

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
(AMENDMENT) (ENGLAND) ORDER 2015

2015 No. 659

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (“the Order”) amends the Town and Country Planning (General Permitted Development) Order 1995 (“the General Permitted Development Order”) to provide that development which comprises the change of use or demolition of buildings which are used as drinking establishments and which are supported by the local community is not permitted development for the purposes of the General Permitted Development Order.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 55 of the Town and Country Planning Act 1990 (“the 1990 Act”) defines “development” for the purposes of that Act to include the demolition of buildings and “any material change in the use” of the premises. Section 57 provides that planning permission is normally required for any development of land. Under section 58, planning permission may be granted on application to a local planning authority or by way of a development order under the 1990 Act.
 - 4.2 Section 59 of the 1990 Act gives the Secretary of State the power to grant planning permission by way of specific or general development orders. The General Permitted Development Order is made under section 59 and grants planning permission without the need for a planning application for various types of development – subject to the limitations and conditions set out in the respective Parts of Schedule 2 to the General Permitted Development Order. These are known, informally, as “permitted development rights”.
 - 4.3 Classes A, AA and C of Part 3 (**changes of use**), Classes C and D of Part 4 (**temporary buildings and uses**) and Class A of Part 31 (**demolition of buildings**) of Schedule 2 to the General Permitted Development Order grant certain permitted development rights for the change of use or demolition of buildings which are used as drinking establishments.

- 4.4 Chapter 3 of Part 5 of the Localism Act 2011 (“the 2011 Act”) obliges the local authority to enter buildings in their area which are of community value (as determined under that chapter) onto a list of assets of community value. Buildings are nominated for listing by a community nomination according to a process outlined in section 89 of the 2011 Act and the Assets of Community Value (England) Regulations 2012 (“the Regulations”). The local authority must keep a record of unsuccessful nominations under section 93 of the 2011 Act. Under section 94, local authorities must publish their list of assets of community value and their list of land nominated by unsuccessful community nominations.
- 4.5 Under section 87 of the 2011 Act, a listing will remain in place for five years, unless removed from the list:
- (a) following a relevant disposal to which section 95(1) of the 2011 Act applies (as defined in section 96 of the 2011 Act and Schedule 3 of the Regulations);
 - (b) following a successful appeal against listing or because the local authority no longer consider the land to be land of community value under regulation 2(c) of the Regulations;
 - (c) following the local authority’s decision on review that the land concerned should not have been included in the list under section 92(4)(a) of the 2011 Act.
- 4.6 The Order provides that where a drinking establishment has been entered onto a list of assets of community value under section 89 of the Localism Act 2011, or where the local planning authority have notified the developer that there is a nomination for listing in respect of that building, development described in paragraph 4.3 is not permitted development for a specified period. This period is the period during which the local authority is determining the nomination, and, if the nomination is successful, the duration of the listing (or a period of 5 years following the date of listing if the building is removed from the list following a relevant disposal).

5. Territorial Extent and Application

- 5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

7 Policy background

What is being done and why

- 7.1 To ensure that protections are in place to prevent the loss of those drinking establishments that provide the most benefit to local communities, the Government is dis-applying the national permitted development rights for the change of use or demolition of Class A4 (**drinking establishments**). The changes will apply where any Class A4 (**drinking establishments**) have been formally listed by the local authority as being an asset of community value under the 2011 Act. This Act requires local authorities to maintain and make publically available the list of community assets.
- 7.2 In addition, before any change of use or demolition of any Class A4 (**drinking establishments**) which are not listed, a developer must request confirmation from the local authority as to whether or not the building has been nominated by a community group for listing as an asset of community value. In such cases the national permitted development rights will be dis-applied for a temporary period of 56 days from the date of the request, and where the asset is not nominated for listing, change of use or demolition may take place within 1 year of the date of the request (subject to the local authority notifying the developer of a nomination, or the asset being listed, during this period).
- 7.3 Where the building is nominated, the national permitted development rights will be dis-applied upon the developer receiving notification of the nomination from the authority, for the period during which the nomination is being considered. This will ensure that buildings do not change use and are not demolished without local consideration whilst their value to the community is being determined.
- 7.4 Where any permitted development rights are dis-applied by virtue of the Order, a planning application will be required seeking planning permission to change the use of, or demolish, the building. Under the Order, permitted development rights are dis-applied:
- (a) from the date of notice to the developer of the nomination for listing, whilst the nomination is being considered; and
 - (b) if the nomination is successful and the building is entered onto the list of assets of community value, for five years from the date on which the building was listed, unless the listing is removed by the local authority following a successful review, appeal, or because the authority no longer consider the building to be of community value.

This will provide an opportunity for local people to comment on any proposals to change the use of, or demolish the building, and will enable the local planning authority to determine the planning application in accordance with its local plan, any neighbourhood plan, and national policy. If the nomination is unsuccessful, permitted development rights will apply from the point at which the local authority enters the building onto the publically available list of land nominated by unsuccessful community nominations.

- 7.5 The period described in paragraph 7.4(b) reflects the duration of the listing. It also captures buildings which are no longer listed because they have been disposed of in the manner set out in paragraph 4.5(a). In this case, national permitted development rights

will remain dis-applied for the five year period to ensure that any decision relating to the change of use or demolition of the building is considered at a local level.

7.6 The permitted development rights for Class A4 (**drinking establishments**) which are dis-applied in the manner set out above are:

- (a) change of use to Class A1 (**shops**) and Class A2 (**financial and professional services**), as set out in Part 3 Classes A and C of the General Permitted Development Order;
- (b) change of use to Class A3 (**restaurants and cafés**) as set out in Part 3 Class AA of the General Permitted Development Order;
- (c) change of use to Class A1 (**shops**), Class A2 (**financial and professional services**), Class A3 (**restaurants and cafés**), and Class B1 (**business**), for a period of two years, as set out in part 4 of schedule 2, Class D of the General Permitted Development Order; and
- (d) change of use to a **state funded school for one academic year** under Part 4, Class C of the General Permitted Development Order.
- (e) **demolition of the building**, as set out in Part 31 of the General Permitted Development Order.

8. Consultation outcome

8.1 No formal consultation has been undertaken. The issues the Order addresses were subject to debate in Parliament on 26 January and 12 February 2015, and the outline of the proposals were set out in the Written Ministerial Statement of 26 January on ‘Community Pubs’.

9. Guidance

9.1 There will be new guidance relating to this statutory instrument in the planning practice guidance on-line tool.

10. Impact

10.1 The impact on business, charities or the voluntary bodies arising from the Order is not expected to be significant.

11. Regulating small business

11.1 This statutory instrument applies to small businesses. The restriction of certain existing permitted development rights are regulatory in effect. Overall, the new rights will slightly increase bureaucracy in the planning system and increase the cost and time burden on

businesses of having to delay development and/or submit a planning application. Small businesses are only likely to face minor negative impacts because of their size.

12. Monitoring & review

- 12.1 The Department for Communities and Local Government will review and evaluate the success of the changes in due course.

13. Contacts

- 13.1 Paul Martin at the Department for Communities and Local Government (Tel: 0303 444 1668 or e-mail: paulg.martin@communities.gsi.gov.uk) can answer any queries regarding the Order.