use.

The Secretary of State attaches considerable importance to the relaxation of planning control embodied in the 1987 Use Classes Order. He considers that the changes of use facilitated by the Order should not be restricted by the term of a permission unless the circumstances of the individual case clearly justify such a restriction.⁴⁵

With reference to parking standards some authorities like Ealing, Hounslow, Slough, Windsor and Maidenhead have decided to apply more stringent office car parking standards on all B1 uses. Adoption of this measure is to provide for the worst scenario. Ironically, the cost of such provision would be likely to make such floorspace uneconomic for industrial businesses.

However, control on traffic generation grounds is not possible with existing industrial premises which have planning permissions with no restriction as to the use or ones that have established use. In addition, industrial buildings can be extended by 25%, or a maximum of 1, 000 square metres (since 1 March 1986) without planning permission as a result of the GDO amendment. Hence, a light industrial building could be extended before changing the use to office purpose, thereby exacerbating any car parking problems which might exist.

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4.1.3 Policy Documents

Some authorities have defined industrial and warehousing areas which are reserved for

B2/B8 use only, with specific restrictions on B1. This is done in order to protect the loss of industrial units/floorspace to office uses. Others, like Westminster, have defined specialist industrial areas where planning permission will normally be refused for major rehabilitation or redevelopment of premises containing industrial uses, especially where such development could be disadvantageous to existing or potential industrial activities.

Still, other boroughs like Kensington and Chelsea borough council have adopted a combination of floorpace limit with a design criterion for all developments in B1 use class. Here any B1 development in an appropriate location must be capable of being used for the full range of uses in this class. Thereby, B1 development must be capable of use for B1 (c) purposes, that is, with appropriate floor loading, larger width doors and passages, 415 bolt three phase power and 240 volt single phase supply to the areas of building, normally ground floor, to be used for B1 (c) purposes.⁴⁶ Hackney insists that all new B1 development must be constructed to a specification capable of use by either office or industrial users, that is, floor loading and minimum floor-to-floor ceiling height restrictions.

4.1.4. Article 4 Direction Order

Kingston Borough Council and Nottingham City Council are amongst the planning authorities who have explored the chances of removing permitted development rights from specified industrial/warehousing areas. Its use is rare⁴⁷ because an Article 4 Direction Order is subject to approval from SoSE and compensation rights. Besides, it would only bring under planning control changes of use from B2 or B8 to B1 but not changes within B1 which is the most common change.⁴⁸

4.1.5 Section 106 Agreement

Section 106 Agreements provide an alternative means of restricting the flexibility of

B1 uses. "This is a method favoured by the City of Westminster in order to retain workspace in areas of Soho and Covent Garden."

The London Borough of Hackney has also used this means in a few change of use applications in order to retain some industrial workspace, particularly in redundant industrial and/ or warehousing buildings.

An example here would help.

4.2 Class B2 and Class B8

These classes will be discussed together in view of their relationship with B1 Use Class and the fact that they were not substantially changed in the recasting of the 1987 UCO.

4.3 Class B2. General Industrial

This is defined as a "use for the carrying on of an industrial process other than one falling within class B1 above or within class B3 to B7 below".

In effect, this class is essentially the same as Class IV in the preceding 1972 UCO, except that it is not limited to land containing a building and its difference from other industrial classes has been made clear.

4.4 Class B8. Storage or Distribution

This is defined as a "use for storage or as a distribution centre."

It is essentially the same as the old Class X in 1972 UCO except that the term "wholesale" which was used in the previous UCOs has vanished. As the Government explained in paragraph 23 of Circular 13/87:

The storage and distribution class is intended to remain the same as in the current order although, the class is defined by reference to a use of land rather than the description of a building. This should help make clear that retail warehouses- where the main purpose is the sale of goods direct to visiting members of the public-will generally fall within the shops class however, much floorspace is used for storage.⁴⁹

The distinctions between B2, B8 and B1 classes have been reduced due to the freedom to switch from B2 and B8 to B1 conferred by the 1988 GDO. The removal of the 235 square metre limit which formerly existed on changes of use from B2 to B1 has hastened the trends discussed earlier (in B1 use class section), and 'has dramatic implications for rental levels on the city fringe.'⁵⁰ It has also undermined local authorities policies which strive to maintain a diversity of uses and employment sources and stir high density development like offices to areas with adequate infrastructure and public transport. The impact of the freedom conferred by the 1988 GDO and 1987 UCO has been greatest in the areas close to the City. There are 16 million square feet of industrial floorspace in the city fringes of Camden, Hackney, Islington and Tower Hamlets, a proportion of which could be converted without planning permission.⁵¹ The sheer volume of extra office space thus becoming available equates to some extent to the number of industrial and warehousing uses being displaced. The continued loss of the B2 and B8 uses to B1/office use is detrimental to the local structure and economy as well as the national economy. As was noted in Chartered Surveyor Weekly, "what Britain needs now, ...is more industrial buildings, because the shortage of them is actually beginning to hurt the economy."⁵²

4.5 Classes B3-B7. Special Industrial Use Classes

These have been kept unchanged from the previous UCOs. The Government, however, is currently carrying out consultations on its proposal to amalgamate all the Special Industrial Use Classes (SIUC) into one use class- B2. If this proposal is implemented, and the unlimited freedom to switch from B2 to B1 conferred by the 1988 GDO remains the same, then the implication would be likely to be dramatic in

one way or another for all involved. It is, however, beyond the scope of this thesis to discuss these special industrial use classes further.

4.6 Summary

In summary, the new Business Use Class - B1 and the related permitted development rights conferred by the GDO 1988, are causing major concerns to local planning authorities.

The new legislation has:

- i) disrupted the existing planning policies which were devised in order to maintain a balance between employment numbers, housing and infrastructure;
- ii) greatly reduced the ability of local planning authorities to exercise any influence over the type of employment in their area in relation to the skills base of the local population or channel office development to appropriate areas;
- iii) led to the uncontrolled change of light industrial uses to office uses as a result of the wider scope of the business use class; thereby resulting in a shortage of industrial floorspace / units and an oversupply of office floorspace / units, particularly, in the central and fringe City areas;
- iv) had a negative impact on the availability of affordable industrial floorspace due to increased rental values on the industrial floorspace / units;
- v) brought about the displacement of a lot of industrial uses and storage and warehousing uses by office development due to the changes facilitated by the two orders;
- vi) led to the uncontrolled change of former industrial land and buildings especially in built urban centres to more intense office use. This has given rise to effects detrimental to highway and environmental interests.

Local planning authorities are using various means to curb the adverse impacts of the B1 use class on the environment, the amenity and the local economies and structures.

These include the use of different restrictive conditions, various policy documents, Section 106 Agreements and Article 4 Directions. However, the use of these measures can only apply to new development.

Local planning authorities appear not to be unduly worried about the changes facilitated by the 1987 UCO in relation to Classes B2 (General Industrial) and B8 (Storage or Distribution). However, the changes allowed by the 1988 GDO have resulted in the loss of these uses to the B1/ office use. The planning authorities are, therefore, having difficulties in retaining these uses. They use various restrictive measures when granting planning permissions including those mentioned above in order to retain some of the B2 and B8 uses.

Nevertheless, the new regulations have increased flexibility in the use of land and buildings. Also, they have increased the choice and supply of office floorspace/ units and, to a lesser extent, mixed use space.

In all, the changes in this section have not significantly changed development control workload nor improved the efficiency of the planning system as the Government expected.

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CHAPTER 5

5.0 RESIDENTIAL USES- PART C

The residential part of the 1987 UCO followed the same general principle of hemming in the number of use classes and, thus, the extent of planning intervention in changes of use, whilst attempting at the same time to retain adequate control over matters of environment and amenity. The two main aims in recasting the previous 1972 UCO residential use classes are:

- i) clarification of the circumstances in which the establishment of hostels and small community care homes would require planning permission, and when they would otherwise be within either the hotel or general dwellinghouse class,
- ii) resolution of the status of hostels, by using the criterion of the absence or presence of a significant element of care as the distinction between hostels which could be grouped with hotels and boarding houses (C1) and those which should generally be regarded as residential care homes (C2)."¹

This section will not be discussed in great detail due to the fact that the DoE has acted in the last two months (April 1994) to rectify the main source of complaint against the 'residential uses' part of the 1987 UCO. The Government's action has taken away some of the concerns which were intended to be raised in this Chapter.

