

Overview of Planning Changes 2020

(England only)



► **Inside**

Planning procedure
Changes to permitted development rights
Changes to Use Classes
Proposed reforms
Judicial Review Challenge



Introduction

There have been a number of changes to permitted development rights (PDRs) during the Covid-19 pandemic and there are further significant reforms in the pipeline.

Even prior to COVID the Government signalled an intention to reform the planning system and the pandemic simply brought about some more immediate changes to assist for the interim period. With the easing of lock-down the Government issued a wave of legislative and policy changes to begin its radical 'shake-up' of the planning system.

Further changes are the subject of consultation papers. The most important being the white paper *Planning for the Future*, which closes at the end of October, and a shorter consultation paper on *Changes to the Current Planning System* which closed 1 October.

Planning procedure

Changes to the planning system were introduced through the Business and Planning Act 2020 which received Royal Assent on 22 July 2020.

The Act included a range of measures to help businesses adjust to new ways of working as a result of Covid-19. In respect of planning, these included:

- **Pavement licences:** a new streamlined procedure enabling businesses serving food and drink to apply for a temporary pavement licence
- **Construction hours:** a fast track application process for the temporary variation of planning conditions relating to construction site working hours
- **Time extensions:** provision to allow the commencement period for certain unimplemented planning permissions and listed building consents to be extended. This is to ensure relevant permissions and consents are still extant, enabling development to commence following delays caused by Covid-19
- **Remote meetings:** amendment to the *Coronavirus Act 2020* which provides that regulations can make provision relating to requirements for local authorities to hold meetings, the timing and frequency of such meetings, the places at which such meetings must be held, and the way in which people may attend, speak and vote. [NB: Regulations that implemented S78 of the Coronavirus Act were made pursuant to the *Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020* and came into force on 4 April 2020].

Changes to permitted development rights

Pubs

The *Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 (SI 2020/330)* took effect on 24 March 2020. This relaxed PDRs to allow pubs and

restaurants to operate as hot food takeaways for a period of 12 months during the coronavirus outbreak. This change applies between 24 March 2020 and 23 March 2021. It is exempt from being overridden by Article 4 Directions.

Upward extensions

The *Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020* came into force on 1 August 2020 and introduced a new permitted development right, Class A allowing 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 PDR contains limitations and conditions on how it will operate and is subject to prior approval.

The *Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020* came into effect on 31 August 2020. It introduces new PDRs for upward extensions of existing homes and the creation of new homes above certain other types of building. The new PDR contains limitations and conditions on how it will operate and is subject to prior approval.

Demolition and Rebuild

The *Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020* came into effect on 31 August 2020. Article 4 of the 2020 Order adds a new class ZA to the GDPO 2015 Order, dealing with demolition of buildings and construction of new dwelling houses in their place. To fall within the scope of the new PDR, the building that is to be demolished must have been built before 1 January 1990, be vacant, redundant and free-standing and fall within the Class B1(a) offices, B1 (b) research and development, B1 (c) industrial processes (light industrial), and freestanding purpose-built residential blocks of flats (C3) use classes on 12 March 2020.

The PDR is subject to prior approval and the buildings must have been vacant for at least six months prior to the date of the application for prior approval.



Temporary use and markets

The *Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020* extend the ability to carry out a temporary change of use for up to 28 days without planning permission. The new Regulations create a second temporary period of 28 days available until 31 December 2020 as well as an additional 14 days for the holding of a market or motor car and motorcycle racing including trials of speed and practising for these activities.

The Regulations also introduce a new PDR to allow a local authority to hold a market for an unlimited number of days without the requirement to submit an application for planning permission from 25 June 2020 to 23 March 2021.

Changes to Use Classes

The *Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020* came into force on 1 September 2020.

New Use Classes

The new classes are: Class E (Commercial, business and service), Class F.1 (Learning and non-residential institutions) and F.2 (Local community).

Class E subsumes previous use classes A1 (Shops), A2 (Financial and professional services) A3 (Restaurants and cafes) and B1 (Business).

Class F.1 and F.2 subsume some of the previous use classes which were specified in the Schedule to the Use Classes Order as Class D1 (Non-residential institutions) and Class D2 (Assembly and leisure).

The residential (C classes), general industrial (B2) and storage and distribution (B8) use classes remain unchanged, except for a new cross reference in the B2 class to the new Class E 'commercial' use class.

Some uses have been moved into the 'sui generis' category so that planning consent will be required for such uses.

