

Changes to the Planning System- Briefing Note

19 August 2020

The government is making significant changes to the planning system, introducing new permitted development rights and changing the way in which the use of commercial buildings is controlled.

'Permitted development' is a right to carry out development without needing to apply for planning permission. Some permitted development rights are subject to a 'prior approval' process, where the council can consider limited aspects of the development, such as design, but cannot refuse the principle.

Planning permission is usually needed to make a significant change in the way land/buildings are used ('a material change of use'). However, not all changes of use need planning permission. The Use Classes Order groups activities into classes, and planning permission is not needed to go from one use to another in the same class. Many changes of use from one class to another are also covered by permitted development.

From 31 August 2020, new permitted development rights are being introduced.

Upward extensions

<https://www.legislation.gov.uk/ukxi/2020/755/contents/made>

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 introduces new permitted development rights for buildings to be extended upwards.

For dwellinghouses, there is a new right to enlarge by the construction of new storeys on top of the highest existing storey of the dwellinghouse. Two storeys may be added if the existing dwellinghouse is two or more storeys tall, or one additional storey where the dwellinghouse consists of one storey.

This right is subject to a number of limitations, the main ones being:

- It doesn't apply in conservation areas;
- It doesn't apply to houses built before 1948 or after 2018, or to houses that have previously been extended upwards;
- An absolute maximum height of 18m, but extensions to attached properties can't be over 3.5m higher than the neighbouring house, or all other houses in a terrace;
- The floor to ceiling height of a storey can't exceed the lower of 3m or the floor to ceiling height of any of the existing storeys;
- The extension can only be on the principal part of the roof;
- The roof pitch of the new storey(s) must be the same as the pitch of the original roof, and the materials must match existing;
- Windows in side elevations are not allowed;
- After extending, a house can only be used for C3 purposes, so exercising this right would prevent a house from subsequently being used as an HMO (without planning permission).

This right is subject to a prior approval process, with the council able to consider design (of the front), impact on the amenity of neighbours, air traffic and defence impacts, and impacts on any protected views.

A number of other permitted development rights for upward development are also introduced:

- Class AA permits construction of 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;
- Class AC permits the construction of new flats on top of terrace dwellinghouses (including semi-detached houses);
- Class AD permits the construction of new flats on top of detached dwellinghouses.

The new rights are subject to prior approval applications, relating to:

- the transport and highways impacts of the development;
- air traffic and defence asset impacts;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- the external appearance of the building, including the design and architectural features of the principal elevation and any side elevation that fronts a highway;
- the provision of adequate natural light in all habitable rooms of the new dwellinghouses;
- the impact on the amenity of neighbouring premises including overlooking, privacy and the loss of light;
- whether, because of the siting of the building, the development will impact on protected views.

Other limitations on the new rights include that they do not apply to buildings constructed before 1st July 1948 or after 5th March 2018.

Demolition and rebuilding of vacant buildings

<https://www.legislation.gov.uk/ukxi/2020/756/contents/made>

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 adds a new permitted development right to demolish and rebuild a vacant building.

- 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.

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. The new right is subject to a prior approval process.

Changes to the Use Classes Order

From 1 September 2020

<https://www.legislation.gov.uk/ukxi/2020/757/contents/made>

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 will introduce three new broad use classes - Class E, Class F1 and Class F2.

- Class E - "commercial, business and service" - use class would subsume the existing Class A1 (Shops), Class A2 (Financial and professional services), Class A3 (Restaurants and cafes), and Class B1 (Business) use classes.
- Class F1 relates to learning and non-residential institutions and includes any non-residential use for the "provision of education, for the display of works of art (otherwise than for sale or hire), as a museum, as a public library or public reading room, as a public hall or exhibition hall, for, or in connection with, public worship or religious instruction, as a law court".
- Class F2 relates to "local community" uses. These are listed as "a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where the shop's premises cover an area not more than 280 metres square, and there is no other such facility within 1,000 metre radius of the shop's location".
- In Class F2 a 'shop' is defined "as a shop mostly for the sale of a range of essential dry goods and food to visiting members of the public". This is intended to provide some protection for such shops while placing those shops found on high streets and town centres in the new 'commercial' class.
- F2 uses also include "a hall or meeting place for the principal use of the local community, an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms, an indoor or outdoor swimming pool or skating rink".
- The following uses are excluded from any use class ("sui generis" uses):
 - public houses, wine bars, or drinking establishments;
 - drinking establishments with expanded food provision;
 - hot food takeaways;
 - live music venues, cinemas, concert halls, bingo halls and dance halls.