

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) (NO. 2) ORDER 2020

2020 No. 755

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”) to introduce a permanent permitted development right to allow existing houses to be extended to provide more living space by constructing additional storeys.
- 2.2 This Order also introduces permanent permitted development rights to allow the construction of additional storeys on free standing blocks and on buildings in a terrace that are houses or in certain commercial uses, and in mixed uses with an element of housing, to create additional self-contained homes. This means that a full application for planning permission is not required for these types of development, while at the same time allowing for local consideration of key planning matters.

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 This 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 have an important role to play in the planning system. They provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through a light-touch prior approval process. Permitted development rights can incentivise certain forms of development by providing developers with a greater level of certainty, within specific planning controls and limitations. They provide for a wide range of development and include measures to incentivise and speed up housing delivery.
- 7.2 Following the consultation, *Planning Reform: Supporting the high street and increasing the delivery of new homes* (October 2018), which closed in January 2019, legislative changes are being made to introduce new permitted development rights to allow the extension of existing homes and to allow existing buildings to extend upwards to construct additional self-contained homes. These measures will support economic recovery from the Covid-19 outbreak by encouraging development.
- 7.3 These provisions are the second phase of permitted development rights relating to the upward extension of buildings. A new right (Class A to Part 20 of Schedule 2 to the General Permitted Development Order) allowing existing purpose-built detached blocks of flats to extend upwards to create new self-contained homes was introduced by S.I. 2020/632, which was laid on 24 June 2020 and comes into force on 1 August 2020. The rights introduced by this Order to allow an extension of up to 2 additional storeys on existing homes and commercial buildings will provide more certainty for homeowners and developers seeking additional living-space or wanting to create new homes, as well as for local authorities.
- 7.4 This Order amends Schedule 2 to the General Permitted Development Order as follows:
- Permitted development right to extend existing homes***
- 7.5 Article 3 of this Order introduces a permanent permitted development right in Part 1 of Schedule 2 of the General Permitted Development Order to allow existing houses which are detached, semi-detached or in a terrace to be extended upwards to provide additional living space by constructing additional storeys. This could provide more

space for growing families, or to accommodate elderly relatives, without having to move house.

- 7.6 The right allows the construction of up to 2 additional storeys on the topmost storey of a detached house of 2 storeys or more, or 1 additional storey on a detached house of 1 storey, above ground level. In a terrace of 2 or more houses (which includes semi-detached houses) it also allows the construction of up to 2 additional storeys on the topmost storey of a house of 2 storeys or more, or 1 additional storey on a house of 1 storey above ground level. Existing accommodation in the roof space of the existing house, including a loft extension, is not considered as a storey for the purposes of this right. The right allows engineering operations necessary for the construction of the additional storeys.
- 7.7 The right is subject to a maximum height limit for the newly extended house of 18 metres, and where the house is in a terrace its height cannot be more than 3.5 metres higher than the next tallest house in the terrace. To prevent overlooking a window cannot be installed in a wall or roof slope of a side elevation of an additional storey built under this right. As with existing permitted development rights to extend or alter houses the external appearance of the materials used in the construction of the additional storeys must be of similar appearance to that of the existing house.
- 7.8 The right applies to houses built since 1 July 1948 (being those granted planning title under the current planning system) and 28 October 2018 when the proposal to introduce a permitted development right to extend existing houses upwards was first announced.
- 7.9 Homes extended using this right cannot be in use as a small house in multiple occupation, or change to that use. This means that an application for planning permission would be required for a home extended under the right to construct additional storeys to become a house in multiple occupation.
- 7.10 The right does not apply in Conservation Areas, National Parks and the Broads, areas of outstanding natural beauty, or sites of special scientific interest.
- 7.11 Given the potential impact on neighbours during the construction of the additional storeys and any engineering works to strengthen the building, the developer must prepare a report setting out the proposed hours of operation and how they intend to minimise any adverse impacts of noise, dust, vibration and traffic movements during the building works on occupiers of the building and neighbouring premises before commencing works under these rights.
- 7.12 The right is subject to obtaining prior approval from the local planning authority, which will consider certain matters relating to the proposed construction of additional storeys. These are consideration of the impact on the amenity of neighbouring premises, including overlooking, privacy and overshadowing; the design, including the architectural features of the principal elevation of the house, and of any side elevation which fronts a highway; and the impacts a taller building may have on air traffic and defence assets and on protected vistas in London.
- 7.13 The local planning authority will notify any adjoining owners or occupiers of the proposed development, as well as consulting with Historic England, the Mayor of London and London boroughs on protected views or the operator of a defence asset or aerodrome, the Civil Aviation Authority and Secretary of State for Defence if required. Where an aerodrome, technical site or defence asset is identified on a safeguarding map provided to the local planning authority, prior approval cannot be

