

SUBSIDIARY LEGISLATION 552.15**DEVELOPMENT PLANNING
(USE CLASSES) ORDER**

28th February, 2014

LEGAL NOTICE 74 of 2014.

1. (1) The title of this Order is the Development Planning (Use Classes) Order. Citation and scope.

(2) The provisions of this Order shall, where relevant, apply to all those planning applications submitted on or after the date of entry into force of this Order.

2. (1) In this Order, unless the context otherwise requires, the following expressions shall have the meanings hereby assigned to them: Interpretation.

"the Act" means the Development Planning Act; Cap. 552.

"boutique tourism accommodation" means a specialised type of tourist accommodation as defined by the competent authority responsible for tourism;

"care" means personal care for people in need of such care by reason of being elderly, disabled, having a past or present dependence on alcohol or drugs, or a past or present mental disorder, and in Category B of the Schedule of this Order also includes the personal care of children and medical care and treatment;

"Category" means a group of different Classes specified in the Schedule of this Order having a similar general use;

"Class" means a Class specified in the Schedule of this Order and Classes under the same Category shall be considered as different Classes for the purpose of this Order;

"cooking" means the transformation of raw material to edible material through the process of heat;

"dangerous substance" means a substance, mixture or preparation listed in Schedule I, Part 2 of the Control of Major Accident Hazards Regulations, or fulfilling the criteria laid down in Schedule I, Part 3 of the said regulations and present as a raw material, product, by-product, residue or intermediate, subject to the exclusions in regulation 4(2) of the said regulations; S.L. 424.19

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

"Development Zone" means the boundary for development as approved by the House of Representatives in 2006 or as otherwise amended;

"residential floorspace" means the floor area of a residence

including all rooms and internal space and excluding any garage, internal or external yard or garden, internal or external open area, and the thickness of the walls;

"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 any other 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;
- (c) the getting, dressing or treatment of minerals,

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

"palazzino" means a specialised type of tourist accommodation as defined by the competent authority responsible for tourism;

Cap. 464.

"professionals complementary to medicine" means professionals as defined in the Health Care Professions Act;

"retail" means:

- (a) retail sale of goods;
- (b) post office;
- (c) sale of tickets;
- (d) travel agency and related operations;
- (e) beauty and wellness related services;
- (f) direction of funerals;
- (g) hiring out of domestic goods or personal goods or articles;
- (h) reception of goods to be washed, cleaned or repaired,

where the sale, display or service is principally to visiting members of the public.

(2) In this Order, words and expressions defined in the Act shall have the same meaning as they have in the Act.

Change of use and the undertaking of additional activities specified in Class 1(c) and 1(d) not requiring a development permission.

3. (1) Subject to the provisions of this Order, and subject to subarticle (2), where a building, including land occupied with the building and used for the same purposes, or land is used for a purpose in any class specified in the Schedule of this Order, the use of that building or land for any other purpose in the same class shall not be development, and a development permission is not required, except as provided in this Order.

(2) In the case when there is a change of use from either:

- (i) Class 3B to Class 3A or
Class 4B to Class 4A or
Class 4C to Class 4A or
Class 4C to Class 4B or

- Class 4D to Class 4A or
 - Class 4D to Class 4B or
 - Class 4D to Class 4C or
 - Class 5B to Class 5A or
 - Class 5C to Class 5A or
 - Class 5C to Class 5B, or
- (ii) when activities identified under Class 1(c) or Class 1(d) are undertaken in addition to those activities identified under Class 1(a) and/or Class 1(b),

this shall be considered as permitted development, subject to a development notification prior to the change of use as specified in the following subarticles.

(3) Any change of use, as specified in subarticle (2)(i), or the engagement of the activities identified under class 1(c) or class 1(d) in addition to those activities identified under Class 1(a) and/or Class 1(b) shall be notified to the Authority prior to the change of use or the engagement of the relative activity, as the case may be. This shall be done by means of the apposite form provided by the Authority which shall include a declaration of the applicant's title to the property. This form shall be accompanied by: three copies of all the necessary plans and elevations; two good-quality colour photographs properly representative of the site; and other relevant documentation as provided in this Order or as the Authority may deem necessary, so that the details submitted to the Authority shall clearly and correctly identify:

- (i) the perit in charge according to article 97(1)(o)(ii) of the Code of Police Laws; Cap. 10.
- (ii) the applicant;
- (iii) the precise location and full extent of the applicant's property, and the applicant's title over the property. Where considered necessary by the Authority, these shall be confirmed by a copy of the deed showing the respective title;
- (iv) the full nature and full extent of the development;
- (v) the specified Class from which the change of use is being proposed and the specified Class to which the change of use is being proposed, or the specified activity proposed to be undertaken in addition to the activity identified under Class 1(a) and/or Class 1(b), as the case may be;
- (vi) all previous licences, permits, applications and notifications affecting the applicant's property, where applicable;
- (vii) where relevant or required, the prior clearances from Malta Enterprise, Malta Tourism Authority, National Commission for the Disabled and the Environmental Health Directorate; and

- (viii) access to the site, indicated on a location map, if the site does not abut on a public street.

(4) Where the change of use is from Class 4C or Class 4D to Class 4B being a fishmonger, butcher, greengrocer or mini-market, an engineer's report is also required to assess any impacts from noise, smell and vibration. An engineer's report shall, unless the Authority deems otherwise, also be required in the case of a change of use from Class 4D to Class 4C.

(5) The Authority shall respond in writing to the notification and shall return one copy of all the plans submitted, endorsed to clearly indicate:

- (a) whether or not the change of use as specified in subarticle (2)(i) or the engagement of an additional activity as specified in subarticle (2)(ii) is permitted; and
- (b) which development is permitted.

In the event of any discrepancy between any approved drawings and relevant provisions of this Order as communicated in the Authority's response, the latter shall prevail.

(6) Where a notification is required under subarticle (2), and without prejudice to any applicable provisions of this Order, the change of use as specified in subarticle (2)(i) or the engagement of the additional activity as specified in subarticle (2)(ii) shall only be treated as permitted if the applicant has complied with the notification procedure established in subarticles (2), (3) and (4) and the Authority either:

- (a) confirms that the change of use or the engagement of the additional activity is permitted; or
- (b) does not within thirty days after the Authority has validated the notification, give to the applicant a notice in writing that the change of use or the engagement of the additional activity requires a development permission.

(7) If the change of use or engagement of the additional activity is not permitted, the Authority shall give detailed reasons for such a decision.

(8) Where the change of use or the engagement of the additional activity has been carried out without the notification required in accordance with subarticle (2), and the change of use or the engagement of the additional activity complies fully with the relevant exceptions, limitations and conditions of this Order, the notification of that change of use or of the engagement of the additional activity shall be treated as though it were a prior notification in accordance with subarticle (2).

(9) Where:

- (a) the change of use or the engagement of the additional activity has been carried out without the notification required in accordance with subarticle (2); or
- (b) a notification has been made and the Authority has not

responded to the notification and that change of use or the engagement of the additional activity either runs counter to policies or plans or legislation approved according to the Act or is not correctly, completely and unequivocally reflected in the notification;

the Authority shall still have the right to stop the change of use or the activity and, or to take enforcement action or other action in accordance with the Act.

(10) The reply of the Authority confirming that the change of use or the engagement of the additional activity is permitted shall have a validity period of one calendar year commencing on the date on which the reply is notified to the applicant, or, in the absence of such a notice, on the date of the expiry of the aforesaid thirty days. The change of use or the engagement of the additional activity has to be carried out within the one year validity period.

(11) Where change of use or engagement of the additional activity is carried out after the validity period stipulated in subarticle (10) has expired, or after the Development Order under which it is permitted has been repealed, the Authority shall still have the right to stop works and, or to take enforcement or other action, in accordance with the Act.

4. Nothing in any Class specified in the Schedule of this Order shall include any use for any of the following:

Uses not within a use Class.

- (a) amusement arcade or centre, recreation centre or a funfair;
- (b) band club, social club, dance or wedding hall, discotheque or similar places of assembly;
- (c) sale of fuel for motor vehicles;
- (d) taxi business, hire of motor vehicles or public service garage;
- (e) fireworks factories, explosives factories or factories for the manufacture of hazardous chemicals and their storage;
- (f) aqualung fillers;
- (g) food take-aways, including pastizzeria;
- (h) waste management facility including scrap yard or yard for the breaking of motor vehicles;
- (i) mineral extraction facility including quarry or mine or for the storage, distribution or processing of minerals;
- (j) manufacturing, processing, keeping or storing of a dangerous substance, in a building or on land;
- (k) disposal of waste materials either on land or at sea;
- (l) washing or cleaning of clothes or fabrics in coin or credit operated machines or on premises at which the goods to be cleaned are received direct from the visiting public;
- (m) bakery;