Part C of the 1987 UCO comprises three residential classes which are shown in Figure 4.

pre April 94

RESIDENTIAL USES

FIGURE 4

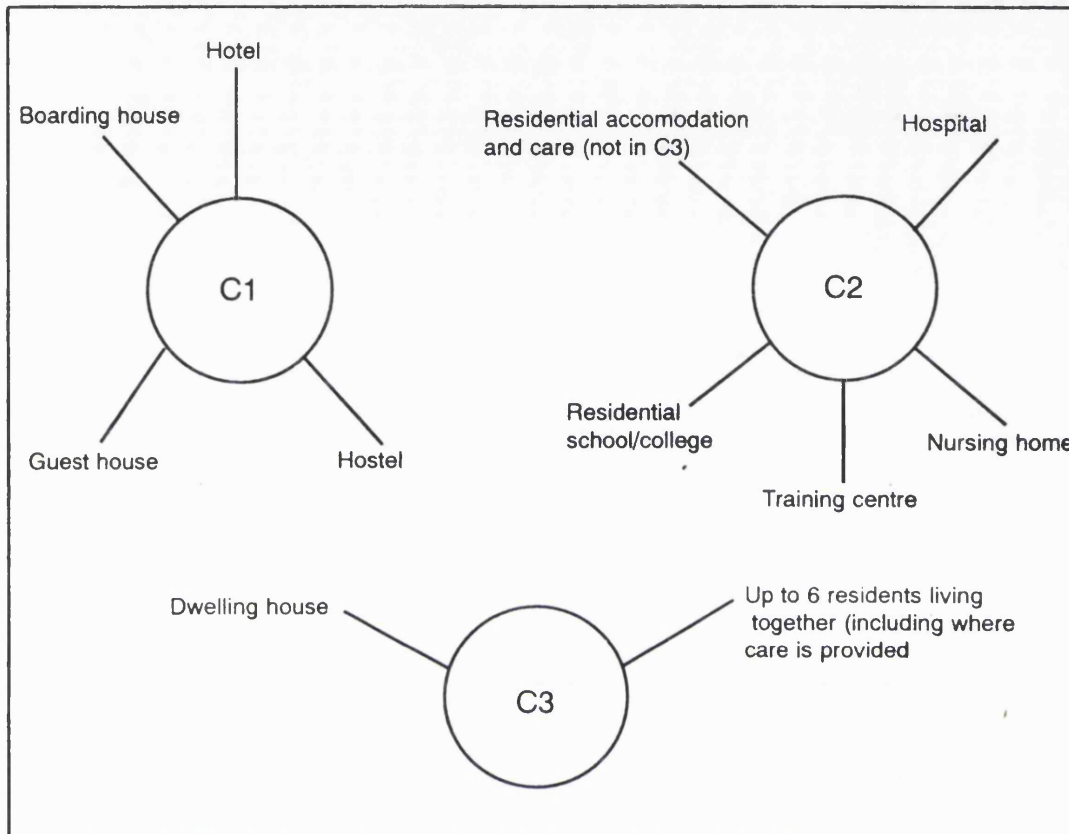
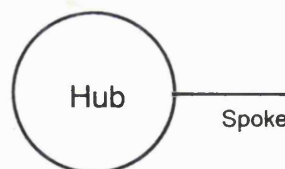


Figure 4:

This illustrates the changes of use which do not require planning permission by reason of the new Use Classes Order or the current General Development Order.

General notes to Fig. 4 and Key:

- The change of use between activities linked via 'spokes' to a 'hub' is not development, and does not need permission.
- Uses one 'spoke' from the hub are mentioned in the order itself. Others have been added for illustration.



C1: No significant element of care must be provided.

C2: Whether or not sole or main residence.

Source: Waters B, 'Use Classes Order 1 Guide', (adapted by the author), Architects Journal, No. 30, Vol. 186, 29 July 1987a, P.63

The 1988 GDO did not confer any permitted development rights to classes or uses in this part. The classes are discussed as follows.

5.1. Class C1. Hotels and Hostels

These are defined as, "use as a hotel, boarding or guest house or as a hostel where, in each case, no significant element of care is provided."

This class is based on Class XI of the 1972 Order, except that it now includes hostels which were previously distinguishable from hotels; and excludes uses where a significant element of care is provided. 'Care' in this context is defined as "personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder...²." As such, hostels where no significant element of care is provided are now to be treated as boarding houses.³

In this instance, the 1987 UCO departs from general planning law by providing that the identity of the user or the type of person to be accommodated by reference to age or other characteristics becomes a land use planning consideration.⁴

The inclusion of hotels and hostels within this same class has caused various local planning authorities great concern. This stemmed, for example, from local authorities in London which were anxious to retain low rent hostel accommodation for nurses, students and others in areas of high demand for tourist accommodation, and conversely from authorities with large holiday resort areas where it was considered that the flexibility granted by the new class would contribute to a reduction in the stock of hotels.⁵

True to the authorities concerns', this class has been very controversial. The Government, until March 1994⁶, maintained that the land-use implications of hotels, boarding or guest houses and hostels are generally the same and, therefore, argued

that changes of use should not be subject to planning control of any sort. Local authorities, on the other hand, have consistently argued that the various uses have different land-use characteristics and, therefore, varying implications on amenity, environment, character of an area and traffic.

Brian Waters predicted the problems which were likely to arise from this class in the early years of the legislation. He considered the scenario where a change occurs from a nurses' hostel to a hotel in a residential area.

Occupiers of the former might own few cars and have their principal meals provided at the main hospital; for the hotel, 30 % of visitors might arrive by car, 20% by coach and the rest by taxi, and a restaurant and bar for residents would require commercial vehicle deliveries, which would cause disturbance early in the morning and late at night.⁷

These fears have now been realised. The LBA survey found that eleven local authorities in London were having problems with the operation of Class C1. The problems included noise, smell, increased traffic generation and uses springing up in inappropriate locations.

The London Borough of Kensington and Chelsea is one of the councils which was experiencing great difficulties with the operation of the C1 use class. In fact, the free interchange between hotels and hostels was creating havoc in the borough.⁸ The Council has a long tradition of residential hostels situated within its residential areas which provide accommodation for students, nurses and other workers. These hostels have always fitted in well with the local communities. There were well over one hundred such establishments containing more than 7, 000 bed spaces in 1989.⁹ With the introduction of the 1987 UCO, the hostels have been converted to hotels which offer higher value without planning permission. This has resulted in the unsuitable location of hostels within residential areas and, thereby, generating noise, smell and traffic and parking problems within the surrounding area.

It has also increased the number of hotels in the borough contrary to the Council's aim of resisting an increase in the stock of hotels. The Council has consistently said that it has a fair share of London's hotels in its borough and, therefore, has been

resisting further growth in hotels. Indeed, it has operated possibly the most restrictive hotel policies in London since the early seventies.¹⁰ The Council's aim was to redress the balance in favour of long term residents who had been expressing deep concern about the impact of hotels and tourism in the borough.¹¹ The introduction of the C1 use class made the means of achieving this aim virtually impossible to the detriment of the community at large.

Some of the hostel owners tend to apply for planning permission to extend their premises before converting them into hotels, thus, exacerbating any problem which the conversion might cause in the first instance. One of such cases was Nos. 1-6 Bramham Gardens which lies within a conservation area. Here, planning permission was refused for the erection of an additional floor to existing hostel premises which the owner intended to change to a hotel. The applicant appealed against the decision. In deciding the case, the inspector considered the issues to be the anticipated impact of the intensification of use on the surrounding residential area and the impact of the use on the character of the conservation area. In dismissing the appeal, the inspector noted the differential impacts of the two uses:

I have no doubt that the introduction of any hotel use into this primarily residential area would have some detrimental effects upon its character. The arrival and departure of hotel guests, particularly in the evening, the generation of taxis, service vehicles and possibly coach movements, and the temporary blockages they could cause whilst double parked, are an inevitable consequence. There would also be likelihood of noise and smells from ventilation equipment and kitchens. The proximity of the attractive gardens would surely tempt joggers and idlers alike. All these effects, small in themselves, would add up to a change in the character of the area which in my opinion would neither preserve nor enhance its character and appearance and would indeed be harmful to it.¹²

In this respect, the conversion was stopped because the applicant could not enlarge the property. In many other cases, changes occur from hostels to hotels or vice versa without the need for physical alteration or operational development which would require planning permission. Thus, resulting in adverse traffic impact, general nuisance and change in the character of the area.

Gerald Gordon, the chairman of Kensington and Chelsea planning committee resigned in 1988 in frustration and anger at the Council's inability to control changes within the C1 use class and other changes facilitated by the 1987 UCO and 1988 GDO. He resigned in order to be free to start a "crusade" to enable the Council to insist on using planning powers to maintain and enhance the boroughs environment as local residents wish."¹³ He said, "indeed, it is my view that the present state of planning control and its implementation by the DoE and its inspectors is the most serious single problem that the Royal Borough now faces."¹⁴

Since then, the members of Kensington and Chelsea Borough Council have had meetings with Michael Spicer, the then Minister for Housing and Planning and the subsequent minister, Sir George Young, over their concerns. The meetings were unsuccessful.¹⁵ In 1993, Kensington Tory MP Dudley Fishburn led a London Boroughs Association delegation to the DoE to call for action on the problems arising from the uncontrolled conversion of hotels to hostels and vice versa in the capital.¹⁶

The City of Westminster is also experiencing problems with the free interchange allowed within Class C1 between hotels and hostels. The Council's concerns were expressly stated in a letter it sent to the London Borough Association. The letter states:

i Hostels to Hotels

Westminster has nearly 45% of London's hotel bedrooms and Westminster's residents experience particular pressures from tourism and hotel development. The City Council therefore regards it as very important to minimise the impact of hotels and related developments whether arising from their appearance or from the traffic and noise associated with such uses. This issue is covered by policies on the location of hotels within the UDP. Because hostels can now change to hotels without needing planning permission, new hotels can be opened in unsuitable locations where new hotels would have been very unlikely to have been granted permission, such as in residential areas outside the Central Activities Zone (CAZ). In such situations there is, of course, no opportunity to consider such factors as the ability of the site and street to cope with coach traffic.

