

PLANNING COMMITTEE - 4 AUGUST 2020

AMENDMENTS TO THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015 AND TOWN AND COUNTRY PLANNING (USE CLASSES) ORDER 1987

1.0 Purpose of Report

1.1 To provide an update to Members on recently published Statutory Instruments (SI)

- SI 2020 No. 632 - The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 which has extended and introduced new permitted development rights.
- SI 2020 No. 755 - The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 also introducing new permitted development rights.
- SI 2020 No. 757 - The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which has made a number of quite significant changes to the Use Class Order.
- SI 2020 No. 756 - The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 which has also introduced new permitted development rights.

Each of these new instruments have significant impacts in terms of planning, although like the majority of permitted development rights, there are a number of restrictions.

1.2 For awareness, other statutory instruments, relating to planning have been implemented following the Covid-19 outbreak, four are of particular interest. They are:

- SI 2020 No. 505 - The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020.
- SI 2020 No. 412 - The Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020.
- SI 2020 No. 330 - The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020.
- SI 2020 No. 781 - The Community Infrastructure Levy (Coronavirus) (Amendment) (England) Regulations 2020.

1.3 A Bill has also been progressing through Parliament – Business and Planning Bill which gained Royal Assent on 22nd July. The Business and Planning Act introduces, inter alia, amendments in relation to construction working hours and extension of time periods for commencement of developments for certain planning permissions.

2.0 Background Information

2.1 The Government consulted in December 2018 and January 2020 on a number of matters relating to permitted development rights, many of which have previously been implemented including making previously time-limited permitted development rights permanent. This applied to larger household extensions of up to 6 or 8 metres as well as

conversion of agricultural buildings into dwellinghouses; and increasing the height threshold for electric vehicle charging points.

- 2.2 Permitted development rights, as Members will be aware, allow a developer/householder to undertake certain building works or change the use of land or building without the need for the submission of a planning application. The extent of what can be undertaken as permitted development is far ranging and includes the more commonly known extensions and buildings householders can undertake; changes of use - for example from a pub to a retail outlet; conversion of agricultural buildings or offices into residential dwellings as well as a number of rights for statutory undertakers, local authorities etc. These are set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596) and within further statutory instruments that have come into force since this time.
- 2.3 The majority of the changes to permitted development rights that have come into force over recent months have been as a direct result of the coronavirus pandemic and are detailed below. However, the more recent statutory instruments (SI 2020 No. 632 and SI 2020 No. 755) introduce permitted development rights for extensions above existing purpose-built, detached blocks of flats up to 2 storeys to create further flats, up to 2 storey extensions above dwellinghouses and a number of other significant changes. This formed part of a 2018/19 consultation.

3.0 Legislation in Force or Coming into Force

- 3.1 The following section details legislation that has come into force or will do so following the Covid-19 pandemic relating to planning.

The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 - SI 2020 No. 632

- 3.2 This instrument makes a number of what may be perceived as minor changes to the existing permitted development rights but should have positive effects on the quality of housing that is provided for future residents. For dwellings created as a result of a change of use from an office (Class O); light industrial use (Class PA); agricultural buildings (Class Q); retail, hot food takeaway or specified sui generis uses (Class M) and specified sui generis uses (Class N), the local authority is required to consider the provision of adequate natural light to all habitable rooms by the proposed change of use from office to dwellinghouse. The applicant is required to submit floor plans indicating dimensions and proposed use of each room, the position and dimension of windows, doors and walls, and elevations of the proposed dwellinghouses. The legislation details that the local planning authority must refuse prior approval if adequate natural light is not provided in all habitable rooms in the proposed development.
- 3.3 A definition of habitable room is provided

"... any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms;"

which is in line with how impacts upon amenity are considered as part of an application for planning permission. This will ensure that developments such as that receiving national coverage in Watford (industrial building conversion into residential) will not be permitted when adequate light is not provided after the 1st August when the changes come into force.