granted for development if an operator of a site, the Civil Aviation Authority or Secretary of State for Defence has responded to the consultation on the application indicating that that the development should not proceed.

- 7.14 The local planning authority is required to make a decision on an application for prior approval under the right within 8 weeks. The right does not provide a default deemed consent if the local planning authority fails to make a decision within this time, reflecting the significance of the matters under consideration including the potential impacts of the proposed development on the amenity of neighbours and on air and defence safety. If a decision has not been made within 8 weeks there is a right of appeal to the Secretary of State for non-determination of the prior approval application.

Permitted development rights for the construction of new homes

- 7.15 Article 4 amends Part 20 of Schedule 2 of the General Permitted Development Order by introducing 4 new permitted development rights for the construction of new self-contained homes by allowing additional storeys to be constructed on free standing blocks and on buildings in a terrace in certain commercial uses, and in mixed uses with an element of housing. They also allow additional storeys to be constructed on existing houses which are detached or in a terrace (which includes semi-detached houses) to create new self-contained homes. As set out in the policy paper *Planning for the Future* (March 2020) the introduction of these measures supports key Government priorities and national policy to boost housing delivery. They will increase densities by making effective use of existing buildings avoiding the need to develop greenfield sites. They also form part of the Government's Covid-19 economic renewal package by enabling new homes to be delivered more easily.
- 7.16 National policy, as set out in the revised National Planning Policy Framework¹ (paragraph 118), supports extending commercial and residential buildings upwards to provide new homes, where development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and can maintain safe access and egress for occupiers. These rights deliver the type of development supported by the broader policy.
- 7.17 A new permitted development right (Class AA of Part 20) is introduced to allow existing free-standing buildings in use as shops (Class A1), financial and professional services (Class A2), restaurants and cafes (Class A3), or offices (Class B1(a)), or as betting shops, pay day loan shops or launderettes, or in mixed use within these uses and mixed use with an element of housing, to extend upwards to create new self-contained homes. These are buildings in uses that are already able to change use to residential uses under existing permitted development rights on Part 3 of Schedule 2 of the General Permitted Development Order.
- 7.18 Up to 2 additional storeys of new homes can be constructed on the topmost storey of existing, detached, free-standing commercial or mixed use buildings of 3 storeys or more above ground level. The right is subject to a maximum height limit for the newly extended building of 30 metres. This height limit recognises sensitivities around local amenity and is considered to be practical in terms of carrying out the building works.

