

## EXPLANATORY MEMORANDUM TO

### THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT ETC.) (ENGLAND) (AMENDMENT) ORDER 2021

2021 No. 428

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 makes a number of amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”), the Town and Country Planning (Use Classes) Order 1987 (“the Use Classes Order”), and the Town and Country Planning (Compensation) (England) Regulations 2015 (“the Compensation Regulations”).
- 2.2 This Order introduces a new permitted development right to allow for the change of use from the Commercial, Business and Service use (Class E) to residential use (Class C3). It also expands the scope of an existing permitted development right to allow for more development by existing schools, colleges, universities, hospitals and, for the first time, prisons and a prior approval process is introduced specifically for development of university buildings.
- 2.3 This Order also amends the permitted development right for dock, pier, harbour, water transport, canal or inland navigation undertakings to achieve alignment, so far as practicable, with the permitted development rights for airports, and brings forward an amendment that exempts statues, memorials and monuments from the permitted development right for the demolition of buildings in Class B to Part 11 of Schedule 2 to the General Permitted Development Order to ensure full local consideration is given to any proposals to remove.

#### 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.

#### 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, where a permitted development right applies, 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 Section 55(2)(f) of the 1990 Act allows the Secretary of State to make an order which groups different uses of buildings and land uses into use classes. A change of use within a single use class is not considered to be development and therefore does not require planning permission.
- 6.4 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 can incentivise certain forms of development by providing developers with a greater level of certainty, within specific planning controls and limitations. Individual rights provide for a wide range of development and include measures to incentivise and speed up housing delivery.
- 7.2 They can also 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:

### *New permitted development right to change use from the Commercial, Business and Service use class to residential use*

- 7.4 Article 6 of this Order introduces a new permitted development right to allow for the change of use from the Commercial, Business and Service use class (Class E) to

residential use (Class C3). This will support housing delivery, economic recovery and high street regeneration.

- 7.5 From 1 September 2020 the Commercial, Business and Service use class encompasses a wide range of uses such as offices and other business uses, shops, cafes, gyms etc which are suitable for a town centre. This is set out in Class E of Part A of Schedule 2 to the Use Classes Order, as amended. To deliver on the Government's commitment to support mixed and flexible high streets, stimulate economic recovery in response to the Covid-19 pandemic, and deliver additional homes more easily, Government is now enabling such premises to benefit from a permitted development right to deliver additional new homes. This meets the commitment in the 30 June 2020 'Build, Build, Build' press statement that "A wider range of commercial buildings will be allowed to change to residential use without the need for a planning application".
- 7.6 National permitted development rights, particularly for the change of use from office to residential, make a significant contribution towards housing delivery, with the existing Class O (office to residential) right alone having delivered over 72,000 homes in the five years ending March 2020. Following the changes to the Use Classes Order from 1 September 2020 (S.I. 2020/757), Government consulted in December 2020 on the introduction of a right for the change of use from the new Commercial, Business and Service use class to residential use. Government is now bringing forward the new right.
- 7.7 The Class MA right will provide for the change of use from any use within the Commercial, Business and Service use class (E) to residential (class C3) use. In order to prevent gaming, the building must have been in Commercial, Business and Service use for two years before benefiting from the right. As the use class has not long been in place, time served in the uses in former use classes now within the Commercial Business and Service use class, such as A1 (shops), and D1 (b) (non-residential institutions – crèche, day nursery or day centre), will count towards this period. To protect successful businesses, the right will require the building to have been vacant for three continuous months immediately before the date of application for prior approval. The time that the premises is closed as a result of Government Covid-19 restrictions will not count towards this period where the building continues to be occupied by the owner or tenant. No more than 1,500 sq m of floorspace in any building may change use. Part of the building may change use under the right, including where the lower floors are in Commercial, Business and Service use and the upper floors residential. The right will apply in Conservation Areas, but not in other land listed in Article 2(3) of the General Permitted Development Order, such as National Parks and Areas of Outstanding Natural Beauty. In accordance with the Secretary of State's announcement of 30 September 2020, under Article 3 (9A) of the General Permitted Development Order, the homes delivered are required to meet, as a minimum, the nationally described space standards.
- 7.8 The right will be subject to prior approval by the local planning authority in respect of: flooding; transport impacts of the development, particularly to ensure safe site access; contamination, impacts of noise from existing commercial premises; adequate natural light in all habitable rooms; the impact of the loss of ground floor Commercial, Business and Service use on the character and sustainability of a conservation area; impact on future residents from introduction of residential use in an area the authority considers is important for heavy industry, waste management, storage and distribution, or a mix of such uses; and impact of the loss of health centres

and registered children's nurseries on the provision of local services. Separate legislation later in the year will amend the right to introduce an additional prior approval in relation to the fire safety of the building changing use.