- 3.4 Flexibility has been given in relation to temporary uses of land, including the holding of a market or motor car and motorcycle racing including trials of speed, and practising for these activities. Previously, the specified uses could not take place for more than 14 days in any calendar year. Any other temporary use was for up to 28 days. Now, between 1st July 2020 and 31st December 2020 these uses can now take place for up to the same number of days, in effect doubling [if the previous maximums had been achieved in the previous 6 months of 2020] the number of days previously permitted. This limitation of days does not apply to the holding of a market by or on behalf of a local authority up until 23rd March 2021. This includes precepting authorities i.e. Town and Parish Councils. This came into effect on 25th June 2020.
- 3.5 One of the more key changes is in relation to the introduction of a new permitted development right allowing for the construction of additional dwellinghouses. The new permitted development right allows work for the construction of up to 2 storeys to create new flats on the topmost residential storey of a building which is an existing purpose-built, detached block of flats. The new permitted development right contains limitations and conditions on how it will operate.
- 3.6 There are a number of excluded development from this permitted development right including those on land or sites which are within a conservation area, site of special scientific interest, listed buildings etc. A prior approval process is required to be undertaken, similar to other permitted developments (large extensions to dwellinghouses) and enable consideration to a number of factors. This will come into effect on 1st August 2020.
- 3.7 There are also a number of other important but primarily technical changes within the Regulation.

The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 - SI 2020 No. 505

- 3.8 This instrument allowed alternative ways of advertising applications for planning permission, listed building consent. Many local planning authorities, as a result of the pandemic, were unable to post neighbour notification letters, post site notices and/or advertise in a local newspaper in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. As a result, this SI enabled authorities to use alternative means such as social media to advertise. These Regulations have not applied to the Council due to the effectiveness and measures that have been put in place to enable the planning team to continue to work 'business as usual'. These are in force.

The Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 - SI 2020 No. 412

- 3.9 This introduced a new permitted development right to allow local authorities and certain health service bodies to carry out development for the purposes of (a) preventing an emergency; (b) reducing, controlling or mitigating the effects of an emergency; or (c) taking other action in connection with an emergency. For these purposes, an emergency is defined as an event or situation which threatens serious damage to human welfare in a place in the United Kingdom. As the title suggests, this has been enacted to enable a swift response to matters as a result of the virus and enables new buildings to be constructed as well as plant and machinery to be sited on land. This permitted development right requires cessation of the use on or before 31st December 2020 and any building permitted by this right to be removed within 12 months of the use ceasing. This is in force.

The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 - SI 2020 No. 330

- 3.10 This is a further temporary permitted development right allowing a change of use of a building falling within the following use classes – A3 (restaurants and cafes), A4 (drinking establishments) or a mix of A3 and A4 uses from the 24th March 2020 until the 23rd March 2021 to provide hot or cold takeaway food. This is in force.

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 - SI 2020 No. 755

- 3.11 This introduces a new permitted development right which permits the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwelling. Two storeys may be added if the existing dwellinghouse is two or more storeys tall, or one additional storey where the dwelling consists of one storey. Excluded from this definition is space below ground level or living space within the roof. This right is subject to a number of limitations and conditions. Excluded development are dwellings within a conservation area, listed buildings, if the dwelling was constructed before 1st July 1948 or after 28th October 2018 etc. As with many of the permitted development rights, there is a requirement for prior approval from the local planning authority in relation to certain matters.

There are also ‘additions’ to the recently enacted SI 2020 No. 632, discussed above in relation to extensions above flats. A new permitted development right will allow construction of

- Class AA up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use.
- Class AB permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.
- Class AC permits the construction of new flats on top of terrace dwellinghouses (including semi-detached houses); two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.

- Class AD permits the construction of new flats on top of detached dwellinghouses; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.

The new permitted development rights are subject to a number of limitations and conditions, including a requirement for prior approval from the local planning authority in relation to certain matters.

This right is subject to a number of limitations and conditions. Excluded development are dwellings within a conservation area and listed buildings. There is a requirement for prior approval from the local planning authority in relation to certain matters. This comes into force on the 31st August 2020.

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 - SI 2020 No. 756

- 3.12 This amends Part 20 of Schedule 2 to the 2015 Order and introduces a new permitted development right. Class ZA allows for the demolition of a single detached building in existence on 12 March 2020 that was used for office, research and development or industrial processes, or a free-standing purpose-built block of flats, and its replacement by an individual detached block of flats or a single detached dwellinghouse within the footprint of the old building.

