

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) (NO 3) ORDER 2020

2020 No. 756

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 (“the Amendment Order”) amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”).
- 2.2 It introduces a new permanent permitted development right to allow for the demolition of certain types of buildings and replacement build as residential to create new homes, while 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 In article 4(2), the restriction of proximity to highways of a replacement building (inserted paragraph ZA.1(i)) adds to the confinement of its footprint (inserted paragraph ZA.1(h) as read with article 6(b)) by addressing the possibility that buildings may jut out above ground level.

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.

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 Amendment 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 National 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 planning certainty, within specific planning controls and limitations. National permitted development rights provide for a wide range of development and include measures to support and speed up housing delivery.
- 7.2 The 2018 consultation *Planning reform: Supporting the high street and increasing the delivery of new homes* invited views on the potential scope of a right that would allow for demolition and rebuild as residential and committed to consult in future on the detail. The Secretary of State announced on 12 March 2020 in *Planning for the future* that the government would consult on the detail of a proposed right which would allow “vacant commercial buildings, industrial buildings and residential blocks to be demolished and replaced with well-designed new residential units which meet natural light standards”.
- 7.3 To stimulate regeneration of our towns and cities and deliver additional homes more easily as part of the Government’s response to the Covid-19 pandemic, that right is now being brought forward at pace and without further consultation on the detail of the right. The Covid-19 pandemic has resulted in a downturn in the rate of construction and a reduction in planning applications. In his 30 June 2020 economy speech, the Prime Minister announced a package of radical planning reform. The accompanying No 10 press release (PM: Build, build build) set out the Government’s ambitions that “builders will no longer need a normal planning application to demolish and rebuild vacant and redundant residential and commercial buildings if they are rebuilt as homes”. The right will support businesses and wider economic recovery by removing the red tape associated with making planning applications and will speed up the delivery of additional new homes. The new right will come into force on 31 August 2020.
- 7.4 The aim of the new right is to support regeneration through the residential redevelopment of vacant and redundant buildings that no longer effectively serve their original purpose, support housing delivery and boost housing density. It supports key Government priorities and national policy to boost housing delivery and increase

densities by making effective use of previously developed land and avoiding the need to develop greenfield sites.

- 7.5 Article 4 (2) of the Amendment Order amends Part 20 of Schedule 2 to the General Permitted Development Order by inserting a new Class ZA *Demolition of buildings and construction of new dwellinghouses in their place*.
- 7.6 The right will apply to vacant and redundant free-standing buildings that fell within the B1(a) offices, B1 (b) research and development, B1 (c) industrial processes (light industrial), and free-standing purpose-built residential blocks of flats (C3) use classes on 12 March 2020, the date of *Planning for the future*. The right therefore does not apply to terraced buildings, detached dwellinghouses, or to mixed use buildings other than those above.
- 7.7 To provide that the right applies to buildings that are vacant and redundant and are no longer suitable for modern use the right will apply to those built before 1 January 1990. This date provides a proxy for redundancy while ensuring that as many buildings as possible are in scope. The right does not require detailed consideration of the condition of the building in respect of redundancy. The buildings must have been entirely vacant for at least six full months prior to the date of the application for prior approval.
- 7.8 The right provides for the necessary building works to demolish the existing (old) building and then to build a new residential building. This includes the demolition of the old building, removal of plant and services, the engineering operations for foundations, digging of a basement, construction of the building, and installation of services and plant etc. The right provides for the temporary erection of scaffolding for the period of the physical works. The right does not allow for separate demolition without subsequent construction of a new residential building, or for the separate construction of a new residential building on previously cleared land unless it was provided for under this right. The development, consisting of both demolition and replacement build, must be completed within three years of the date of the grant of prior approval.
- 7.9 Recognising the streamlined planning process, limits are placed on the scale of development permitted. The right allows for redevelopment of a single new building within the footprint of buildings with a footprint of up to 1,000 sq m, and with a maximum height of 18 metres. The demolition or the replacement build of buildings with a footprint greater than 1,000 sq m is not permitted. The right does not apply to part of a building, nor does it allow for the demolition of more than one building within the curtilage and the incorporation of any additional footprint.
- 7.10 The right provides for the construction of a free-standing block of flats in the C3 use class. Where, for example, a small old building is demolished, alternatively a single C3 dwellinghouse may be built. More than one building may not be built within the footprint under the right. The dwellinghouses must remain in C3 use.
- 7.11 The replacement new building may be re-designed and re-positioned within the footprint of the old, which may result in some of the external dimensions of the final building being different to, but no larger than, the original in any direction. The design of the new building may not come forward of the wall of the old building where it fronts a highway. The right does not allow for wider redevelopment within the curtilage, or for the incorporation of outbuildings within the footprint. Facilities

for waste or storage etc should be accommodated within the new building. The building must provide for safe access and egress.