- (n) shooting range or shooting club or for any other use involving firearms;
- (o) conference or public assembly centre;
- (p) racing or practicing of motor vehicles, including off-road vehicles;
- (q) manufacture, processing and distribution of concrete, or manufacturing or casting of concrete elements and products;
- (r) sale or display of motor vehicles;
- (s) supermarkets;
- (t) places in connection with public worship or religious instruction or the social or recreational activities of a religious body;
- (u) bingo halls, casinos, gaming shops, betting shops or lotto offices;
- (v) retail outlets selling fire-arms;
- (w) any other uses not included in the Schedule of this Order.

Change of use of part of a building or land used as a dwelling.

5. In the case of a building used for a purpose within Class 1 (Dwellings) of the Schedule, the use of the building which results in an increase or decrease in the number of dwelling units in which the building was previously used, shall be development.

Conditions on a development permission.

Cap. 504.

6. A provision of this Order shall not apply where its operation is expressly excluded by a condition or conditions, or limitation, imposed on development permission in accordance with article 69(3) of the Environment and Development Planning Act.

Limitation on operation of certain Classes.

L.N. 53 of 1994

7. The provisions of this Order shall have effect in relation to Classes 3C, 5A, 5B and 5C only where the use from which the change is to be made to another use within the same Class has been permitted by a specific grant of a development permission made after the coming into force of this Order or of the Development Planning (Use Classes) Order, 1994.*

Fees relative to any procedure undertaken in terms of this Order.

8. There shall be charged by the Authority a fee of two hundred and fifty euro (€250) as a charge to be paid in respect of any procedure undertaken in terms of this Order required for the notification of any change of use or engagement of an additional activity.

*Revoked by this Order.

SCHEDULE

(Article 3 (1))

CATEGORY A - RESIDENTIAL USES

CLASS 1 - Dwellings

Use as a residence, whether or not as a sole or main residence, by any of the following:

- (a) a single person or by people living together as a family;
- (b) not more than six residents living together, including a household where care is provided for residents;
- (c) lodging of not more than sixteen persons, provided that the operation is licensed by the Malta Tourism Authority and the premises are located within an Urban Conservation Area;
- (d) a resident concurrently with his or her occupation or business, provided that it is identified as the ordinary residence of the person undertaking the occupation or business and the activity:
 - (i) uses less than half the residential floorspace of the dwelling capped at 50 sq m provided that the minimum dwelling size is not prejudiced;
 - (ii) relates to beauty and wellness related services, or professional offices, or medical services, or education, or any other activity which in the opinion of the Authority is compatible with residential use;
 - (iii) is not a client intensive activity;
 - (iv) does not generate a disproportionate vehicular traffic or parking which is detrimental to the amenity of the area in which it is conducted;
 - (v) can be carried on in any residential area within the Development Zone without undue detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, light, radiation or incompatible visual impact; and
 - (vi) is conducted in a residence which does not form part of a block of apartments or any other block of buildings accessible from an external common entrance.

CATEGORY B - SOCIAL USES

CLASS 2A - Residential Institutions

Use for either of the following:

- (a) residential accommodation and care to people in need of care other than a use within Class 1 (Dwellings);
- (b) hospital or nursing home;
- (c) medical clinic;
- (d) clinic for professionals complementary to medicine.

CLASS 2B - Non Residential Institutions

Use, other than residential use, for any of the following:

- (a) display of works of art other than for sale or for hire;
- (b) museum;

- (c) public library or public reading room;
- (d) public hall or exhibition hall.

CLASS 2C - Education

Use for either of the following:

- (a) kindergarten, creche, day nursery or day centre;
- (b) residential or non residential school, college or training centre.

CATEGORY C - TOURISM AND LEISURE USES

CLASS 3A - Guest Houses, *Palazzini*, Boutique Tourism Accommodations and Hostels

Use for any of the following:

- (a) guest house;
- (b) *palazzino*;
- (c) boutique tourism accommodation;
- (d) hostel,

where no significant element of care is provided, but excluding premises licensed for the sale of alcoholic liquor to persons other than residents.