There can also be problems where there is a clustering effect. Some hostel uses catering for long term residents are low key and unobtrusive and where

several within one street change to hotel use, as in Nottingham Place, the whole character of the street may change and make it harder to protect the amenities of the remaining permanent residents. Hotel residents naturally have a quite different style of living, timetable, etc. from permanent residents. As a result Westminster's experience suggests that they are hard to locate satisfactorily adjacent to residential premises...

ii Hotels to Hostels

The loss of hotels, especially those which are purpose-built, have adequate servicing and are located within the CAZ, is detrimental to the wider interests of the tourist industry. They are an essential central London use. With the next upturn in the tourist industry the loss of existing hotels is likely to be an additional pressure for hotel development both inside and outside the CAZ. As a result, the Council's development plans have long contained policies for the protection of the hotel stock...¹⁷

The London Borough of Hackney, although not under great pressure from tourism, is having similar problems with the free interchange between hotels and hostels allowed by the 1987 UCO. To the council, the land use characteristics of these uses are clear-cut and how detrimental the effect of one use is, depends on its location and intensity of the use. In principle, a hostel is considered to be appropriate and acceptable in residential streets/areas, while a hotel is not.

The Council has different policies for hotels and hostels. In the Hackney Unitary Development Plan Deposit Draft hostels are covered in the Housing chapter while Hotels are covered in the Tourism chapter.¹⁸

Note 2 to Policy H015 - Residential Hostels, specifically stated that:

...In the opinion of the Council, the use as a residential hostel is distinct from other Class C1 uses including use as a tourist accommodation hotel,...because of the different type of occupier, nature of facilities provided, and the greater 'permanency' of occupation by those who are often without any other residence.¹⁹

Note 3 went on to state that:

Under the GLC (General Powers) Acts 1973 and 1983 the use of residential accommodation for temporary sleeping accommodation for less than ninety consecutive nights is a material change of use requiring planning permission.²⁰

On the other hand, the policy on hotel development -ACE 7- identifies three main areas in the borough where hotel development will be favourably considered. The policy makes it absolutely clear that hotel development will not be permitted in predominantly residential areas or areas without good public transport links because "hotels constitute an intensive form of land-use and can create severe environmental problems in surrounding areas."²¹

Prior to April 1 1994, these policies could only apply to new development where the Council could exercise some control over the location of hostels and hotels and the facilities provided for the users.

The Council have had few problems with the uncontrolled changes of residential hostels to hotels; and changes of hotels to hostels - notably bed and breakfast - without planning permission. In most of the cases, the sudden change in use resulted in the adjoining residents or users complaining about the adverse impact of the new uses on amenity (noise and smell), and on traffic and parking, in addition to the detrimental impact on hotels adjoining 'new hostels' with the consequent change in the type of occupiers.

Outside London, the tourist seaside towns like Eastbourne, Bournemouth, Clacton, Bridlington, Scarborough, Torquay and Blackpool are very worried about the effects of the C1 use class in their area. Their concerns were raised in a Parliamentary debate on tourism in July 1993 by the Heritage Minister, Iain Sproat.²² The main problem in these areas was the change in the character of the areas brought about by the change of hotels to hostels without any planning control.

Hotel trade in these traditional resort areas has been affected by the decline in visitor numbers for other than short stay trips, the changing patterns in holidays²³ and the recession. The hotel operators / owners have therefore, sought a more stable means of regular income by changing their hotels to hostels for the homeless and unemployed persons- whose rents are paid on regular basis by the Government. The different type of occupiers now residing in these hostels (formerly hotels) and the permanency of

their residence have generally resulted in change in the character of the areas and an adverse impact on tourism.

On criticising the effects of Class C1 uses in the seaside towns, the Heritage Minister observed that:

What was once a small hotel becomes a hostel. It is filled not with guests who stay the night or the week but with people, usually DSS claimants, who stay for months on end. It is essential that we find proper accommodation for DSS claimants or unemployed people, but it is idiotic to place a hostel next to a good hotel that is bringing in good tourist money and jobs to an area.²⁴

The Minister was in doubt as to the consequences of the uncontrolled changes on the amenity. He said that "people who retire to somewhere like Scarborough hope to spend their retirement in peace and quiet. They suddenly find, however, that their home is next door to some noisy, drunk-infested, drug-infested hostel."²⁵

On the issue of control, the minister said:

We should not say that the unemployed and DSS claimants should not have a proper place to live - of course they should - but it should be up to the local council to say no to such a hostel and to say that it will not give planning permission for a hostel. If a local council says it will welcome such a hostel, that is fine. At the moment, however, there is no control.²⁶

A survey carried out by the Association of District Councils also found that some authorities are having great difficulties over the free interchange allowed within Class C1 between hotels and hostels by the 1987 UCO. Thanet District Council is one of them. The Council is of the view that experience since the 1987 UCO strongly indicates that, "hostels represent a significantly different form of occupation to traditional holiday use. such hostels, particularly if operated in significant numbers in a relatively concentrated area, ...have a direct and detrimental impact on the character of the traditional hotel and guest house area."²⁷

It is obvious from the above discussion that the flexibility in the use of hotels and hostels introduced by the 1987 UCO is creating problems for various local authorities. Local authorities have sought to limit the adverse impact of the uncontrolled changes

of use on the amenity, the environment, and the local structure and character. Regardless of the Government's advice on the use of restrictive conditions, they are widely used by local authorities to "modify the scope of the C1 use class, with a relatively inflexible interpretation of hostels within Class C1 favoured in particular".²⁸ This, however, only applies to new developments.

The use of Section 106 Agreements to limit the effects of the free interchange of uses within Class C1 is not common.²⁹

5.1.1 Change of Class C1. Hotels not Hostels!

The Government has finally acknowledged that the land-use implications of hotels and hostels are not the same, following the "scathing attack" by the Heritage minister (discussed above). It has acted to solve the problems being experienced by local authorities due to the legal functioning of the C1 use class. In recognising the difference, the Planning Minister, David Curry said that "the Government is now satisfied that there is a real and specific threat to the amenity of tourists' areas from the establishment of such hostels in traditional hotel areas."³⁰

The Minister then announced that from April 1 1994, hostel uses will be removed from the C1 Use Class. In the longer term, the Government will be looking into the possibility of a licensing system of some sort for the establishment of hostels. With this measure, hotels can no longer be converted into hostels without planning permission.

This measure has been welcomed by the London Boroughs Association³¹ who are now calling for further revisions to the 1987 UCO. It is hoped that this measure will go some way towards solving the London local authorities' complaints against the changes facilitated by the 1987 UCO and restoring public confidence in the planning system.

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Nevertheless, it is worrying that the Government seems to have taken this measure of safeguarding hotels for what looks like political reasons rather than planning reasons. Since the introduction of the 1987 UCO, many local authorities have been complaining about the problems they were facing in relation to C1 use class and other classes as well (see chapters 3 and 4). In all the cases of Class C1, the Government maintained that the land-use implications of hotels and hostels were generally the same and that planning permission should not be required for such changes. The Government also argued that 'the introduction of Class C1 has been beneficial to small hoteliers by allowing them to adapt more rapidly to changing demands.'³²



Until the Heritage Minister criticised the effects of the C1 use class on tourist seaside councils - all of which happen to be Conservative 'strongholds' - the Government was not willing to listen to local authorities complaints or the justifications for restrictive planning policies on hotels and hostels alike. It may be argued that the change to this class was taken not so much for the technical reasons but for political ones as well.

5.2 Class C2. Residential Institutions

These are defined as:

- Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
- Use as a hospital or nursing home.
- Use as a residential school, college or training centre.

This class combines Classes XII and XIV of the 1972 UCO with minor changes. Circular 13/87, paragraphs 25 and 26 explained the new class thus:

...Apart from educational establishments, the characteristic of the uses contained in this class that sets them apart from those in the hotels and hostels and dwellinghouses classes is, in the case of the former the provision of personal care and treatment, and in the case of the latter that the residents and staff do not form a single household... The Secretaries of State are aware of concern that residential care homes and nursing homes should not be permitted where they will place additional demands on already stretched essential services. However, it is important for local planning authorities to concentrate on the land-use planning considerations to be taken into account when

considering a planning application for a change of use to a use falling within this class.