There are restrictions including the old building should have a footprint no larger than 1,000 square metres and be no higher than 18 metres. The old building must have been built before 1990 and have been vacant for at least six months before the date of the application for prior approval. The right provides permission for works for the construction of a new building that can be up to two storeys higher than the old building with a maximum overall height of 18 metres. This has what the legislation defines as an 'essential' prior approval process. Unlike the majority (if not all) of the prior approval processes within other parts of the General Permitted Development Order, if a decision has not been made within the statutory timescale (56 days) on an application under this Class, the developer **does not** get automatic consent by default. This comes into force on the 31st August 2020.

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 - SI 2020 No. 757

- 3.13 This takes effect on 1 September 2020 and makes a number of important and significant changes to the 2007 Use Class Order.

The existing Use Classes A1 (shops), A2 (financial and professional services), A3 (food and drink), A4 (drinking establishments) A5 (hot food takeaways), D1 (non-residential institutions) and D2 (assembly and leisure) are completely revoked. These are replaced by new Use Classes except for those listed below that have now become sui generis [without classification] uses. Class B1 (business) is also abolished as a separate Use Class and is subsumed within a new Use Class. Use Class B2 (general industry) remains in an amended form.

The new sui generis uses are:

- (p) as a public house, wine bar, or drinking establishment [formerly A4],
- (q) as a drinking establishment with expanded food provision [which fell awkwardly between A4 and A3],
- (r) as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises [formerly A5]
- (s) as a venue for live music performance [formerly within D2, and possibly also an ancillary use in some cases within other Use Classes],
- (t) a cinema [formerly D2(a)],
- (u) a concert hall [formerly D2(b)],
- (v) a bingo hall [formerly D2(c)],
- (x) a dance hall [formerly D2(d)].

This means, for example in relation to a concert hall, cinema, bingo hall or dance hall, these uses up until the 1st September 2020 could change from one use to another without the need for planning permission. From the 1st September 2020, permission will be required.

There are many other changes, but the most salient changes relate to uses that most typically are found within a high street. Former A1, A2, A3 etc. uses that were previously in their own use class are now combined into one. Previously, for example, if a change of use was proposed from an A1 to A2 or A3 use, planning permission would have been required. This now falls under Class E (below) and is thus not considered development and can be undertaken without planning permission. The list of the uses that can switch between one another is expansive compared to the current Use Class Order.

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public [*formerly A1*],
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises [*formerly A3*],
- (c) for the provision of the following kinds of services principally to visiting members of the public [*all formerly within A2*] —
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public [*formerly within D2(e)*].
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner [*formerly D1(a)*],
- (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public [*formerly D1(b)*],

(g) for—

- (i) an office to carry out any operational or administrative functions [*formerly B1(a)*],
- (ii) the research and development of products or processes [*formerly B1 (b)*], or
- (iii) any industrial process [*formerly B1(c)*],

There are many other changes to the Use Class Order enabling more ‘community’ uses to switch between one another e.g.

- Class F.1 – Learning and non-residential institutions - museums, public halls, schools, law courts, religious establishments.
- Class F.2 – Local community – shops (with defined criteria), halls/meeting places, outdoor sport recreation (with criteria) and indoor and swimming pools or skating rinks.

This regulation comes into force on the 1st September 2020.

Business and Planning Act 2020

- 3.14 The Business and Planning Act gained Royal Assent on 22nd July 2020. This extends the ‘life’ of planning permissions that have expired since the coronavirus lockdown was initiated as well as relaxing restrictions in terms of construction hours that might be limited via a condition on a planning permission.
- 3.15 The Secretary of State for Housing, Communities and Local Government previously announced that local planning authorities should be flexible in relation to construction working hours where conditions have been imposed on planning permissions restricting these. The aim was to allow a construction company to start work at earlier hours in the morning and continue until later in the evening due to the challenges (and thus slowing of construction) of workers trying to socially separate. To date, officers have been flexible, referring requests to Environmental Health to understand if there are any specific issues to the site in question to prevent such a request. Response letters have, in the main, agreed requests advising the agreement would be reviewed again after 3 months to establish if complaints have been received. It was also suggested that noisier activities took place during the ‘core’ hours and quieter activities during any extended hours. In addition, it was recommended that a notice was put outside the site to advise who people should contact if there were any concerns and prior to starting the new hours, the neighbouring dwellings notified by letter.
- 3.16 The introduction of Section 74B of the Town and Country Planning Act 1990 formalises these arrangements. This section requires the developer to advise the local planning authority of the proposed working hours, 14 days in advance of when they would like the change to come effect. The longest period the amended hours can be sought for is until the 1 April 2021. The local planning authority can agree or refuse the request or can modify the request in terms of the times of construction activities, when the changes might take effect from and/or the date when the changes cease to have effect. Any modification to the request has to be agreed with the applicant prior to determination. The guidance details that “Local planning authorities should not refuse applications to extend working hours until 9pm.” The decision must be made within 14 days (beginning the day after the application is received), otherwise permission is granted in default. A right of appeal can