- 7.9 Under transitional arrangements provided for in the Use Classes Amendment Regulations (S.I. 2020/757), the existing rights for the change of use from offices and from retail to residential will continue to apply until 31 July 2021. Applications for prior approval under Class MA may therefore only be submitted on or after 1 August 2021.
- 7.10 This legislation prevents applications for prior approval for the existing right for the change of use from office to residential (Class O) and in respect of A1 (shops), and A2 (financial and professional services) under Class M (retail, takeaways and specified sui generis uses to dwellinghouses) being made after 31 July 2021. Where there is an existing Article 4 direction on 31 July 2021 in respect of the change of use from offices to residential (under Class O) it will continue to have effect on equivalent development in respect of offices (now under use class E (g) (i)) under Class MA until 31 July 2022.
- 7.11 The right will attract a fee of £100 per dwellinghouse, up to a maximum of £5,000. The fee will be introduced via separate secondary legislation at the first available opportunity.

***Amendment to permitted development right for schools, colleges, universities, hospitals and prisons***

- 7.12 Article 9 of this Order amends Class M in Part 7 of Schedule 2 to the General Permitted Development Order. *In his 30 June 2020 economy speech, the Prime Minister announced "Project Speed" to "scythe through the red tape and get things done" to "build faster". Project Speed focuses on the delivery of important public infrastructure and specifically the delivery of schools, colleges, hospitals and prisons.* This amendment has the effect of giving additional flexibility to extend existing public service infrastructure as part of Project Speed.
- 7.13 Class M is amended to allow the erection, extension, or alteration of prison buildings for the first time, enabling a quicker response to the need for more and better-quality prisoner accommodation. Development under this right is limited to closed prisons which operate behind a secure closed perimeter and development can only take place within the boundary as it was on the 21<sup>st</sup> April 2021. It does not, for example, apply to immigration removal centres. As for development at college, university or hospital buildings, development of prison buildings under this right is not allowed within 5 metres of the boundary.
- 7.14 This Order amends the right to allow for the erection, extension or alteration of school, college, university, hospital and prison buildings, where the footprint of any buildings erected, extended or altered would be up to 25% of the cumulative footprint of existing buildings on site on the 21<sup>st</sup> April 2021, or up to 250 square metres whichever is greater.
- 7.15 Development of new buildings is allowed up to 6 metres in height, unless within 10 metres of the boundary where development of new buildings is allowed to 5 metres in height. Extensions or alterations to existing buildings are limited to the height of the existing building, unless within 10 metres of the boundary where development is allowed to 5 metres in height or the height of the existing building being extended.

- 7.16 The height of any rooftop structures, such as for the purposes of ventilation, are allowed up to 1.5 metres in height beyond the height limit of the building. This is in addition to the height of the building as erected, extended or altered, as set out in paragraph 7.15.
- 7.17 Due to potential impacts raised during the consultation, particularly given the often sensitive city centre location and large scale of universities, a prior approval process has been introduced specifically for the erection, extension or alteration of university buildings.
- 7.18 The prior approval procedure sets out the requirements relating to the application and its decision. The local authority will need to make a determination as to whether it will require prior approval in relation to the transport and highways impacts, the design and external appearance of the development, and the impact of the development on heritage and archaeology. Approved developments will be required to be completed within a period of three years from the prior approval date. Applications will attract a fee of £96 which will be introduced via separate secondary legislation at the first available opportunity, alongside the fee mentioned in 7.11.
- 7.19 A condition has also been introduced requiring the submission of a Travel Plan to the local planning authority for information only where the erection, extension or alteration of a school building would result in an increase in school's published admission number. A published admission number is the number of pupils allowed at the school as agreed with the local authority.
- 7.20 Note there are other existing restrictions on development within Class M of Part 7 that continue to apply and have not been amended by this Order.