Unless they are managed or provided by a body constituted by an Act of Parliament or incorporated by Royal Charter, all private and voluntary homes (except residential care homes with three beds or less) have to be registered with the local social services authority or the district health authority. Registration can be refused on the grounds that the home would not provide adequate services or facilities reasonably required by residents or patients. The registering authorities may consult each other and the family practitioner committee about the provision of health and social services for residents. Therefore, among the land-use planning considerations local planning authorities will need to concern themselves mainly with the impact of a proposed institution on amenity and the environment. They should also avoid giving the impression that, if planning permission is granted, registration is likely to follow automatically. It is important that intending developers should discuss their proposals with the registration authorities before investing money in them.³³

Generally, the operation of this class has been non-controversial. There is no evidence to suggest otherwise.

amusing!

5.3 Class C3. Dwellinghouses

These are defined as:

Use as a dwellinghouse (whether or not as a sole or main residence)-

- a) by a single person or by people living together as a family, or
- b) by not more than six residents living together as a single household(including a household where care is provided for residents.)

This is the first time the Use Classes Order has reserved a particular use class for dwellinghouses. The SoSE described it as "the largest new class" when it was introduced in 1987 and stressed that "it will help to clarify the circumstances in which the planning system bears on our care in the community initiative". Circular 13/87 in paragraph 27 went on to explain the class thus:

The key element in the use of a dwellinghouse for other than family purposes is the concept of a single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall in the residential institutions class, regardless of the size of the home. The single household concept will provide

more certainty over the planning position of small group homes which play a major role in the government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community.... Local planning authorities should include any resident care staff in the calculation of the number of people living together under arrangements for providing care and support within the community, but also other groups of people such as students, not necessarily related to each other, who choose to live on a communal basis as a single household. The use of a dwellinghouse for other forms of 'multiple occupation' will generally remain outside the scope of the Order and local planning authorities will continue to need to assess whether development is involved in each case on a fact and degree basis. However, most sheltered housing development will fall within this class because they normally comprise a group of individual dwellinghouses.³⁴

This class like the C2 Use Class seems to have been non-controversial. Infact, the class is well favoured by planning authorities. They welcome the clarification it provided in relation to multiple occupancy at the lower end of the size scale; and the help and flexibility it has provided with the implementation of the care in the community programmes.³⁵

The aims of creating this class - which are that of clarification and help to local planning authority and the operators of 'homes' in providing accommodation for care in the community programmes- have been achieved without disrupting established planning policies.

The definition of the Dwellinghouse Use Class was not referred to in the 1988 GDO. It only states that 'dwellinghouse' does not include a building containing one or more flats, or a flat contained within such a building.

5.4 Summary

In summary, the concerns raised by local planning authorities at the freedom introduced by Class C1 to move between hotels and hostels have been realised by various local authorities to varying degrees. The uncontrolled changes have resulted in some uses being located in inappropriate locations, thereby, resulting in an adverse

impact on amenity, increased traffic generation and parking problems. In addition, it has led to a change in the character of the areas and has far reaching implications for the long term tourist industry.

Some people, notably the owners or operators of the hotels or hostels, benefitted from the loss of control over this change of use to the disadvantage of the public at large.

The Government has finally acted to curb the problems mentioned above. Hotels will now need planning permission to change to Hostels. Local authorities can again take all material planning considerations into account in deciding to grant permission or refuse applications for change of use of a hotel to a hostel or vice versa. This amendment has been welcomed by the London Borough Association and, I assume, all the local planning authorities.

Classes C2 and C3 operations have not caused problems (at least not significant problems) for the local planning authorities. There is no evidence to suggest otherwise.

As a whole, the changes in this part, did not result in significant change in either the development control or policy workload of the local planning authorities as the Government expected.

On the positive side, this part of the UCO 1987, achieved its aims of clarifying the planning status of the majority of hostels and the position of unrelated persons living together as one household; as well as assisting the local authorities with the operation of the care in the community programmes.

Notes & References

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CHAPTER 6

6.0 STRATEGIC ISSUES, CONCLUSION AND RECOMMENDATIONS

6.1 Strategic Issues

The main considerations on which planning applications and other planning issues are decided by London LPAs are set out in the Unitary Development Plan (UDP). These are generally in line with the national and regional planning guidance.¹ The UDPs draw on the Strategic Guidance and the Strategic Advice issued by the Government and the London Planning Advisory Committee (LPAC) respectively on planning matters. With the new planning legislation, the implementation of this strategic guidance and advice has been affected in the same way as the LPAs policies on other business and industrial uses in particular.

Ministerial Guidance

The SoS's Strategic Planning Guidance for London² (RPG 3), on the one hand, embraces the philosophy behind the new planning regulations and, on the other, exposes the inherent problems with the operation of the new regulations. In paragraph 21, it states that:

UDPs should reflect the changing needs of industry and current or likely future demands for such development. They should provide for flexibility within the business Use Class (B1) of the Use Classes Order 1987, and should not promote policies which distinguish between say, light industrial and other business uses.³

In the same paragraph 21, however, the Strategic Guidance also asked boroughs to provide good quality sites for general industry (Use Class B2) where there is a demand for it. It does not indicate whether or how such land can be safeguarded from the ratchet effect of the 1988 GDO which allows one-way changes from B2 to B1.

In paragraphs 21 and 23, the Strategic Guidance also calls for Boroughs to make provisions in their UDPs for good quality, accessible sites and premises to meet the accommodation needs of small firms either starting up or expanding; and make

provision for the accommodation of warehousing respectively.

The call for local authorities to provide for the needs of industrial uses and small firms is reiterated in paragraph A9 of the Regional Guidance for the South East (PPG 9)⁴. It states:

Local Planning Authorities are responsible for ensuring that an adequate supply of land in suitable locations continues to be made available for industrial and commercial development, including the needs of small firms and new industries. Also that through their development control policies they pay particular attention to the needs of firms proposing to set up or expand in situ.⁵

Like the Strategic Guidance, the Regional Guidance does not say whether or how such land can be retained and protected from the effects of the 1987 UCO and the 1988 GDO, which allows light industrial uses and general industries respectively to change to higher value office uses or even high-technology development without planning permission.

As is evident from the discussion in Chapter 4, effective implementation of this Strategic and Regional Guidance (as it relates to business and other industrial uses) is virtually impossible to achieve with the flexibility afforded to these uses by the two Orders. Where boroughs have sought to rephrase their policies to suit the fabric and terminology of the new UCO they have discovered that the only way to stop offices from taking over general industrial land and buildings is to prohibit Class B1 use on those sites.⁶ This is difficult, if not impossible to enforce, since it removes the permitted development rights conferred by the 1988 GDO. Even if it was possible to defend such a policy, it would mean that light industrial uses (Class B1 (c)) will be ruled out from sites earmarked for B2 uses. In all probability, these uses will have a perfectly legitimate planning case for using such sites. This is why the LBA, in responding to the draft Guidance, accused the Government of "placing unrealistic reliance on the ability of LPAs to control change of use".⁷ It then stated that for general industry and warehousing land to be secured, a General Development Order shake-up would be required.

With respect to the request that LPAs should provide for the accommodation needs of small firms and new industries, the Strategic Guidance (RPG 3) does not distinguish between office and industrial firms, even though the Regional Guidance (PPG 9) specifically mentioned 'industrial development' and 'new industries'. Be that as it may, the changes introduced in the 1987 UCO and the 1988 GDO have taken away the means by which local planning authorities could have implemented this guidance. As it stands, "the planning regulations have had a disproportionate effect upon small units".⁸ Office firms are consistently outbidding industrial firms in the search for accommodation, in addition to displacing some of the established ones. Hence, the regulations have affected small units affordability and, thus, accessibility to the industrial sectors, particularly those within class B1.⁹ It has been argued therefore, that the accommodation needs of small firms are "being met less well now than under the old regulations"¹⁰.

With reference to the Residential Uses, Class C1, in particular, para. 76 of the Strategic Guidance (RPG 3) states that:

further hotel and tourism development in some primarily residential areas of Westminster and Kensington & Chelsea, where there is already substantial hotel capacity, might place undue strain on the local environment and services of those areas. UDPs for these boroughs should specify the criteria whereby proposals for additional hotel and tourism development will be assessed, and identify any areas where such development would or would not be appropriate.¹¹

Interesting

This strategic guidance obviously contradicts the advice given in Circular 13/87 regarding the free interchange and, therefore, the location of the uses within the former Class C1 allowed by the 1987 UCO.

It is ridiculous that the Government should be advising these boroughs to include such restrictive policies on hotel location when it knows fully well that the boroughs could not influence the location of some of the hotels because of the freedom to convert hostels to hotels without the need for planning permission (allowed in the 1987 UCO). As was revealed in Chapter 5, these boroughs were experiencing great difficulties with their inability to control the conversion of hostels to hotels and thereby resist an

increase in the stock of hotels because of the operation of the 1987 UCO.

