

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT ETC.) (ENGLAND) (AMENDMENT) (NO. 3) ORDER 2021

2021 No. 1464

1. Introduction

- 1.1 This explanatory memorandum has been jointly prepared by the Department for Levelling Up, Housing and Communities and the Ministry of Defence and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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) (as amended) (“the General Permitted Development Order”) to introduce a number of changes to permitted development rights, including making existing time-limited permitted development rights permanent by the Department for Levelling Up, Housing and Communities and introducing a new right for the Ministry of Defence (“MOD”) to enable the modernisation and development of the Defence estate.
- 2.2 This Order will make permanent two time-limited permitted development rights relating to outdoor markets and moveable structures, alongside the introduction of limitations and conditions to address any impacts. This Order will also extend the time-limited permitted development right for development by local authorities and health service bodies for a further 12 months to expire on 31 December 2022.
- 2.3 This Order introduces a permitted development right to allow MOD to both extend and alter existing buildings and erect additional buildings on the Defence estate, within the perimeter of a site, subject to certain limitations and conditions.
- 2.4 The Order also amends the Town and Country Planning (Compensation) (England) Regulations 2015 (S.I. 2015/598) (“the Compensation Regulations”) to limit the compensation liability where a local planning authority withdraws the permitted development rights for markets, moveable structures for pubs and restaurants etc, moveable structures for historic visitor attractions and listed buildings in scope of this order, or the MOD by making a direction under Article 4 of the General Permitted Development Order.

3. Matters of special interest to Parliament

Matters of special interest to Joint Committee on Statutory Instruments

- 3.1 Some articles of this Order will be laid in breach of the 21-day rule for Parliament to pray against Statutory Instruments.
- 3.2 Some articles of this Order relate to time-limited permitted development rights that are due to expire imminently, specifically the rights relating to moveable structures (1 January 2022) and development by local authorities and health service bodies (31 December 2021). To ensure continuity of these rights for businesses, local authorities

and health service bodies, the legislation must come into force prior to the expiration date. This will breach the rule requiring instruments to be laid at least 21 days before they come into effect. This Order contains measures on which it was necessary to consult. However, in order to allow the response to and recovery from the coronavirus pandemic to continue uninterrupted and to support the hospitality industry, not adhering to the 21-day rule is thought necessary and justifiable. Therefore these measures will come into force on 2 January 2022 and 1 January 2022 respectively. There is a transitional arrangement for existing moveable structures in place before 2 January 2022, allowing them to remain in place until the end of 31 January 2022.

- 3.3 All other measures proposed in this instrument will come into force in line with the 21-day rule, on 11 January 2022.

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 the 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 General Permitted Development Order 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”.
- 6.3 The Compensation Regulations can limit or exclude, in specified circumstances, the liability of local planning authorities to pay compensation on withdrawal of a permitted development right contained within the General Permitted Development Order.

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 are subject to conditions and limitations to control impacts and to protect local amenity.

7.2 Permitted development rights can incentivise certain forms of development, support businesses by providing developers with a greater level of certainty and can benefit public bodies by allowing them to respond to particular challenges and emergencies quickly without the need to go through the formal planning application process.

7.3 This Order amends the General Permitted Development Order as follows:

Making time-limited permitted development rights permanent

7.4 During 2020 - 2021 a number of time-limited permitted development rights were introduced to support local authorities, health service bodies, businesses, and communities in responding to the coronavirus pandemic. These rights were introduced on a time-limited basis to quickly respond to the emergency at that time. As lockdown restrictions have lifted in England, evidence shows that these rights have positively impacted the response and recovery. To provide continuity and ensure the country rebounds from the pandemic, this order will extend and make permanent some of these measures.

Moveable structures in the curtilage of pubs, cafes, restaurants, and historic visitor attractions

7.5 On 16 April 2021 a time-limited permitted development right was introduced by the Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 (SI 2021/467) allowing one moveable structure in the curtilage of pubs, cafes, restaurants and historic visitor attractions, including where all of these are listed buildings, without the requirement to submit a planning application (allowed for in Class BB of Part 4 of Schedule 2 of the General Permitted Development Order).