***Amendment to permitted development right for development on operational land in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings***

- 7.21 Article 10 of this Order amends Class B in Part 8 of Schedule 2 to the General Permitted Development Order, widening the scope of the types of development that can be undertaken and who can undertake it. This was a commitment made in the Government response to the *Freeports* consultation.
- 7.22 This amendment allows for development in connection with the provision of services and facilities, and explicitly includes the erection or alteration of an operational building. This gives the operators of dock, pier, harbour, water transport, canal or inland navigation undertakings greater flexibility to undertake development, supporting ports as an important economic agent further to the exit of the UK from the EU.
- 7.23 It also allows for development to be undertaken by the statutory undertaker's agent of development, giving further flexibility for port operators to allow for work to be undertaken by others on their behalf.
- 7.24 Both of these flexibilities reflect the permitted development right enjoyed by airports through Class F in Part 8 of Schedule 2 to the General Permitted Development Order. These amendments are in response to requests from the sector looking to align the freedoms enjoyed by airports and ports.
- 7.25 Given we have sought to align the rights to give more freedom to develop, a new requirement to consult the local planning authority prior to any development taking place has been introduced. This mirrors the provision for airports carrying out

development under Class F in Part 8. This will give the local planning authority an opportunity to comment on the plans and their impacts. Consultation will not need to take place where certain limited types of development are urgently required for the efficient running of the port.

***Exempting statues, memorials and monuments from the permitted development right for the demolition of buildings***

- 7.26 Article 11 of this Order makes a permanent amendment to Class B in Part 11 of Schedule 2 to the General Permitted Development Order to exempt certain statues, memorials and monuments from the permitted development right allowing the demolition of buildings.
- 7.27 The exemption applies to statues, memorials and monuments which have been in place for at least 10 years on the date of proposed demolition, other than those in five specified exceptions. This will mean that, in future, proposals to demolish the statues, memorials and monuments which do not fall in the exceptions will require an application for planning permission.
- 7.28 The Written Ministerial Statement of 18 January 2021 ref UIN HCWS713 signalled the Government's policy intention to make this change.
- 7.29 Statues, memorials and monuments which are erected to commemorate prominent individuals and events can become the subject of disagreement. Government considers that decisions to remove such public landmarks should be made following proper process in accordance with the local development plan, national planning policy and other material considerations, and consultation with the public. Government is committed to protecting our historic environment and its policy is that such statues should be retained and explained - to raise awareness of our country's complex past - rather than be removed.
- 7.30 Separately to this legislative change, we have introduced a requirement for local planning authorities to notify such planning applications to the Secretary of State. This will allow the opportunity for applications to be called in for determination by the Secretary of State (rather than the local planning authority) where this is considered appropriate. We have excepted five categories of statues, memorials and monuments either because they are subject to other regulation, to protect the curatorial independence of museums and art galleries or to avoid every day garden ornaments being captured by the new rules.

***Clarification of Class E of the Use Classes Order***

- 7.31 Article 13 provides a minor amendment to Class E of the Use Classes Order. This confirms that a swimming pool or skating rink are not included with the Commercial Business and Service use class at E (d) indoor sport, recreation or fitness. Swimming pools and skating rinks fall with the F2 Local Community use class.

***Amendment in respect of compensation***

- 7.32 Article 14 amends the Compensation Regulations to add Class MA of Part 3 of Schedule 2 to the General Permitted Development Order into the list of permitted development rights for which compensation on withdrawal of the right is limited. This limits to 12 months the period during which a local planning authority may be liable to pay compensation and excludes compensation liability where a local planning authority withdraws the Class MA permitted development right by making a direction under

article 4 of the General Permitted Development Order for which they have given at least 12 months' notice.

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

## **10. Consultation outcome**

10.1 The *Supporting housing delivery and public service infrastructure*, which ran from 3 December 2020 to 28 January 2021, attracted 879 responses, including from developers, local planning authorities, and members of the public, business and interest groups who provided a range of comments. The Government response to this consultation will be published [online](https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure)  
<https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure>.

10.2 Some measures in this legislation have been developed further to the outcome of the consultation. Where concerns were raised, for example about the potential loss of services like health centres, and the impact on thriving business, we have sought to address this through the matters for prior approval and other limitations where possible. In response to comments received, the Class MA permitted development right for the change of use from Commercial, Business and Service use to residential applies to buildings that have been vacant for three continuous months, and allows floorspace of up to 1,500 sq m to change use. In addition, a new prior approval allows for consideration of the impact of the loss of health centres and registered nurseries on the provision of such local services.