This goes further to show the inherent problem with the operation of the 1987 UCO with regards to the effective implementation of the policies/ advice given in the Strategic Guidance.

London Planning Advisory Committee (LPAC) Advice

LPACs Strategic Planning Advice for London¹², so far as it affects businesses and industrial uses, clearly distinguishes between general industrial and business uses, and between pure office and other uses within Class B1. The Strategic Advice has distinct policies for each use to be absorbed in either the Strategic Guidance or the Unitary Development Plan (UDP) as assigned. These policies are set within a reasoned economic strategy for London as a whole. The essential parts of this strategy are as follows:

Strategic Policies E4 -E8 give advice on the location of office development and the need to match supply with demand. The Strategic Advice calls for boroughs to incorporate a strategic locational framework for office development in reviewing the UDPs. (Policy E5). Office uses are directed in paragraph 3.19 to specific locations in London. These include the Isle of Dogs/ Canary Wharf Special Business Zone, Paddington, Kings Cross, Waterloo, Eastern Fringe of the City, London Bridge, Farringdon, Tottenham Court Road, Stratford and Lewisham. There are also general criteria for assessing office development proposals including taking existing supply into account and ensuring that sites are adequately served by public transport. Policy E7 is specifically asking the boroughs to find alternative uses for the 'surplus office property and sites'.

For the industrial uses, there are policies which encourage the boroughs to resist the loss of industrial land (Policy E 10), to provide for accommodation needs of general industry ie. Class B2 uses (Policy E11), and designate land for Industrial Business Parks or Technology Parks (Policies E12 and E 13) in an attractive location accessible

by public transport. It also asked the boroughs to provide for the needs of small firms, including 'start-ups' (Policy E15).

With the free interchange within class B1 uses and the one-way change from B2 to B1 uses, the means for the LPAs to implement this strategic advice is virtually non-existent. As the discussion in Chapter 4 revealed, most local planning authorities are experiencing difficulties in attempting to retain various areas of land designated for specific land uses. Their ability to direct office uses to appropriate location in relation to highway and environmental issues has been dramatically reduced by the new planning regulations.

LPAC has already acknowledged that the Boroughs are not in a position to effectively implement its policies any more. It is very concerned about the impact of the planning legislation on the economic recovery of London and has been calling on the Government to amend the 1987 UCO and the 1988 GDO¹³.

It is also very concerned about the loss of small scale industrial premises, particularly in and around central London. It notes that the B1 use class has had an adverse effect on urban regeneration, contrary to the UCO's aims. Paragraph 3.27 of the Strategic Planning Advice explains its concern thus:

A further concern is the loss of smaller scale industrial premises in mixed use locations, particularly in and around Central London, which is exacerbated by the flexibility afforded by the B1 and B2 Use Classes. This not only appears to disrupt local business linkages, but frequently now results in the creation of non-productive, vacant, normally office property....This has led to problems in maintaining the balance between industry and offices, and uses which encompass both; a mix seen as necessary for regeneration. Contrary to its aims, the operation of the B1 Use Class has reduced flexibility by removing flexible premises from the market. The effect of this is to undermine urban regeneration.¹⁴

In all, it is very difficult, if not impossible, for London planning authorities to effectively execute Strategic Guidance and the Strategic Advice given by the Government and LPAC respectively due to the legitimate operation of the 1987 UCO and the 1988 GDO. The regulations have removed the means by which LPAC's

policies can be implemented, because each of these policies requires a distinction to be made between other 'business' uses and industry.

6.2 Conclusion

The conclusion to this thesis will be presented in two ways:

- i) as a general overview, and
- i) in terms of the shopping area sector, the business and other industrial sector and the residential sector.

6.2.1 General Overview

The UCO and the GDO were revised in 1987 and 1988 respectively. The main aim was to reduce the 'intervention' of the planning system in the use of land and buildings by commercial activity, in order to foster enterprise whilst continuing to protect the environment and the interests of amenity. The revisions, therefore, introduced a more market led approach to the planning system, as opposed to a system based on locally determined policies dealing with various environmental, social and economic matters (like differential traffic generation, differential impact on amenity, employment, industrial and office locations) in the interest of the public.

Generally, the revisions on the one hand, have greatly reduced the ability of local planning authorities to control, monitor and regulate the use of land and buildings in the interest of the public. They have made it virtually impossible for local planning authorities to implement the strategic policies to the detriment of the wider community/ region. ✓

Thirty one out of thirty three London LPAs are experiencing various problems in relation to the revised orders.¹⁵ The most common problems relate to changes facilitated by the 1987 UCO within Class B1, followed by Class A3, and then Class

C1 (prior to April 1st 1994). The permitted development rights allowed by the revised GDO are also causing problems but not to the same extent as the changes allowed by the UCO. The problems being experienced by the LPAs include adverse impact on the character of the area, increased parking congestion and traffic generation, detriment to amenity due to noise, smell and litter; and uncontrolled loss of industrial and warehousing uses together with the jobs they provide.

LPAs have consistently argued, contrary to the Government's view, that the land-use implications of the various uses within Classes A3, B1 and C1 (prior to April 1 1994) in particular, are distinct. The establishment of one use within a class can have a very damaging effect while that of another will not. The difference in the effect will depend amongst other things, on the location, the intensity of the use and the hours of use.

The revisions appear not to have improved the efficiency of the planning system nor significantly reduced the development control workload as the Government claimed they would.

On the other hand, the revisions have achieved their goals of reducing the intervention of planning control in the use of retail, business and residential land and buildings; and that of embracing modern concepts of land and building use. They have resulted in greater flexibility in the use of land and buildings at the expense of the planning system. The owners and the developers of land and buildings are the main beneficiaries of the revisions¹⁶ as predicted by the RTPi. (See Chapter 4)

In all, "whilst the increased flexibility in the use of buildings and land is recognised as a positive result of the 1987 changes, from the local authority perspective, the negative consequences outweigh the benefits."¹⁷

Conclusion - good.

6.2.2 Shopping Area Uses

The revisions in this part were essentially concerned with clarifications and reducing the intervention of planning control in the use of retail property whilst retaining control on amenity and the environment. Generally these aims have been achieved but without retaining effective control on amenity and the environment.

Class A1

The operation of this class has not caused significant, if any, problems to London LPAs. It generally fits in well with the established planning policies on retail.

Class A2. Financial and Professional Services.

The functioning of this class has not been a major cause of concern to LPAs. However, the inclusion of these services within the shopping area uses has not encouraged planning authorities to be materially more accommodating towards these uses especially in the 'primary' shopping centres. The possible loss of retail from take is still a major concern amongst LPAs who try by all means available to them to avoid 'dead frontage' in the shopping area.

Class A3. Food and Drink.

The free interchange of the wide-range of uses within this class and the inclusion of hot food takeaways in this class have been a major source of concern to LPAs. The uncontrolled changes of use within this class have resulted in detriment to amenity (smell, noise and litter), adverse impact on the character of the area, and increased highway and environmental problems in most London LPAs.

The related permitted development rights have also resulted in the loss of public houses, inns and wine bars with consequent changes in the character of the area and loss of essential social facilities to the local communities. This could undermine the

campaign to discourage the use of cars.

Contrary to the Government's advice, (Circulars 13/87 and 1/85), the use of conditions and policy documents of various types by the LPAs to limit the freedom granted by the regulations is common. However, these measures only apply to new developments. Apart from this limitation, the SoS and his inspectors do not often uphold these conditions on appeal.

6.2.3 Other Business and Industrial Uses

Only three Classes- B1, B2 and B8 were discussed in this section. It is not within the ambit of this paper to consider the operation of the Special Industrial Use Classes- B3 -B7.

Class B1. Business.

The introduction of the new business use class has had far reaching implications for London LBAs. The adverse impact caused by this 'catch-all' class, was predicted by the RTP1 and the local planning authorities before it ever came into force in 1987. The impact is exacerbated by the 1988 GDO, for any B2 or B8 use to change to any B1 use with the need for planning permission (changes to and from B8 are subject to a maximum floorspace of 234 square metres).

Together, the regulations have made it very difficult, and sometimes impossible, for the LPAs to carry out the following duties in the interest of the public at large:

- i) implement strategic planning policies which sought to maintain a balance between employment numbers, housing supply, infrastructure and the whole issue of sustainable development;
- ii) monitor business space and physical development against Unitary Development Plan allocations for industrial and office activities;
- iii) channel office development to appropriate locations with regard to

- highway and environmental issues;
- iv) maintain a mix of employment and uses for a balanced community;
 - v) provide or retain job opportunities for the local 'blue-collar' workers;
 - vi) retain the traditional industries which add to the character, attractiveness and vitality of the areas;
 - vii) retain land earmarked for 'high-tech' development contrary to the UCOs intention.

In addition, the new business use class has led to an oversupply of office space and a shortage of industrial floorspace, especially in areas of constrained land supply.