7.6 The right helps businesses operate more flexibly across their outdoor sites by allowing for the provision of one moveable structure within the curtilage of pubs, cafes, restaurants, or historic visitor attractions, including in the grounds of listed buildings. This supports the economic recovery of hospitality businesses and heritage attractions by allowing for the temporary provision of moveable structures within the existing curtilage, increasing space to operate in, such as temporary marquees, and enabling historic visitor attractions to operate while minimising the need for visitors to gather in enclosed spaces, for example through the use of temporary moveable structures for ticket sales. This time-limited permitted development right ends on 1 January 2022.

7.7 Two permanent rights will now provide for moveable structures within the curtilage of pubs, cafes, restaurants and for historic visitor attractions and listed buildings in scope of this right.

7.8 Article 4 introduces a new permanent right for one moveable structure in the curtilage of pubs, cafes and restaurants that are not listed, in a new Class G of Part 2 of Schedule 2 to the General Permitted Development Order for an unlimited number of days.

7.9 Article 5 amends Class BB (moveable structures for specified uses) of Part 4 of Schedule 2 to the General Permitted Development Order. The right only applies to historic visitor attractions, and to pubs, cafes, and restaurants where they are listed buildings. This is a permanent right and introduces new limitations and conditions on development under Class BB.

- 7.10 The amended right provides for one moveable structure for up to 120 days in a twelve month period, subject to prior approval in relation to the siting and method of installation of the moveable structure. The right also requires the reinstatement of the land to its original condition once the moveable structure is removed and a requirement for consultation with Historic England.
- 7.11 Additional mitigation measures apply to all moveable structures under Class G of Part 2 and Class BB of Part 4, including a height limit of 3 metres, a 2 metre boundary buffer where next to residential development, and a size threshold of no more than 50% of the existing footprint of the building on site or 50 square metres, whichever is the lesser. The right maintains the current protections for Scheduled Monuments and preventing the use of moveable structures for the display of an advertisement.
- 7.12 In addition, both the Licensing Act 2003 regime will apply to licensed premises, and the environmental health statutory nuisance regime will apply to all premises. This provides effective mitigation and avenues of redress for local residents against harm to local amenity from noise or public nuisance. For example, local licensing authorities can attach conditions or terminal hours to outdoors use.

Markets by or on behalf of local authorities

- 7.13 On 25 June 2020 a time-limited permitted development right was introduced by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (SI 2020/632) enabling markets to be held by or on behalf of local authorities for an unlimited number of days without the requirement to submit a planning application (allowed for in Class BA of Part 12 of Schedule 2 of the General Permitted Development Order). Originally in place until 23 March 2021, the period was extended to 23 March 2022 by the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations (SI 2020/1243). The Order makes this right permanent and includes limitations preventing markets to be held on Sites of Special Scientific Interest or on sites designated as scheduled monuments.
- 7.14 The right provides opportunities for businesses to operate outdoors, with minimal cost of operation, providing beneficial conditions to encourage the creation of new businesses and for existing businesses to increase the number of products they can sell. This will help local authorities to encourage economic activity, thereby creating employment and improving the vitality and viability of high streets and town centres.
- 7.15 Article 6 amends Class BA (holding of a market by or on behalf of a local authority) of Part 12 of Schedule 2 to the General Permitted Development Order to remove the restriction that development under Class BA is only permitted between 25 June 2020 and 23 March 2022.

Development by Local Authorities and Health Service Bodies

- 7.16 On 9 April 2020 a time-limited permitted development right was introduced by the Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 (SI 2020/412) allowing local authorities and health service bodies to facilitate the development and change of use of premises in response to the coronavirus pandemic without the requirement to submit a planning application (Part 12A of Schedule 2 to the General Permitted Development Order). This right has been used widely to deliver the Nightingale Hospitals and support the rollout of the vaccination programme. This right was introduced for a limited duration

until 31 December 2020 and later extended until 31 December 2021 by the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations (SI 2020/1243). Article 7 will further extend the right for another year until 31 December 2022.

- 7.17 This right enables local councils and health service bodies to provide facilities to manage the response and recovery. The right can also be used to provide additional buildings to support the vaccination programme, which has recently been extended to younger adults and children and a booster offer for adults. The right will enable development including, but not limited to, the change of use of existing premises; erection of temporary buildings, structures, plant, and machinery; vehicle parking and storage space.

