

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) (NO. 4) ORDER 2020

2020 No. 1459

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”).
- 2.2 Part 20 of Schedule 2 to the General Permitted Development Order provides permitted development rights for existing buildings to extend upwards to create new homes (. This Order amends two existing rights (Class A and Class AA of Part 20 of Schedule 2 to the General Permitted Development Order) to introduce a new matter for prior approval to require confirmation that the external wall construction of the existing building, which are 18 metres or more in height, meets building regulations in respect of fire safety, before extending upwards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.3 The instrument does not have any minor or consequential effects outside England as it applies only to development in England.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 Under Part 3 of the Town and Country Planning Act 1990 (“the 1990 Act”) planning permission is required for the development of land. Planning permission may be granted on application to a local planning authority or by a development order made under the 1990 Act.
- 6.2 The Order amends the General Permitted Development Order which grants planning permission for a range of specific classes of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a “permitted development right”. The effect is that an application for planning permission does not need to be made to the local planning authority, although in some cases permitted development rights require the local planning authority to approve certain key planning matters before development can proceed. This is known as “prior approval”.

7. Policy background

What is being done and why?

- 7.1 Permitted development rights provide for the upward extension of certain existing buildings to create new homes. The Class A right for *new dwellinghouses on detached blocks of flats* came into force on 1 August 2020 (SI 2020/632) and the Class AA right for *new dwellinghouses on detached buildings in commercial or mixed use* came into effect on 31 August 2020 (SI 2020/755). These rights allow the upward extension by up to two additional storeys of buildings up to 30 metres in height.
- 7.2 Where additional storeys and homes are added to a building some aspects of the building as a whole may also be required to be upgraded under Building Regulations, including in respect of fire safety. These provisions are described in detail by a circular which can be found here: <https://www.gov.uk/government/publications/application-of-building-regulations-where-additional-storeys-are-provided-to-existing-buildings-circular-032020>. However, building regulations do not provide that such works must be completed before additional storeys or homes are constructed.
- 7.3 This amendment introduces a new prior approval to these two permitted development rights in respect of the fire safety of the external wall construction of buildings that are 18 metres or more. In respect of such buildings the application for prior approval must be accompanied by a report confirming that the external wall construction of the existing building complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010 (S.I. 2010/2214). This report must be provided by a chartered engineer or other competent professional. Where a report is not provided the local planning authority must refuse prior approval.

Transitional and saving provisions

- 7.4 Article 3 of the Order allows for the determination of an application for prior approval that has been submitted before 30 December 2020, or an appeal made within six months of refusal of such applications, to proceed without the requirement to provide evidence of the fire safety of the external wall construction.
- 7.5 Article 3 of the Order allows for development which has previously been granted, by the prior approval of details by the local planning authority or on appeal, to continue as if the amendment has not been made.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The General Permitted Development Order was consolidated in 2015. This is the twenty-first amending instrument to the General Permitted Development Order.

10. Consultation outcome

- 10.1 The proposal for the introduction of a permitted development right for new homes on existing blocks of flats was included in the *Planning Reform: supporting the high street and increasing the delivery of new homes*¹ consultation published in October 2018. The introduction of this additional matter for prior approval is a technical amendment implementing the proposal and does not require specific consultation.

11. Guidance

- 11.1 There are no plans to issue specific statutory guidance for this instrument. However, the Ministry of Housing, Communities and Local Government intends to provide advice to local planning authorities on its application. This will be available at: <https://www.gov.uk/guidance/building-safety-programme-letters>

12. Impact

- 12.1 The requirement to provide a report that the external wall construction of existing buildings of 18 metres or more meets building regulations alongside the application for prior approval may add some costs to business, and potentially to charities or voluntary bodies where they are building owners or developers. Some developers will already have such evidence from their engagement with experts in exploring the potential for development and framing the proposal. Where the building requires remediation, it will be necessary to complete and be able to evidence this in a report before submitting an application for prior approval. This may therefore add to costs of scaffolding etc compared with undertaking the operations to remediate and extend upwards as one exercise. Any delay arising from completing the works or providing the report, including where remediation may not be required, may lead to some deferral of rental income for building owners. It is not known how many buildings with external wall construction that does not meet building regulations may seek to extend upwards under the rights in order to estimate the direct costs. Such costs should not be substantial as the most cost-effective option for most developers will instead be to apply for full planning permission. For those that require remediation, this will enable remediation and upward development simultaneously, and avoid doing two separate sets of works to meet building regulations. For those that do not require remediation, this will avoid any significant delays to building works.

¹ <https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes#:~:text=Building%20on%20existing%20planning%20reforms,the%20delivery%20of%20new%20homes>

- 12.2 There is no significant impact on the public sector. The amendment requires that a report from a competent professional is provided with the application. Where this is not provided the local planning authorities must refuse permission.
- 12.3 A full Impact Assessment has not been prepared for this instrument. The estimated direct cost to business is below £5m per annum.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 Where businesses are directly impacted as a result of these amendments small businesses are impacted in the same way as larger businesses and are not treated differently. Small businesses have not been excluded as this would undermine the effectiveness of the legislation. This a regulatory measure: adding a requirement to two existing rights.

14. Monitoring & review

- 14.1 The Ministry of Housing, Communities and Local Government committed to monitor progress and carry out a review of S1 2020/632 that introduced the first of these rights by 2025 in line with the requirements of the Small Business, Enterprise and Employment Act 2015. The Ministry will monitor the effectiveness of this instrument and if necessary, consideration of this additional requirement will form part of that review.

15. Contact

- 15.1 Maria Darby at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 1463 or e-mail: maria.darby@communities.gov.uk) can be contacted with any queries on this instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.