Due to these adverse impacts, LPAs have sought to limit the scope of the new business class and the related permitted development rights through various measures. The most popular strategy has been the imposition of restrictive conditions on planning permissions, even though it is 'against the spirit' of the new Orders. Other measures include the requirement for new B1 development to comply with stringent parking and traffic standards and flexible design criteria. Section 106 Agreements and Article 4 Direction Orders are also used, although to a lesser extent, to moderate the freedom of movement allowed by the two Orders. In general, these measures can only apply to new developments and their success rate is generally low when tested on appeal.

Notwithstanding the adverse impacts, the regulations in relation to this class, have resulted in a greater flexibility in the use of land and buildings for various businesses. The choice available to the users of this space has been increased. The main beneficiaries of the changes are owners of industrial land and premises in areas of constrained office supply and high demand, due to the freedom to change their property to a business use which gives a higher return.

Class B2. General Industrial and Class B8. Storage or Distribution

The operation of these classes in relation to the UCO has not been controversial.

However, the same cannot be said about the GDO. London LPAs have been losing industrial and storage and warehousing floorspace to B1 (usually office) development because of the permitted development rights allowed by the 1988 GDO. LPAs have sought to curtail the loss of these uses and the consequent effect on the environment, the local economy and structure by use of the various measures mentioned above. Their success rate, as with class B1, has been minimal because the SoS and his inspectors consider these measures as being against the spirit of the deregulation Orders.

6.2.4 Residential Uses

The revisions in this part were essentially concerned with clarifications. This aim has been achieved by the 1987 UCO. The permitted development rights allowed by the 1988 GDO does not apply to any of the classes in this part.

Class C1. Hotels and Hostels

Prior to April 1 1994, the uncontrolled changes of hostels to hotels or hotels to hostels resulted in detriment to the amenity of local residents or/and tourists, change in the character of the area and adverse impact on traffic and parking in some cases.

The Government has finally accepted that the land use characteristics of a hotel are different from those of a hostel. It has acted to curb the 'abuse' of the free interchange between hotels and hostels. Hostels have been removed from the C1 Class. Hence, planning permission will be required in order to change a hotel to a hostel. This move has been welcomed by the LBA and other LPAs, who were experiencing problems with the operation of this class.

Class C2. Residential Institutions and Class C3- Dwellinghouses.

In general, the operation of the uses within these classes has been non-controversial.

There is no evidence to suggest otherwise. The introduction of the C3 Class was of much use to the LPAs, in that it clarified the position of unrelated persons living together as one household and provided assistance with the care in the community programme.

6.3 Recommendation

All the surveys discussed in this paper have shown that under the current planning legislation and policy London LPAs and others are experiencing various landuse problems due to the considerable freedom in the use of land and buildings brought in by the 1987 UCO and the 1988 GDO. The landuse changes in themselves are not the principal cause for concern but rather the effect which these changes may have on local economies, local communities, the environment, business enterprise and the vitality and viability of shopping centres.

In all, the regulations have dramatically reduced the ability of LPAs to control, manage and regulate the use of land in the interest of the public. The greater flexibility in the use of land and buildings has been achieved at the expense of planning control to the detriment of the wider community. Since "potentially controversial development no longer needs planning permission then planning control is not so much being streamlined as weakened".¹⁸

The Government should, therefore, act to redress the balance between control of the uses in the interest of the public and flexibility in the use of land and buildings. The most effective recourse in the long run would be to amend the planning legislation in such a way as to restore the distinction between the various uses in Class A3 and Class B1 in particular.

In the short term, the following actions could be taken by the Government in order to alleviate the difficulties being experience by the LPAs due to the legitimate operation of the new UCO and the GDO.

1. Use of Condition-

i) Presently, circular 13/87 and PPG 4, para. 30 acknowledges that there may be exceptional circumstances where conditions can be imposed which remove the UCO and the GDO rights, but these 'circumstances' only relate to amenity or environmental considerations. In order for LPAs to use this device confidently, the definition of what constitutes an 'exceptional circumstance' would have to be widened to include at least some socio-economic issues considered as material planning considerations by the LPAs. These might include maintaining a diversity of uses and employment opportunities for a balanced community, protecting the character of an area and safeguarding essential traditional industries and community facilities. This would need to be reflected in the Strategic Guidance as well.

ii) The SoSE and his inspectors should allow a greater degree of LPAs discretion in imposing conditions to limit the scope of A3 Use Class. The same should apply to business and industrial uses where conditions could be successfully used to retain a mix of uses and land specifically allocated to uses such as light industrial, general industrial or/and high-technology development.

2. Use of Policy Documents

After the Wootton Jeffreys and Bernard Thorpe report was published by the DoE in 1991, the Government indicated that local circumstances can be allowed for in development plans.¹⁹ Since then, the Government has not elaborated on this issue or given it any formal approval. The Government should, therefore, give a formal 'go-ahead' for local planning authorities to devise policies in their development plans to restrict changes of use in some areas where special circumstances justify the restriction. This would need to be supported by the Strategic Guidance.

3. Use of Article 4 Direction Orders

A more sympathetic response from the SoS on the request for Article 4 Direction

approval would be likely to assist in stemming the loss of general industrial land and buildings to B1 office use, and the loss of traditional public houses to Class A2 and sometimes Class B uses.

The Government could also give greater discretion in the use of the Order to LPAs provided it is subject to appeal. In this way, cost could be awarded against a LPA if found to have acted unreasonably.

Don't understand this.

4. Use of Section 106 Agreements

The Government should also give support to the use of this type of Agreement to retain or provide industrial floorspace in new B1 developments.

Currently, these 'solutions' are being used by the LPAs to various degrees. Carrying out these recommendations will, therefore, legalise these measures and introduce a more 'uniform' practice throughout the LPAs.

However, these short term solutions, with the exception of Article 4 Directions, can only apply to new development or established uses with restrictions as to use. The problems caused by the uncontrolled changes of use within the various classes and between them would need to be curbed by making major changes to the current UCO and the GDO.

important

In the long term, therefore, and as a more permanent solution, the Government should review the changes made to the UCO and the GDO in 1987 and 1988 respectively, particularly as they relate to Classes A3 and B1. The following suggestions are made:

- i) The various uses within the food and drink (A3) class should be separated. Hot-food take-away shops and public house/wine bar/inns should be made *sui generis*.
- ii) The distinction between pure office use and other commercial uses should be restored.

- iii) The free one-way permitted developments rights to change from general industrial use (B2) to any business use (B1) and from food and drink class (A3) to any professional and financial services (A2) use should be suspended.
- iv) The other long-term solution would have been for the Government to distinguish between hotel and hostel uses- former Class C1. However, the Government has done this.


The merit of these recommendations is supported by the fact that most of them have been made before by various bodies, including LPAC and the LPA- but with little success. However, if the Government could amend Class 1- Hotels and hostels without any further consultation, then it is possible that the same could apply to Classes A3 and B1. After all, the free interchange between the uses within these Classes is causing more widespread problems for the LPAs than those caused by the Class C1 uses. For instance, 99% of LPAs that responded to a survey, complained about the shortage of industrial land and premises and said that tackling this shortage was the authorities highest priority.²⁰ Since sorting out this problem is the authorities' highest priority, perhaps it should also be the Government's.

In conclusion, the changes introduced in the 1987 UCO and the 1988 GDO have had far reaching implications for London LPAs. They have greatly reduced their ability to carry out their principal statutory duty of controlling, managing and regulating the use of land and buildings in the interest of the public. The Government in its Sustainable Development: The UK Strategy, recognises that one of the objectives of planning is "control, which ensures that developers cannot ultimately insist for private reasons on development which would be against the public interest".²¹ Yet, the Government has taken that 'control' away from the planning system, through the considerable freedom in the use of land and buildings allowed by the new regulations.

There is no doubt that the relaxation of control has increased flexibility in the use of land and buildings and has stimulated a great deal of development. However, "not all of this development was desirable and, for many local authorities, policies of

strategic importance have been compromised".²² As Wootton Jeffreys Consultants and Bernard Thorpe said:

Sufficient has been learnt during the period in which the new Orders has been in practice for a worthwhile change in their application and practical effect now to be envisaged. This could seek to enhance the achievement of the original and desirable objectives, whilst perhaps reigning back some of the significant land use changes that have been set in progress".²³



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APPENDICES

APPENDIX A

Town and Country Planning Act 1990

PART III

CONTROL OVER DEVELOPMENT

Meaning of development

55. (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development", means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[(1A) For the purposes of this Act "building operations" includes -

- a) demolition of buildings;
- b) rebuilding;
- c) structural alterations of or additions to buildings; and
- d) other operations normally undertaken by a person carrying on business as a builder.]

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-

- a) the carrying out for the maintenance, improvement or other alteration of any building or works which-
 - i) affect only the interior of the building, or
 - ii) do not materially affect the external appearance of the building,
and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;
- b) the carrying out on land within the boundaries of a road by a local highway authority of any works required for the maintenance or improvement of the road;
- c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
- e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
- f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part

of the buildings or the other land, for any other purpose of the same class.