Development by the Crown on a closed defence site

- 7.18 Developing the Defence estate sooner and making it fit for the future is key to achieving the overarching objectives of the Integrated Review of Security, Defence, Development and Foreign Policy 2021. These objectives included, ‘strengthening security and Defence at home and overseas, and building resilience at home and overseas.¹’
- 7.19 The new permitted development right will enable MOD to achieve its infrastructure development plans faster, and with more certainty as well as giving Defence the agility to amend and adjust plans to meet changes in requirement as the capability needs in Defence change.
- 7.20 In recognition of the types and amount of development that MOD is planning across its estate the permitted development right will allow MOD to extend, alter and erect new single living accommodation and offices, workshops and other buildings across the Defence estate within the perimeter of a Defence site. Article 8 of this Order introduces a Class TA permitted development right in Part 19 of Schedule 2 of the General Permitted Development Order to develop Defence sites.
- 7.21 The delivery of Service personnel accommodation is a priority for Defence. TA(a) provides additional single living accommodation for personnel based at a Defence site who are either single or serving unaccompanied, that is away from their families.
- 7.22 The right allows for single living accommodation to be erected, extended or altered by up to 25% of the floorspace of the total current single living accommodation and supporting ancillary buildings on the same Defence site. Depending on the type of build the kitchen and dining facilities could form part of the accommodation provision, for example in an Officers’ Mess. Therefore, the right includes the ability to build or alter the ancillary aspects which form part of the building, for instance the central kitchen, dining and recreation spaces in line with MOD scaling and health and safety requirements.
- 7.23 To keep pace with changing capability requirements of the military there is a need for new work and training spaces to be delivered which will meet the current and future needs of the military.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975077/Global_Britain_in_a_Competitive_Age_-_the_Integrated_Review_of_Security__Defence__Development_and_Foreign_Policy.pdf.

- 7.24 TA(b) therefore allows for non-accommodation buildings to be erected, extended or altered by up to 35% of the total floorspace of existing non-accommodation buildings on the same Defence site. The types of non-accommodation buildings typically provided for Defence personnel are wide ranging, often dependent on the role that the Defence personnel at a particular base are performing and the type of equipment they are using but it may include office space, training facilities, workshops, garaging and hangars for equipment to be housed and worked on, stores, medical and dental facilities, guardrooms and gyms.
- 7.25 The requirement for 35% recognises the scale of what is required and planned by Defence. For example, modern ‘super-diners’ for Service personnel are intended to serve hundreds of personnel at a time.

Development that is not permitted

- 7.26 Under this Order, development will not take place any closer than 15 metres to the perimeter of the Defence site.
- 7.27 To mitigate potential concerns regarding the height of any development, the erection of buildings is not permitted within 25 metres of the perimeter if they are visible from a highway and exceed 10 metres in height.
- 7.28 To further mitigate against height concerns, buildings that are extended or altered within 25 metres of the perimeter are subject to a maximum development height which is the lesser of the height of the existing building or 12 metres. This is in recognition of the potential greater intrusiveness of taller buildings, even though they will be within a Defence site.
- 7.29 Development is also not permitted on land which is, or forms part of a site of special scientific interest, to listed buildings and their curtilage, Scheduled Monuments, or to Article 2(3) land.

Conditions applying to the permitted development right

- 7.30 The Order contains a condition that prior to development, a developer must assess the contamination and flood risks at the site, identifying any mitigation they are able to perform, so far as is reasonably practicable. Any subsequent development must be undertaken in accordance with these mitigations. Where the development is identified as taking place within a Flood Zone 3 area, the developers are to seek prior consultation with the Environment Agency.
- 7.31 To ensure the local planning authority is made fully aware of MOD development, the exercise of the permitted development right will be subject to the developer (MOD) notifying the local planning authority of such development at the commencement of the development. The notification will contain sufficient information to enable the planning authority to satisfy itself that the development complies with the provisions of the Order.
- 7.32 If the total footprint of new development at a site under this permitted development right exceeds 4,000 square metres, it will be subject to prior approval from the local planning authority regarding the siting and scale of the proposed or future development.
- 7.33 Additional restrictions include a prior approval for exterior appearance where the development height is above 10 metres, and visible from a highway, and also where the new erection or extension will be for single living accommodation which will be

higher than the highest existing single living accommodation on the site; or for a non-residential building which will be higher than the highest existing non-residential building on the site.