Table of New Use Classes

Part B (Schedule 1)

Class B2 – General Industrial
Class B8 – Storage and distribution

Part C (Schedule 1)

Class C1 – Hotels
Class C2 – Residential institutions
Class C2A – Secure residential institutions
Class C3 – Dwellinghouses
Class C4 – Small Houses in multiple occupation

Part A (Schedule 2) Commercial, Business and Service

Class E – Commercial, Business and Service

Part B (Schedule 2) Local Community and Learning

Class F.1 Learning and non-residential institutions
Class F.2 Local community

Transitional provisions

Transitional saving provisions mean that until 31 July 2021, the GPDO use classes are to be construed as references to the uses classes which were specified in the Use Classes Order on 31 August 2020 (before the latest amendments came into force).

Applications for planning permission (including outline and reserved matters) submitted before 1 September 2020 will be determined against the former use classes rather than the new ones.

The changes do not override any existing planning conditions or planning obligations which specifically prohibit a new use.

Proposed reforms

Planning Changes Consultation Paper

Changing the standard method of assessing housing need

The current method sets a baseline using a 10-year average of the 2014 national household growth projections. This is then adjusted based on affordability with a 40% cap to limit the increases an individual local authority can face.

The Government's proposes a revised method geared towards delivering a number nationally that is consistent with the commitment to plan for

the delivery of 300,000 new homes a year.

To achieve this, they will introduce a new element into the standard method, a percentage of existing housing stock levels, which takes into account the number of homes that are already in an area. The Government also proposes to introduce an affordability adjustment that takes into account changes over time and to remove the cap.

First Homes

The Government has developed a new home-ownership affordable housing tenure, First Homes which will secure a 30% discount on market price. The intention is to amend the NPPF to require a minimum of 25% of all affordable housing units for any development to be secured through developer contributions as First Homes.

SMEs – raising threshold for affordable housing

The proposal is to raise the affordable homes threshold from sites of 10 or more units or less than 0.5 hectares to up to either 40 or 50 new homes through changes to the NPPF. This would be available for a limited period of 18 months.

Planning in Principle

The Government proposes to remove the restriction in the current Permission in Principle regulations on major development. The existing restrictions in the Permission in Principle Regulations relating to EIA and Habitats requirements will remain.

Planning for the Future (White Paper)

New Role for Local Plans

The Government plans to alter the role of local plans with the focus being site or area-specific requirements, including broad height limits, scale and/or density limits for relevant "zoned" land (see below re 'zoning').

Local authorities would also play a role in producing design guides and codes to reflect local character and preferences about the form and appearance of development. These would probably be produced on a 'twin track' with the Local Plan.

Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable for key stages of the local plan adoption process (approx. 30 months).

Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.

Digital technology

The Government hopes that greater use of digital technology will make decision-making faster and more certain. The established time limits of eight or 13 weeks for determining an application from validation to decision will become firmed deadlines.

Zoning

The White Paper proposes simplifying the role of land use plans. This will involve local plans identifying three types of land: (i) Growth areas suitable for substantial development (ii) Renewal areas suitable for some development such as 'gentle densification' and (iii) and areas that are Protected where development will be restricted.

CIL and S106

It is proposed that the Community Infrastructure Levy and s106 obligations will be replaced by a single "Infrastructure Levy". This would be charged as a fixed proportion of the development value above a threshold with a mandatory nationally-set rates. The new levy would include the provision of affordable housing.

The scope of the Infrastructure Levy may be extended to cover permitted development rights.

Build Out - Design Codes and Guidance

The NPPF will be amended to emphasise that masterplans and design codes for sites prepared for substantial development should seek to include a variety of development types by different builders which allow more phases to come forward together. It is expected that design guidance and codes will be prepared locally with community involvement and will be made more binding within planning decisions.

A body will be set up a body to support the

delivery of provably locally-popular design codes and each authority will be required to have a chief officer for design and place-making.

The Government wants to introduce a fast-track for 'beauty' through changes to national policy and legislation.

Environment

The NPPF will be amended to provide a *'quicker, simpler framework for assessing environmental impacts and enhancement opportunities, that speeds up the process while protecting and enhancing the most valuable and important habitats and species in England'*.

The Government also wants to make improvements in the energy efficiency standards for buildings to help deliver the UK commitment to net-zero by 2050.

Heritage

NPPF policies for listed buildings and conservation areas will be reviewed and amended to ensure their significance is conserved while allowing sympathetic changes to support their continued use and address climate change.

Resources

In order to develop and implement the reforms, the Government will develop a comprehensive resources and skills strategy for the planning sector.

Judicial Review Challenge

A campaign group has launched a judicial review challenge to the Government's new reforms on permitted development relating to upward extensions, demolition as well as the changes to the use classes.

The permission stage has been expedited and is due to be heard in October. However, until any such proceedings are finally determined the current legislation will continue to have effect.

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