- g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a local planning authority.

(3) For the avoidance of doubt it is hereby declared that for the purposes of this section-

- a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
- b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if-
 - i) the superficial area of the deposit is extended, or
 - ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.

(4) For the purposes of this Act mining operations include-

- a) the removal of material of any description-
 - i) from a mineral-working deposit;
 - ii) from a deposit of pulverised fuel ash or other furnace ash or clinker; or
 - iii) from a deposit of iron, steel or other metallic slags; and
- b) the extraction of minerals from a disused railway embankment.

(5) Without prejudice to any regulations made under the provisions of this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

(6) In this Act "new development" means any development other than development of a class specified in Part I or Part II of Schedule 3; and Part III of that Schedule has effect for the purposes of Parts I and II.

APPENDIX B

PROPERTY ADVISORY GROUP FULL RECOMMENDATIONS

PART 1 : AMENDMENTS TO THE GDO

1 Shops

(A) The definition of "shop" in Article 2 (2) of the UCO should exclude the reference to "any other purpose appropriate to a shopping area".

(B) The definition should include launderettes, betting offices, restaurants, snack bars, cafes, showrooms and buildings used for the hiring out of domestic or personal goods or articles. (Para. 6.06)

(C) Banks, estate agencies, building societies and employment agencies should be transferred from the definition of "office" (Class II) and added to the definition of "shop". (para. 6.08)

(d) Exceptions (i) to (v) inclusive in Use Class I should be removed. (Para. 6.05)

(E) (Majority Recommendation) The definition of "shop" should also include certain types of office in which the activity carried on consists of the provision of personal services to members of the public. (Para. 6.12)

2 Offices, light industry and other business uses

A new use class should be created by amalgamating Use Classes II (offices) and III (light industrial buildings) and incorporating certain additional business activities which at present are or may arguably be *sui generis* uses but are comparable in their impact on the environment and general commercial character to offices and light industry. These additional uses should be included by being expressly specified in the UCO rather than by general words of definition or exclusion (para. 7.09). Some of those *sui generis* uses which might be included within this new class are referred to in para. 7.09.

3 Residential institutions

A new single use class should be created which would combine the existing Classes XI (boarding or guest houses and hotels), XII (residential schools and colleges) and XIV (houses and institutions providing care for children, old people and others), and include the use of premises as a hostel (para. 10.01).

4 Non-residential institutions

A new single use class should be created which would combine the existing Classes XV (health and day centres, etc.) and XVI (art galleries, museums, etc.) and include the use of premises as a non-residential school or college (para. 10.02).

5 Places of assembly and public resort

A new use class should be created to include the use of premises for any purpose comprised within the existing Use Classes XIII (places of worship, etc.), XVII (theatres, cinemas, etc.) and XVIII (dance halls, skating rinks, etc.). This new class should also include sporting activities generally and other leisure uses (para. 10.03).

6 Residential premises

A new use class should be created to cover the use of a building for the purposes of a residence. This use should expressly include the use of a building by any resident concurrently with his or her occupation of the property for any activity compatible with that principal use, which (1) can be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit; (2) does not generate vehicular traffic or a type or amount which is detrimental to the amenity of the area in which it is conducted, and (3) does not involve the presence on the premises of more than five person engaged in business (including the proprietors) at any one time (para. 11.09). The new use class should also include the provision of permanent housing accommodation for certain people in premises not falling within Use Class XIV (as amended) (para.11.10).

7 Sub-division of units

Any re-draft of the UCO should enable a single planning unit currently in use for a purpose falling within a use class to be sub-divided into two or more separate units to be devoted to a use or uses falling within the same class without the necessity of obtaining planning permission. (If necessary, the 1971 Act should also be amended to allow that kind of sub-division to take place.) (para. 12.09)

8 Open land

Three new use classes should be introduced to cover the use of open land for (1) the sale of any goods by retail; (2) light industrial purposes (as at present defined); and (3) general industrial purposes (as at present defined). (Para.13.03)

PART 2: OTHER RECOMMENDATIONS

9 The Secretary of State should give further guidance to planning authorities on the concept of ancillary uses (para. 5.04)

10 When the Simplified Planning Zone procedure is introduced, planning authorities should be advised that it should be used wherever possible to

enlarge upon the basic freedom from control which is conferred by the UCO. (Para. 5.05)

- 11 Consultations should be held to discover whether any new uses ought to be added to the Special Industrial Use Classes (Classes V to IX) and whether some freedom of interchange between those Classes should be allowed by the making of a Development Order. (Para. 8.03 and 8.04)
- 12 Freedom of change from warehouse to any use comprised in the new use class recommended in para. 2 of this Appendix should be allowed by the making of a general development order; and the new Simplified Planning Zone procedure should be utilised to bring about the complete amalgamation of warehouse use with that new use class in areas where it is appropriate to do so. (Para. 9.03)
- 13 Section 22(3) of the 1971 Act, which provides that the subdivision of one separate dwelling into two (or more) amounts to development should be repealed. (Para. 11.10)
- 14 When a new UCO is made, the Secretary of State will have to give guidance to planning authorities on the effect which it ought to have on their approach to applications for permission to carry out building or engineering operations, and on a wide range of other planning questions. (Para. 14.02-14.04)

APPENDIX C

STATUTORY INSTRUMENTS

1987 No. 764

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES

The Town and Country Planning (Use Classes)
Order 1987

*Made 28th April 1987
Coming into force 1st June 1987*

The Secretary of State for the Environment, in the exercise of the powers conferred on him by sections 22(2) (f) and 287 (3) of the Town and Country Planning Act 1971¹ and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Town and Country Planning (Use classes) Order 1987 and shall come into force on 1st June 1987.

Interpretation

2. In this Order, unless the context otherwise requires:

"care" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment;

"day centre" means premises which are visited during the day for social or recreational purposes or for the purposes of rehabilitation or occupational training, at which care is also provided;

"hazardous substance" and "notifiable quantity" have the meanings assigned to those terms by the Notification of Installations Handling

¹1971c. 78.section 22 (2)(f) was amended by paragraph 1 of Schedule 11 to the Housing and Planning Act 1986 (c.63).

Hazardous Substances Regulations 1982²;

"industrial process" means a process for or incidental to any of the following purposes:

- a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording),
- b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or
- c) the getting, dressing or treatment of minerals;

in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry;

"Schedule" means the Schedule to this Order;

"site" means the whole area of land within a single unit of occupation.

Use Classes

3. (1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land.

(2) References in paragraph (1) to a building include references to land occupied with the building and used for the same purposes.

(3) A use which is included in and ordinarily incidental to any use in a class specified in the Schedule is not excluded from the use to which it is incidental merely because it is specified in the Schedule as a separate use.

(4) Where land on a single site or on adjacent sites used as parts of a single undertaking is used for purposes consisting of or including purposes falling within any two or more of classes B1 to B7 in the Schedule, those classes may be treated as a single class in considering the use of that land for the purposes of this Order, so long as the areas used for a purpose falling either within class B2 or within classes B3 to B7 is not substantially increased as a result.

(5) No class specified in the Schedule includes any use for a purpose which involves the manufacture, processing, keeping or use of a

²S.I. 1982/1357.

hazardous substance in such circumstances as will result in the presence at one time of a notifiable quantity of that substance in, on, over or under that building or land or any site of which that building or land forms part.

- (6) No class specified in the Schedule includes use-
- a) as a theatre,
 - b) as an amusement arcade or centre, or a funfair,
 - c) as a launderette,
 - d) for the sale of fuel for motor vehicles,
 - e) for the sale or display for sale of motor vehicles,
 - f) for a taxi business or business for the hire of motor vehicles,
 - g) as a scrapyards, or a yard for the storage or distribution of minerals or the breaking of motor vehicles,
 - h) for any work registrable under the Alkali, etc. Works Regulation Act 1906.

Change of use of part of building or land.

4. In the case of a building used for a purpose within class C3 (dwellinghouses) in the Schedule, the use as a separate dwellinghouse of any part of the building or of any land occupied with and used for the same purposes as the building is not, by virtue of this Order, to be taken as not amounting to development.

Revocation

5. The Town and Country Planning (Use classes) Order 1972³ and the Town and Country Planning (Use Classes) (Amendment) Order 1983⁴ are hereby revoked.

SCHEDULE

PART A

Class A1. Shops

Use for all or any of the following purposes-

- a) for the retail sale of goods other than hot food,
- b) as a post office,
- c) for the sale of tickets or as a travel agency,
- d) for the sale of sandwiches or other cold food for consumption off the premises,

³S.I. 1972/1385.

⁴S.I. 1983/1614.

- e) for hairdressing,
- f) for the direction of funerals,
- g) for the display of goods for sale,
- h) for the hiring out of domestic or personal goods or articles,
- i) for the washing or cleaning of clothes or fabrics on the premises,
- j) for the reception of goods to be washed, cleaned or repaired where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services

Use for the provision of -

- a) financial services, or
- b) professional services (other than health or medical services), or
- c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area,

where the services are provided principally to visiting members of the public.