- 7.34 Development may not begin before the grant of prior approval by the local planning authority, written notice from the local planning authority that prior approval is not required, or the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying that prior approval is granted or refused.
- 7.35 The process for prior consultation requires the developer to notify the Environment Agency of the development risk and specify the date by which the Environment Agency must provide a response. This must not be less than 21 days from the date that the developer gave notice to the Environment Agency. Development cannot begin until either the developer receives a response to the consultation and takes those representations into account, or the day after the period of 21 days elapses.
- 7.36 Where the developer has received representations from the Environment Agency because of this consultation, it must send to the local planning authority a copy of those representations and a note explaining how it has taken those representations into account.
- 7.37 The Order will not apply to service families' housing, which will remain subject to the existing requirement for planning permission. This is in recognition of the wider impact a housing development may have on local amenities.

Minor amendments

- 7.38 Article 3 amends the General Permitted Development Order to update references to the National Planning Policy Framework (“the Framework”). The Framework contains the Government’s planning policies for England and sets out how these should be applied. At present the General Permitted Development Order references the February 2019 version of the Framework. This has since been updated and the latest version was published in July 2021. Therefore, all references to the Framework will be amended to make reference to the latest iteration.

Amendment in respect of compensation

- 7.39 Article 9 makes minor amendment to the Compensation Regulations 2015 to add Class G of Part 2, Class BB of Part 4, Class BA of Part 12, and Class TA of Part 19 to the list of development prescribed for the purposes of subsections (2A)(a) and (3C)(a) of section 108 (compensation where planning permission granted by development order is withdrawn) of the Town and Country Planning Act 1990.

8. European Union Withdrawal and Future Relationship

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

10. Consultation outcome

- 10.1 The *Supporting Defence Infrastructure and the Future of Time Limited Permitted Development Rights* consultation (“the consultation”) was open from 5 September 2021 to 14 November 2021 and invited views on making two time-limited permitted development rights permanent and the proposed permitted development right to support Defence infrastructure.
- 10.2 There were 212 responses to the consultation in total. The Government response to the consultation will be published online:
<https://www.gov.uk/government/consultations/supporting-defence-infrastructure-and-the-future-of-time-limited-permitted-development-rights/supporting-defence-infrastructure-and-the-future-of-time-limited-permitted-development-rights>. A summary of the responses is provided below.

Moveable structures in the curtilage of pubs, cafes, restaurants, and historic visitor attractions

- 10.3 The consultation sought views about the permanency of the right as well as potential limits to height, size, proximity to neighbouring premises and how long the structures should be in place for. Those supporting the proposal suggested that the right had benefited local high streets and town centre recovery. Those respondents that did not support making the right permanent, cited impacts including on noise and on the appearance and access to heritage assets. A number of limitations and conditions have been introduced to address any impacts, as set out in detail below including a 2 metre distance to residential boundaries.
- 10.4 Following the consultation there will be separate permanent rights in respect of moveable structures in the curtilage of all pubs, cafes, and restaurants, and for historic visitor attractions and listed buildings in scope of this right, alongside the introduction of limitations and conditions to address any impacts.
- 10.5 A new Class G Part 2 right provides for moveable structures in the curtilage of pubs, cafes, and restaurants for an unlimited number of days. The right is subject to limits on the height, size and, where it adjoins residential use, distance to the boundary.
- 10.6 The Class BB Part 4 right will allow moveable structures in the curtilage of historic visitor attractions and pubs, cafes, and restaurants where they are listed buildings for up to 120 days in a twelve month period, subject to prior approval in relation to the siting and method of installation of the moveable structures to minimise impacts to protected heritage assets. In addition, in response to comments received there will be a requirement for land restoration after the removal of temporary structures, and a requirement for consultation with Historic England.
- 10.7 The consultation proposed a 4 metre height limit and a size threshold of up to 50% of the footprint of the existing building for the moveable structure. While there was support for a height limit, suggestions on what this should be varied. There was support for a size threshold. Comment was made about the potential adverse impact of making the right permanent on neighbouring residential use. Therefore both of these rights will be subject to a 3 metre height limit and a size threshold of 50% of the footprint of the existing building or 50 square metres whichever is the lesser, and where the land adjoins residential use, a 2 metre boundary buffer.