¹ <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- 7.19 This Order also introduces a new permitted development right (Class AB of Part 20) to allow buildings in a terrace (of 2 or more attached buildings) in the uses mentioned in paragraph 7.17 above, to extend upwards to create new self-contained homes.
- 7.20 Up to 2 additional storeys of new homes can be constructed on the topmost storey of a building of 2 storeys or more above ground level, or 1 additional storey on a building of 1 storey above ground level. The overall height of the building when it is extended cannot be greater than 18 metres and no more than 3.5 metres higher than the next tallest building in the terrace.
- 7.21 The rights in paragraphs 7.17 and 7.19, to build additional storeys to create new homes on existing commercial buildings, or buildings in mixed use including with an element of housing, allow engineering operations necessary for the construction of the additional storeys, the replacement or installation of additional plant, construction of safe access and egress and construction of ancillary facilities, if necessary. These rights do not allow for these additional works to be undertaken without the construction of the new storeys and homes.
- 7.22 A further permitted development right (Class AC of Part 20) is introduced by this Order to allow additional storeys to be built on existing houses in a terrace (which includes semi-detached houses) to create new self-contained homes. Up to 2 additional storeys of new homes can be constructed on the topmost storey of a house in a terrace of 2 storeys or more above ground level, or 1 additional storey on a house in a terrace of 1 storey above ground level. The right is subject to a maximum height limit for the newly extended building of 18 metres, and it cannot be more than 3.5 metres higher than the next tallest house in the terrace.
- 7.23 This Order also introduces a new permitted development right (Class AD of Part 20) to allow additional storeys to be built on detached houses to create new self-contained homes. Up to 2 additional storeys of new homes can be constructed on the topmost storey of a detached house of 2 storeys or more above ground level, or 1 additional storey on a detached house of 1 storey above ground level. The right is subject to a maximum height limit for the newly extended building of 18 metres.
- 7.24 The rights in paragraphs 7.22 and 7.23, to build additional storeys on existing houses to create new homes, allow engineering operations necessary for the construction of the additional storeys, safe access and egress and ancillary facilities, if necessary. The rights do not allow for these additional works to be undertaken without the construction of the new storeys. The appearance of the materials used in the construction of the additional storeys must be similar to that of the existing house.
- 7.25 The rights introduced by Article 5 of this Order to construct additional storeys to create additional homes apply to houses and buildings in certain commercial or mixed uses built since 1 July 1948 (being those granted planning title under the current planning system) and before 5th March 2018, when the intention to introduce a permitted development right to build upwards was first announced. Houses and buildings have to have been in one of the relevant uses or mixed uses on 5 March 2018. Existing accommodation in the roof space of the existing commercial building or house, including a loft extension, is not considered as a storey for the purposes of these rights.
- 7.26 Homes created using these permitted development rights cannot change use to a small house in multiple occupation and the right is not available to houses currently in such

a use. This means that an application for planning permission would be required for a home created under the right to become a house in multiple occupation.

- 7.27 These rights do not apply in Conservation Areas, National Parks and the Broads, areas of outstanding natural beauty, or sites of special scientific interest or if the house or building is a listed building or a scheduled monument.
- 7.28 Given the potential impact on neighbours during the construction of the additional storeys and any engineering works to strengthen the building, the developer must prepare a report setting out the proposed hours of operation and how they intend to minimise any adverse impacts of noise, dust, vibration and traffic movements during the building works on occupiers of the building and neighbouring premises before commencing works under these rights.
- 7.29 These rights are subject to obtaining prior approval from the local planning authority, which will consider certain matters relating to the proposed construction of additional storeys. These matters are the potential transport and highways impacts; contamination and flood risk; the appearance of the proposed upward extension and the design and architectural features of the principal elevation of the house or building, and of any side elevation which fronts a highway; the impact on the amenity of neighbouring premises, and those in the building being extended, in including overlooking, privacy and overshadowing; the provision of adequate natural light in all habitable rooms of the new homes; impact of noise from existing commercial premises on the intended occupiers of the new homes; the impact on businesses or the use of land in the surrounding area of introducing, or increasing the number of, homes in an the area; and the impacts a taller building may have on air traffic and defence assets and on protected vistas in London.
- 7.30 The local planning authority will notify any owners or occupiers adjoining the proposed development, and of the premises being extended upwards, as well as consulting with the Environment Agency, the highways authority, Historic England, the Mayor of London and London boroughs on protected views and the operator of a defence asset or aerodrome, the Civil Aviation Authority and Secretary of State for Defence if required. Where an aerodrome, technical site or defence asset is identified on a safeguarding map provided to the local planning authority, prior approval cannot be granted for development where an operator of a site, the Civil Aviation Authority or Secretary of State for Defence has responded to consultation on the application indicating that that the development should not proceed.
- 7.31 The local planning authority is required to make a decision on an application for prior approval under the right within 8 weeks. The right does not provide a default deemed consent if the local planning authority fails to make a decision within this time, reflecting the significance of the matters under consideration including the potential impacts of the proposed development on the amenity of neighbours. If a decision has not been made within 8 weeks there is a right of appeal to the Secretary of State for non-determination of the prior approval application.
- 7.32 All development, whether granted permission following a planning application or through a national permitted development right is legally required to comply with the Building Regulations 2010 (S.I. 2010/2214), as amended (“the Building Regulations”). 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.