Class A3. Food and drink

Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises.

PART B

Class B1. Business

Use for all or any of the following purposes-

- a) as an office other than a use within class A2 (financial and professional services).
- b) for research and development of products or processes, or
- c) for any industrial process.

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above or within classes B3 to B7 below.

Class B3. Special Industrial Group A

Use for any work registrable under the Alkali etc. Works Regulation Act 1096 (a) and which is not included in any of classes B4 to B7 below.

Class B4. Special Industrial Group B

Use for any of the following processes, except where the process is ancillary to the getting, dressing or treatment of minerals and is carried on in or adjacent to a quarry or mine:

- a) smelting, calcining, sintering or reducing ores, minerals, concentrates or mattes;
- b) converting, refining, re-heating, annealing, hardening, melting, carburising, forging or casting metals or alloys other than pressure die-casting;
- c) recovering metal from scrap or drosses or ashes;
- d) galvanizing;
- e) pickling or treating metal in acid;
- f) chromium plating.

Class B5. special Industrial Group C

Use for any of the following processes, except where the process is ancillary to the getting, dressing or treatment of minerals and is carried on in or adjacent to a quarry or mine:

- a) burning bricks or pipes;
- b) burning lime or dolomite;
- c) producing zinc oxide, cement or alumina;
- d) foaming, crushing, screening or heating minerals or slag;
- e) processing pulverised fuel ash by heat;
- f) producing carbonate of lime or hydrated lime;
- g) producing inorganic pigments by calcining, roasting or grinding.

Class B6. Special Industrial Group D

Use for any of the following purposes:

- a) distilling, refining or blending oils (other than petroleum or petroleum products);
- b) producing or using cellulose or using other pressure sprayed metal finishes (other than in vehicle repair workshops in connection with minor repairs, or the application of plastic powder by the use of fluidised bed and electrostatic spray techniques);
- c) boiling linseed oil or running gum;
- d) processes involving the use of hot pitch or bitumen (except the use of bitumen in the manufacture of roofing felt at temperatures not exceeding 220 degrees C and also the manufacture of coated roadstone);
- e) stoving enamelled ware;
- f) producing aliphatic esters of the lower fatty acids, butyric acid, caramel, hexamine, iodoform, naphthols, resin products (excluding plastic moulding or extrusion operations and producing plastic sheets, rods, tubes, filaments, fibres or optical components produced by casting, calendering, moulding, shaping or extrusion), salicylic acid or

- g) sulphonated organic compounds;
- h) producing rubber from scrap;
- h) chemical processes in which chlorphenols or chlor cresols are used as intermediates;
- i) manufacturing acetylene from calcium carbide;
- j) manufacturing, recovering or using pyridine or picolines, any methyl or ethyl amine or acrylates.

Class B7. Special Industrial Group E

Use for carrying on any of the following industries, businesses or trades:

Boiling blood, chitterlings, nettlings or soap.

Boiling, burning, grinding or steaming bones.

Boiling or cleaning tripe.

Breeding maggots from putrescible animal matter.

cleaning, adapting or treating animal hair.

Curing fish.

Dealing in rags and bones (including receiving, storing, sorting or manipulating rags in, or likely to become in, an offensive condition, or any bones, rabbit skins, fat or putrescible animal products of a similar nature).

Dressing or scraping fish skins.

Drying skins.

Making manure from bones, fish, offal, blood, spent hops, beans or other putrescible animal or vegetable matter.

Making or scraping guts.

Manufacturing animal charcoal, blood albumen, candles, catgut, glue, fish oil, size or feeding stuff for animals or poultry from meat, fish, blood, bone, feathers, fat or animal offal either in an offensive condition or subjected to any process causing noxious or infusions effluvia.

Melting, refining or extracting fat or tallow.

Preparing skins for working.

Class B8. Storage or distribution

Use for storage or as a distribution centre.

PART C

Class C1. Hotels and hostels

Use as a hotel, boarding or guest house or as a hostel where, in each case, no significant element of care is provided.

Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C3. Dwelling houses

Use as a dwellinghouse (whether or not as a sole or main residence)-

- a) by a single person or by people living together as a family, or
- b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

PART D

Class D1. Non-residential institutions

Any use not including a residential use-

- a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,
- b) as a creche, day nursery or day centre,
- c) for the provision of education,
- d) for the display of works of art (otherwise than for sale or hire),
- e) as a museum,
- f) as a public library or public reading room,
- g) as a public hall or exhibition hall,
- h) for, or in connection with, public worship or religious instruction.

Class D2. Assembly and leisure

Use as-

- a) a cinema,
- b) a concert hall,
- c) a bingo hall or casino,
- d) a dance hall,
- e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.

28th April 1987

Nicholas Ridley
Secretary of State for the Environment

APPENDIX D

STATUTORY INSTRUMENTS

1988 No. 1813

**TOWN AND COUNTRY PLANNING, ENGLAND
AND WALES**

**The Town and Country Planning
General Development
Order 1988**

Made. 21st October 1988
Laid before Parliament 31st October 1988
Coming into force . . 5th December 1988

LONDON
HER MAJESTY'S STATIONARY OFFICE

**SCHEDULE 2
PART 3
CHANGES OF USE**

Class A

Permitted development

- A. Development consisting of a change of the use of a building to a use falling within Class A1 (shops) of the Schedule to the Use Classes Order from a use falling within Class A3 (food and drink) of that Schedule or from a use for the sale, or display for sale, of motor vehicles.**

Class B

Permitted development

- B. Development consisting of a change of the use of a building-**
 - a) to a use for any purpose falling within Class B1 (business) of the Schedule to the Use Classes Order from any use falling within Class B2 (general industrial) or B8 (storage and distribution) of that Schedule;**
 - b) to a use for any purpose falling within Class B8 (storage and distribution) of that Schedule from any use falling within class B1 (business) or B2 (general industrial).**

Development not permitted

- B.1 Development is not permitted by Class B where the change is to or from a use falling within Class B8 of that Schedule, if the change of use relates to more than 235 square metres of floorspace in the building.**

Class C

Permitted development

- C. Development consisting of a change of use to a use falling within Class A2 (financial and professional services) of that Schedule to the Use Classes Order from a use falling within Class A3 (food and drink) of that Schedule.**

Class D

Permitted development

- D. Development consisting of a change of use of any premises with a display window at ground floor level to a use falling within class A1 (shops) of the Schedule to the Use Classes Order from a use falling within Class A2 (financial and professional services) of that Schedule.**

Class E

Permitted development

- E. Development consisting of change in the use of any building or other land from a use permitted by a planning permission granted on an application, to another use which that permission would have specifically authorised when it was granted.**

Development not permitted

- E.1 Development is not permitted by Class E if-**
 - a) the application for planning permission referred to was made before the date of coming into force of this order;**
 - b) it would be carried out more than ten years after the grant of planning permission; or**
 - c) it would result in the breach of any condition, limitation or specification contained in that planning permission in relation to the use in question.**

APPENDIX E

HACKNEY BOROUGH COUNCIL'S MAIN STANDARD CONDITIONS ON CLASS A3. (FOOD AND DRINK)

S4 Provision of Litter Bins

(SCS4) Before the use/development commences provision of facilities for the disposal of litter and refuse by members of the public within the site shall be made in accordance with details to be submitted to and approved by the Local Planning Authority in writing.

(SRS4) In order to assist the proper disposal of waste and to protect the appearance of the area generally.

S5 Storage of Refuse within the Premises

(SCS5) Except on day(s) of collection, all refuse and waste shall be stored in sealed containers in the refuse area shown on the plans hereby approved.

(SRS5) To ensure refuse is not left in the street in the interests of visual amenity and to reduce the likelihood of infestation.

S6A Flue/Ductwork (Details to be Approved)

(SCS6A) Details of the position, type and finish of external flue, and ductwork, and any other ventilation equipment shall be submitted to and approved by the Local Planning Authority in writing before work/use commences. The development shall not be carried out otherwise than in accordance with the details thus approved.

(SRS6A) To safeguard the appearance of the property and area generally.

S6B Flue/Ductwork (Finish to Match)

(SCS6B) The external flue/ductwork hereby permitted shall be painted or otherwise treated and be permanently maintained in a colour to match the adjoining facing material.

(SRS6B) To safeguard the appearance of the property and the area generally.

S7 Fume Extraction Motor Equipment

(SCS7) The motor system for the fume extract equipment hereby approved shall not be fitted externally and shall be located within the fabric of the building.

(SRS7) To avoid serious disturbance to and adverse effects upon the environment and to occupiers of nearby residential properties.

S8 No 'Take-Away' Service

(SCS8) The use hereby permitted shall only involve the consumption of food on the premises and shall not include the sale of hot food to be consumed off the premises.

(SRS8) In order to limit the number of callers at the premises in the interests of maintaining a free flow of traffic in the adjoining streets, and amenity of adjoining occupiers.

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