CLASS 3B - Hotels

Use for hotel

CLASS 3C - Assembly and Leisure

Use for any of the following:

- (a) cinema;
- (b) concert hall or theatre;
- (c) swimming bath or pool, skating rink, gymnasium, health club, sauna, sports hall, or other indoor or outdoor land-based sports or recreations not involving motorised vehicles or firearms.

CLASS 3D - Marine Leisure

Use for any of the following:

- (a) mooring boats and/or as a marina;
- (b) diving, sailing, or windsurfing school or other marine- based sport or recreation.

CATEGORY D - COMMERCIAL USES

CLASS 4A - Financial, Professional and Other Offices

Use for any of the following:

- (a) financial services;
- (b) professional services (including doctors, lawyers, dentists);
- (c) any other offices of a comparable nature.

CLASS 4B - Retail

Use for any of the following:

- (a) retail outlets;
- (b) display for sale of goods excluding motor vehicles.

CLASS 4C - Food and Drink Establishments where no cooking is allowed

Use for establishments catering for the preparation and sale of hot or cold food or drink for consumption on the premises where no cooking is allowed.

CLASS 4D - Food and Drink Establishments where cooking is allowed

Use for establishments catering for the preparation and sale of hot or cold food or drink for consumption on the premises where cooking is allowed.

CATEGORY E - INDUSTRIAL USES

CLASS 5A - Light Industry

Use for any of the following:

- (a) research, testing and development of products or processes;
- (b) craft business;
- (c) any other light industry not falling under Class 5C,

provided that, if any such use is carried out in a residential area, in the opinion of the Authority:

- (i) it can be carried out without detriment to the amenity of that area by reason of noise, vibrations, smell, fumes, smoke, soot, ash, dust, grit, or visual impact; and
- (ii) it does not generate a disproportionate vehicular traffic or parking which is detrimental to the amenity of the area in which it is conducted; and
- (iii) it does not result in a significant increase in the number of employees previously engaged in the former use.

CLASS 5B - General Industry

Use for the carrying on of an industrial process not contemplated by Class 5A or Class 5C.

CLASS 5C - Specialised Industry

Any specialised industrial process for any of the following use:

- (a) smelting, calcining, sintering or reducing ores, minerals, concentrates or mattes;
- (b) converting, refining, reheating, annealing, hardening, melting, carburising, forging, or casting metals or alloys other than pressure die-casting;
- (c) recovering of metal from scrap, drosses or ashes;
- (d) galvanising;
- (e) pickling or treating metal in acid;
- (f) chromium plating;
- (g) burning lime or dolomite;
- (h) producing zinc oxide, cement or alumina;
- (i) foaming, crushing, screening or heating mineral or slag;
- (j) processing pulverised fuel ash by heat;
- (k) producing carbonate of lime or hydrated lime;

(l) producing inorganic pigments by calcining, roasting or grinding, except where the above processes are ancillary to the getting, dressing or treatment of minerals and undertaking in or adjacent to a quarry or mine;

- (m) distilling, refining, or blending oils (other than petroleum or petroleum products);
- (n) producing or using cellulose or using other pressure sprayed metal finishes (other than in vehicle repair workshops in connection with minor repairs, or application of plastic powder by the use of fluidised bed and electrostatic spray techniques);
- (o) boiling linseed oil or running gum;
- (p) processes involving the use of hot pitch or bitumen in the manufacture of roofing felt at temperatures not exceeding 220°C or the manufacture of coated roadstone;
- (q) stoving enameled ware;
- (r) 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 sulphonated organic compounds;
- (s) producing rubber from scrap;
- (t) chemical processes in which chlorophenols or chlorocresols are used as intermediates;
- (u) manufacturing acetylene from calcium carbide;
- (v) manufacturing, recovering, or using pyridine or picolines, any methyl or ethyl amine, or acrylates;
- (w) the carrying on of an industrial process which uses animal remains as the primary input or as part of the process of manufacture.

CATEGORY F - STORAGE AND BOATHOUSE USES

CLASS 6A - Storage and Distribution

Use for storage (other than the storage, on land or on water, of boats) or as a distribution centre.

CLASS 6B - Boatyards

Use for any of the following:

- (a) storing boats (other than in a marina);
- (b) boat building;
- (c) boat repair and servicing.

CATEGORY G - AGRICULTURE USES

CLASS 7 – Agriculture

The carrying on of agriculture which involves the intensive raising of crops or animals.

CATEGORY H - AQUACULTURE USES

CLASS 8 - Aquaculture

Use for the hatching or fattening of fish.