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 fifteenth amending instrument to the General Permitted Development Order. There are no current plans for a consolidation.

10. Consultation outcome

10.1 The proposal 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* consultation published in October 2018. Responses were received from local planning authorities, members of the public, business and interest groups who provided a range of comments. The consultation offered options for building up on residential and certain commercial premises, either allow building up to the height of the highest roofline in a terrace; or to the height of the prevailing roofline in the locality, and to allow additional storeys to be built on top of existing purpose-built free standing blocks of flats. A permitted development right for the latter, allowing 2 additional storeys to be constructed on existing purpose-built detached blocks of flats to create additional homes comes into force on 1 August 2020.

10.2 There were 281 responses to the proposal that existing homes should benefit from a permitted development right to extend upwards to provide additional living space, more than half of which did not support it. Those supporting the proposal sought generous limits, including allowing development higher than neighbouring properties, while concerns raised included possible adverse impacts on neighbour amenity and the character of residential areas, an increase in parking, a loss of bungalows and the creation of homes in multiple occupation from family homes.

10.3 In considering whether there is a role for a permitted development right to provide additional self-contained homes by extending certain premises upwards more than half of the 326 responses did not support it. Those who did, recognised that increasing density may relieve pressure for additional housing sites, allow for additional homes to be created by transport hubs and in town centres, and reduce the need for development in the green belt. Some concerns were raised about how communities and local planning authorities would have a say over the quality of homes delivered; how access and safety would be addressed; and the impact on the existing occupiers and neighbours of the premises being extended.

10.4 Respondents sought to ensure development reflected the character of an area, had access to natural light and does not have a negative impact on neighbouring premises. Of the 269 responses on the range of matters proposed for prior approval consideration there was considerable support for the proposals to mitigate the impact of a permitted development right. There was also support for local communities to be able to comment on prior approval applications.

10.5 A summary of responses to the consultation and the government's responses was published in May 2019, and is available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachme>

[nt_data/file/799220/Government_Response_to_Planning_Reform_Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/799220/Government_Response_to_Planning_Reform_Consultation.pdf).

These views have shaped the permitted development rights to allow existing houses to be extended upwards and to create new self-contained homes by allowing additional storeys to be constructed on certain commercial buildings and house, and we have sought to address concerns, where possible, in the conditions and through the prior approval process, as set out in section 7 above.

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 will update *Permitted development rights for householders: technical guidance* on the rights which allow the improvement and extension of homes, which is available at <https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance>. It has also issued a circular letter to building control bodies reminding them of the building and fire safety requirements, including restrictions on the use of combustible materials, for the whole building when additional residential storeys are added. It is available at <https://www.gov.uk/government/collections/building-regulations-divisional-circular-letters>.

12. **Impact**

- 12.1 The impact on business, charities or the voluntary bodies of the permitted development rights to build upwards to construct additional homes is to reduce the cost and time burden of having to submit a full planning application in more cases. Owners of buildings to which these permitted rights apply will also benefit from land value uplift.
- 12.2 Homeowners will have a reduction in the costs and time burden of having to submit a full planning application to extend their homes by adding new storeys and will also benefit from an uplift in the value of their property.
- 12.3 The impact on the public sector is a reduction in administrative cost and time of processing planning applications, where the development would have come forward through an application. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2020 introduced a fee per dwelling for homes constructed under permitted development rights to offset local authorities' costs of considering prior approval applications for this development. The Regulations are available at <http://www.legislation.gov.uk/id/ukdsi/2020/9780348209372>.
- 12.4 A Regulatory Impact Assessment is being prepared for this instrument.

13. **Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses, who may own properties being extended or are carrying out the construction works to do so.
- 13.2 Overall, the impact of the changes is deregulatory. The permitted development rights to allow certain building upwards is deregulatory in effect, helping to reduce bureaucracy and cost in the planning system.

14. Monitoring & review

- 14.1 This measure will be monitored as part of the Government's package of planning reforms to support economic recovery, with changes made accordingly to ensure the intended outcomes. The Government has announced that it will be considering major and wide-ranging reforms of the planning system. A review clause for this specific measure has therefore not been included.

15. Contact

- 15.1 Julie Shanahan at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 3378 or e-mail: julie.shanahan@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.