Markets by or on behalf of local authorities

- 10.8 The consultation sought views on a range of matters including making the right permanent, limiting the number of days, the benefits and impacts, whether heritage assets such as scheduled monuments should be disapplied from the right and if suitable mitigation was needed to address any impacts.
- 10.9 There was broad support for making the right permanent with respondents recognising the increased footfall, local economic benefits and employment opportunities. There were mixed views on whether there should be a limit on the number of days a market could be held per year. To maximise the benefits of the right to communities and businesses, the permanent right will allow markets for an unlimited number of days.
- 10.10 The consultation invited views on whether additional restrictions were necessary to mitigate against potential impacts, including consideration of proximity to scheduled monuments. Following the consultation, the right will not apply to land that is, or forms part of a scheduled monument and a Site of Special Scientific Interest.

Development by Local Authorities and Health Service Bodies

- 10.11 We did not propose to extend this right at the time of preparing the consultation as the future need for the right was unclear. As such this measure was not consulted on and the consultation document stated that this right would only be extended on a time-limited basis if it were necessary to do so. The Department of Health and Social Care (DHSC) and Local Resilience Forums have subsequently made a case for an extension of this right for a further time-limited period to support the vaccination rollout and retain facilities for winter contingency.

Development by the Crown on a closed defence site

- 10.12 The strongest responses were received in respect of the questions concerning treatment of flood risk, contaminated land, Sites of Special Scientific Interest, listed buildings and their curtilage, Scheduled Monuments and Art 2(3) land, reflecting the need for protection measures.
- 10.13 In respect of the flood risk, MOD has addressed this by including the requirement to assess the flood risk, consult the Environment Agency and notify the local planning authority of mitigating action.
- 10.14 In respect of contaminated land concerns, MOD has addressed this by specifically requiring an assessment of the contamination risk and identification of measures to reduce the risk which will be notified to the local planning authority.
- 10.15 In respect of Sites of Special Scientific Interest, listed buildings and their curtilage, Scheduled Monuments and Art 2 (3) land, MOD has retained the proposal that the permitted developments will not apply.
- 10.16 Some concern was expressed in relation to community and local planning authority awareness and involvement in the development process, as well as the impact of development on the neighbouring community for example in relation to traffic, noise, and views. To address these concerns the right allows for prior approval by the local planning authority, in certain circumstances.

11. Guidance

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

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 The permitted development rights relating to moveable structures and outdoor markets support businesses and high streets to recover from the pandemic by allowing better use of outdoor space to operate in. Removing the need for a planning application in these cases provides a small time and cost saving to business from no longer incurring costs associated with preparing and submitting planning applications and greater planning certainty. The permitted development right relating to development by local authorities and health service bodies supports the response to the coronavirus pandemic through the provision of additional temporary health, care and storage facilities without the need to submit a planning application.
- 12.3 There is no impact on business, charities or voluntary bodies related to the permitted development right for development by the Crown on a closed defence site.
- 12.4 An assessment of impact has not been prepared for this instrument.

13. Regulating small business

- 13.1 Part of the legislation relating to permitted development rights for moveable structures and outdoor markets applies to activities that are undertaken by small businesses. The impact of the change is deregulatory, providing a small reduction in bureaucracy and cost in the planning system and so small businesses have not been exempted as they will benefit.
- 13.2 The permitted development right relating to outdoor markets and development by local authorities and health service bodies applies to activities that are undertaken by the public sector. The impact of the change is deregulatory, providing a small reduction in bureaucracy and cost in the planning system.
- 13.3 The permitted development right for development by the Crown on a closed defence site does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 A review under the Small Business, Enterprise and Employment Act 2015 will not be undertaken.

15. Contact

- 15.1 Amy Brookes at the Department for Levelling Up, Housing and Communities, Telephone: 0303 444 4811 or email: amy.brookes@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.