- 7.12 However, to provide flexibility and make effective use of the airspace above existing buildings, the right provides for the new residential building to be up to 7 metres higher than the old to accommodate up to two additional storeys to provide additional homes, within a final overall maximum height of 18 metres. The floor to ceiling height measured internally of any additional storey cannot be more than 3 metres, or the floor to ceiling height of any existing storeys whichever is the lesser.
- 7.13 A building with a high floor to ceiling height, such as a light industrial building, may provide for more than one residential storey within this original storey as long as the overall maximum height of the final building is no higher than 18 metres.
- 7.14 The right allows for local consideration of specific planning matters through prior approval. These include: the transport and highways impacts of the development, contamination and flooding risks, the impact of noise from other premises on the future residents, design and external appearance of the new building, the adequacy of natural light in all habitable rooms of each new dwellinghouse, the impact of the introduction of residential use into an area, and the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light. As the right allows for demolition it will further provide for local consideration of the method of demolition, and the impacts of the development on heritage and archaeology. It will also allow for consideration of plans for landscaping including the planting and maintenance of shrubs and trees.
- 7.15 In the case of buildings that are extended upwards consideration is also to be given to any impacts a taller building may have on air traffic and defence assets and on protected vistas in London.
- 7.16 It is important that local consideration is given to the impacts of such development on sensitive areas. The right therefore will not apply in land designated under article 2(3) of the General Permitted Development Order, such as National Parks, Conservation Areas, the Broads, Areas of Outstanding Natural Beauty, or World Heritage Sites. The right does not apply if the building is a listed building or scheduled monument, or if the land on which the building is sited is within the curtilage of a listed building or scheduled monument. The right provides safeguards for agricultural tenants. The right also ensures necessary safeguards for example in respect of safety hazard areas and military explosive storage areas.
- 7.17 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. (Paragraph B(8) of Part 20.)
- 7.18 Article 3 of the General Permitted Development Order sets out, as a default assumption, that development that is screened as requiring an Environmental Impact Assessment is not permitted.
- 7.19 The application procedure for prior approval is set out in paragraph B of Part 20 to Schedule 2 of the General Permitted Development Order. Article 5 of the Amendment Order inserts new paragraphs B (1A) to (1C) in respect of this right. The application for prior approval is to be accompanied by a drawing to scale and indicating North showing the position of the site, the dimensions of the old building and footprint size,

the proposed dimensions of the new building, detailed floor plans indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, the proposed elevations of the new homes, and a fee per dwellinghouse.

- 7.20 Given the potential impact on neighbouring properties during the demolition of the original building and construction of the new residential building the developer must prepare a construction management plan. This must set out the method of demolition, proposed hours of operation, how they plan to manage waste materials, and how they intend to minimise any adverse impacts of noise, dust, vibration and traffic movements during the demolition and building works on neighbouring premises.
- 7.21 The application must also be accompanied by a heritage and archaeology statement, which could include for example reference to the local Historic Environment Record, as well as plans to mitigate any impact on any heritage or archaeological assets. Where the local planning authority considers that prior approval is required, they may request additional information, and if reasonably practicable, consult with those bodies with relevant heritage and archaeological expertise with whom they would consult when considering these matters in respect of a planning application. Where justified, conditions relevant to matters for prior approval may be attached to the grant of prior approval.
- 7.22 The local planning authority will notify any owners or occupiers adjoining the proposed development, 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 relevant. 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.
- 7.23 The local planning authority is required by article 7 of the General Permitted Development Order, 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 under section 78 of the Town and Country Planning Act 1990, to determine the application for prior approval. The development must not begin before the receipt in writing of the grant of prior approval.
- 7.24 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”), including in respect of fire safety.
- 7.25 By virtue of Regulation 26 of Part 4 of The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020/632, the compensation liability is limited to twelve months where the local

planning authority removes the right by making a direction under article 4 of the General Permitted Development Order.

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

10. Consultation outcome

10.1 The *Planning Reform: supporting the high street and increasing the delivery of new homes* consultation published in October 2018 sought views on support for a potential permitted development right that could provide for demolition and replacement build as residential, and noted that there would be a further consultation on the detail of any right. A summary of responses to the consultation and the government's response was published in May 2019 and is available at:

<https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes>. In commenting on the potential for a right the report noted that it would require extensive prior approval considerations and that it could result in some better quality development than change of use. The Government committed to continue to consider the design of a permitted development right to allow commercial buildings to be demolished and replaced with homes in the light of the views received to the consultation.

10.2 The Government has introduced the right without further public consultation in order to support regeneration of our towns and cities and our broader economic renewal. In framing the right, the Government has considered the range of planning matters that should provide for local consideration through a prior approval while maintaining a simplified planning process that will bring forward such development. The right aims to bring into effective use sites that are vacant and redundant, and which therefore do not impact on the supply of available commercial buildings.

11. Guidance

11.1 There are no plans to issue specific statutory guidance for this instrument.

12. Impact

12.1 The impact on business, charities or the voluntary bodies is to reduce the cost and time burden of having to submit a planning application in more cases. Owners of buildings to which this permitted right applies will benefit from land value uplift. As the buildings should have been vacant for 6 months prior to the application for prior approval we consider that there may be limited displacement of existing businesses.

12.2 The impact on the public sector is a reduction in administrative cost and time of processing planning applications, where the development would otherwise have come forward through a planning application. The fee per dwelling to be provided with the

application offsets local authorities' costs of considering these streamlined applications compared with a full planning application.

- 12.3 In recognition of the urgency to support economic renewal, this legislation has been brought forward at pace. An interim assessment of impact has been provided alongside the instrument. A full Regulatory Impact Assessment will be produced in due course and submitted for independent verification against any Business Impact Target set under the requirements of the Small Business, Enterprise and Employment Act 2015.

13. Regulating small business

- 13.1 The legislation applies to activities that may be undertaken by small businesses.
- 13.2 The permitted development right is deregulatory in effect, helping to reduce bureaucracy and cost in the planning system. Changes to save time and resources are likely to benefit small businesses more when compared to larger business as they have less resource available. As such, small businesses have not been exempted from the effects of this measure.

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 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.