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# Real Estate Tip of the Week: Use Class Order Challenge Update

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Back in September we outlined the changes to the Use Class Order following the introduction of the new Use Class E (known as the Commercial, Business and Service Use Class). We also brought to your attention the legal challenge that was brought to seek the quashing of this statutory development. Please see our earlier Tip [here](#) for further detail.

The legal challenge was heard in the High Court in October 2020 before Lord Justice Lewis and Mr Justice Holgate. The decision was handed down on 17th November 2020 and the challenge was dismissed. The new Use Class E is therefore here to stay...for the time being.

We understand the claimants will apply to the Court of Appeal for permission to appeal the decision on the first ground (absence of a Strategic Environmental Assessment). If permission is granted, the uncertainty over Use Class E's future will remain until the appeal is determined. Drafting concerns surrounding the permitted uses in leases will therefore continue. For now, we would recommend that you continue to consider the following options when drafting the permitted user:

- Refer to the relevant use class order as it existed at 31 August 2020;
- Keep using generic language without specific reference to the use class orders; and/or
- Refer to a limited list of alternative uses, excluded uses and/or changes of use.

In a further 'shake-up' to the Use Class Order, the Government opened the 'Supporting Housing Delivery and Public Service Infrastructure' consultation on 3 December 2020. One of the consultation proposals is to introduce permitted development rights to change from Use Class E to residential use. The proposal intends to increase the delivery of housing by making effective use of otherwise empty commercial buildings. Properties that had any use, or mix of uses, within Class E as at 1 September 2020 could benefit from the right to change to residential C3 use. This proposal seeks to widen and replace the current office to residential, and retail to residential rights which will remain in force until 31 July 2021.

If you wish to have your say on the proposals, you have until 28 January 2021 to make representations via the online survey found [here](#).

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