10.3 With regards to the permitted development right for public service infrastructure, we have further developed policy having regard to the outcome of the consultation. Some concerns were raised regarding the impact of the expanded right given to universities considering their scale, scope of footprint and often sensitive locations. We have sought to address concerns through the introduction of a prior approval process specifically in the case of universities that will allow for local consideration of the impact on design, heritage and archaeology, and highways and transport. In response to concerns raised over the potential height of plant above the height limits set on new buildings under this permitted development right, we have introduced a height limit on plant, which can only be located on the roof of a building.

10.4 The measures included in Article 10 of this Order have been developed further to the Freeport consultation which ran from 10 February 2020 to 13 July 2020. The Government response has been issued and can be viewed online  
<https://www.gov.uk/government/consultations/freeports-consultation>.

10.5 A majority of respondents to that consultation agreed that permitted development rights for ports etc should be brought into closer alignment with existing rights for

airports by allowing the development of buildings for purposes connected with the operation of the port. All stakeholder groups contained a majority of respondents in favour of this change, including a large majority of port operators. In its response to the consultation Government confirmed in its consultation response that we will amend those regulations to align with similar rights for airports by April 2021.

- 10.6 In relation to the amendment to remove statues, memorials, and monuments from the permitted development right for demolition, we have engaged with Historic England, Government's adviser on heritage matters and DCMS on the policy development.

## **11. Guidance**

- 11.1 Guidance on the new planning rules for statues, memorials and monuments will be included in the Department's online planning practice guidance at: <https://www.gov.uk/guidance/when-is-permission-required>. This will be available in time for the new rules coming into force.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is primarily to provide greater planning certainty and to reduce the cost and time burden of the requirement to submit a full planning application. Owners of buildings in the Commercial Business and Service use class will benefit from land value uplift. As these buildings are required to have been vacant for 3 continuous months prior to the application for prior approval we consider that there may be limited displacement of existing businesses. Port operators will benefit from additional freedom to develop without needing to submit a planning application, saving application fees.
- 12.2 The impact on the local planning authorities 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, of £100, is to be provided with the application for prior approval for the change of use from the Commercial Business and Service use class to residential use. It will offset local authorities' costs of considering these streamlined applications compared with a full planning application.
- 12.3 The public sector (schools, hospitals, and prisons) will benefit from quicker delivery through no longer needing to submit a planning application for larger extensions. Universities will be required in future to apply for prior approval for an extension and pay the accompanying fee of £96.
- 12.4 Local communities will benefit from the additional housing delivered through the right, and the additional school and hospital capacity. The matters for prior approval within Class MA provide for local consideration on issues such as traffic and the impact of the loss of health centres that may impact on existing residents, and noise and flooding that may impact on future occupiers.
- 12.5 We anticipate the impacts arising from the amendment to Part 11 Class B to exclude the demolition of statues, memorials and monuments from permitted development rights to be likely to be low. This amendment would mean that proposals to demolish those statues, memorials and monuments in scope would require planning permission. However, we do not expect a significant impact. This is because it mainly applies to statues, memorials and monuments in the public realm, which will usually be owned by local authorities or other public bodies. It will not apply to statues,

monuments and memorials within the curtilage of a dwellinghouse; to those within churchyards, cemeteries or within the curtilage of places of worship; nor to those outdoor exhibits which are part of the collection of museums and art galleries.

- 12.6 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 are undertaken by small businesses.
- 13.2 The majority of the measures are deregulatory in nature and offer greater freedoms for smaller businesses to undertake development without needing to apply for planning permission through the full planning process. Therefore, small businesses have not been excluded from the scope of these amendments.
- 13.3 With regards to the changes in relation to statues, memorials and monuments, we do not anticipate that these new rules will have a significant impact on small business as they will mainly apply to statues in the public realm which are owned by local authorities and other public bodies.

### **14. Monitoring & review**

- 14.1 The Ministry of Housing, Communities and Local Government will monitor progress and carry out a review by 2026 in line with the requirements of the Small Business, Enterprise and Employment Act 2015.

### **15. Contact**

- 15.1 Julie Shanahan at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 3378 or email: [julie.shanahan@communities.gov.uk](mailto:julie.shanahan@communities.gov.uk) can be contacted with any queries regarding the 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.