be made in relation to a refusal. Applicants are advised to work collaboratively with neighbours.

- 3.17 Under section 93A of the 1990 Act, unimplemented planning permissions and listed building consents with time limits for implementation due to lapse between 23rd March 2020 and 31st December 2020 are extended until 1st May 2021 automatically. For applications subject to an environmental approval (Environmental Impact Assessment), an application will need to be submitted for approval by the local planning authority. This will have benefit for developments that have been unable to commence due to the restrictions arising from Covid-19.

Cultural and Tourism Venues

- 3.18 Guidance has been issued on 14 July aimed at supporting the cultural and tourism sector. Applications to change the use of theatres, concert halls and live performance venues whose primary use has been temporarily discontinued as a result of Covid-19 should be considered in the normal way. This requires consultation with the Theatres Trust. The guidance stays in place until the 31 December 2022. The government intends to amend the Development Management Procedure Order to prevent the demolition of such buildings without prior approval.
- 3.19 In relation caravan, campsite or holiday parks which are limited by planning conditions, the guidance encourages the extension of the open season into the winter. It is encouraged owners speak to the planning authority prior to submitting an application.

RECOMMENDATIONS that:

- (a) Members note the contents of this report.
- (b) Further changes to legislation will be reported to Members

Reason for Recommendations

To enable Members to be up to date with recent planning changes.

Background Papers

Statutory Instrument 2020 No. 330 -
http://www.legislation.gov.uk/uksi/2020/330/pdfs/uksi_20200330_en.pdf

Statutory Instrument 2020 No. 412 –
https://www.legislation.gov.uk/uksi/2020/412/pdfs/uksi_20200412_en.pdf

Statutory Instrument 2020 No. 505 –
https://www.legislation.gov.uk/uksi/2020/505/pdfs/uksi_20200505_en.pdf

Statutory Instrument 2020 No. 632 -
https://www.legislation.gov.uk/uksi/2020/632/pdfs/uksi_20200632_en.pdf

Statutory Instrument 2020 No. 755
https://www.legislation.gov.uk/uksi/2020/755/pdfs/uksi_20200755_en.pdf

Statutory Instrument 2020 No. 756

https://www.legislation.gov.uk/uksi/2020/756/pdfs/uksi_20200756_en.pdf

Statutory Instrument 2020 No. 757

https://www.legislation.gov.uk/uksi/2020/757/pdfs/uksi_20200757_en.pdf

Statutory Instrument 2020 No. 781

https://www.legislation.gov.uk/uksi/2020/781/pdfs/uksi_20200781_en.pdf

Guidance: modification of planning conditions relating to construction working hours -

<https://www.gov.uk/government/publications/construction-working-hours-draft-guidance/draft-guidance-construction-site-hours-deemed-consent>

Extension of certain planning permissions; guidance

<https://www.gov.uk/government/publications/extension-of-certain-planning-permissions-draft-guidance/extension-of-certain-planning-permissions-draft-guidance>

Coronavirus (COVID-19): Community Infrastructure Levy guidance -

<https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance>

Coronavirus (COVID-19): planning update on cultural venues and holiday parks

<https://www.gov.uk/guidance/coronavirus-covid-19-planning-update-on-cultural-venues-and-holiday-parks--2>

For further information please contact Lisa Hughes on Ext 5565.

Matt Lamb

Director – Growth & Regeneration