

**READING BOROUGH COUNCIL  
REPORT BY DIRECTOR OF ECONOMIC GROWTH & NEIGHBOURHOOD SERVICES**

<b>TO:</b>	<b>PLANNING APPLICATIONS COMMITTEE</b>		
<b>DATE:</b>	15 <sup>th</sup> July 2020		
<b>TITLE:</b>	Town & Country Planning (Permitted Development and Miscellaneous Amendments) (England)(Coronavirus) Regulations 2020 (SI 2020 No. 632)		
<b>AUTHOR:</b>	Julie Williams		
<b>JOB TITLE:</b>	<b>PLANNING MANAGER (acting)</b>	<b>E-MAIL:</b>	<a href="mailto:Julie.williams@reading.gov.uk">Julie.williams@reading.gov.uk</a>

**1. PURPOSE AND SUMMARY OF REPORT**

- 1.1 A report was presented to Planning Applications Committee in January 2019 to advise that the Ministry of Housing, Communities and Local Government (MHCLG) was consulting making a number of changes to permitted development rights and use classes. Members agreed at that meeting to send our comments, which were generally opposed to the changes as they were set out.
- 1.2 In June 2019 a further report was presented to PAC to explain the outcome of the consultations.
- 1.3 The Town & Country Planning (Permitted Development and Miscellaneous Amendments) (England)(Coronavirus) Regulations 2020 (SI 2020 No. 632) introduces Regulations 20 and 21 to amend Parts 4 and 12 of the GPDO relating to temporary use of open spaces, which came into force on 25/06/2020.
- 1.4 SI 2020 No. 632 also amends some of the changes of use permitted development criteria in Part 3 of the GPDO to require that residential units are provided with access to natural light. Finally, a new part to the GPDO is introduced (Part 20) to allow existing blocks of flats to be extended upwards for residential purposes. These regulations come into force on 01/08/2020.
- 1.5 This report provides more detail on these changes and provides commentary on how officers view them.

**2.0 RECOMMENDED ACTION**

- 2.1 That the Committee notes the report.**

**3. THE CHANGES**

**Changes to Parts 4 and 12 of the GPDO**

- 3.1 Part 4 relates to temporary changes of use. A new class BA is introduced to allow the additional temporary use of land for any purpose for up to 28 days during the 6 month period from 01/07/2020 to 31/12/2020.
- 3.2 Part 12 relates to development by local authorities. A new class BA is introduced to Part 12 to allow the temporary use of land for the purposes of "holding a market" by,

or on behalf of, a local authority during the 9 month period from 25/06/2020 to 23/03/2021.

- 3.3 In both cases the new rights also cover the erection of moveable structures such as stalls or a marquee associated with the use. The rights are time-limited and in respect of Part 4 will cease to have effect from 1 January 2021 and for Part 12 will cease to have effect from 23rd March 2021.
- 3.4 Also in both cases the new rights are in addition to the existing permitted development right for the temporary use of land in Class B of Part 4 of Schedule 2 of the General Permitted Development Order. Under existing rights, developers can use their allowance of up to 28 days for any purpose, of which up to 14 days can be to hold a market or for motor car and motorcycle racing. Now, in addition, the new right in Class BA of Part 4 provides an additional allowance of 28 days for any purpose, of which up to 14 days can be to hold a market or for motor car and motorcycle racing, from 1st July 2020 to 31st December 2020. The explanatory memorandum confirms that *“This effectively allows land to be used for any purpose without an application for planning permission for 56 days, of which 28 days can be to hold a market or for motorsports, until 31 December 2020. If the developer is also a local authority, then in addition to using their allowance under Class B and Class BA of Part 4 to use land any purpose, they can also use Class BA of Part 12 of Schedule 2 to hold a market for any number of days until 23rd March 2021.”*

#### **New Part 20 Class A**

- 3.5 This new Permitted Development right provides for the construction of up to two additional storeys of new dwellinghouses on top of a purpose-built detached block of flats in addition to:
- (a) **Engineering operations** that are *“necessary to construct the additional storeys and new dwellinghouses”*.
  - (b) The replacement of **existing plant** or the installation of **additional plant** (on the roof of the extended building) that is *“reasonably necessary to service the new dwellinghouses”*.
  - (c) The construction of *“appropriate and safe access and egress to the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases”*.
  - (d) The construction of *“storage, waste or other ancillary facilities”* that are *“reasonably necessary to support the new dwellinghouses”*.
- 3.6 This permitted development right cannot be used on a building:
- less than 3 storeys in height (above ground level).
  - constructed before 01/07/1948 or after 05/03/2018.
  - converted under Part 3 Classes M, N, O, P, PA, or Q of the GPDO.
  - if it lies in Article 2(3)<sup>1</sup> land, is in a Site of Special Scientific Interest (SSSI), is a listed building, scheduled monument, safety hazard area, or military explosives storage area or lies within 3km of an aerodrome.
- 3.7 There are 12 main requirements of this Class with the more significant ones being that the new dwellings must be “flats”, the additional storeys must be constructed on the “principal part” of the building, the height of the roof of the extended part of the building cannot be greater than 7m higher than the “highest part of the existing

---

<sup>1</sup> Article 2(3) land includes Conservation Areas, AONB, the Broads; National Parks; and a World Heritage Site.

roof and the overall extended building (not including plant)" cannot be greater than 30m in height.

- 3.8 The developer will have to apply for prior approval to the LPA with respect to the following issues:
- Transport and highways impacts.
  - Contamination risks.
  - Flooding risks.
  - the provision of adequate natural light in all habitable rooms of the new dwellinghouses
  - impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light
  - External appearance of the building.
  - Air traffic and defence asset impacts.
  - Impact on a protected view identified in the "Directions Relating to Protected Vistas" dated 15/03/2012. (this relates to London but needs to be clarified if
- 3.9 The development needs to be completed within 3 years from the date on which the developer successfully completes the prior approval process (and the developer needs to notify the LPA after completion with two standard conditions. The first stating that any new dwellinghouse must be used as a C3 "dwellinghouse" and for no other purpose. The second stating that, before beginning the development, the developer must provide the LPA with "a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated.
- 3.10 The new Part 20, unlike other prior approval applications as set out in the GPDO, does not set a deadline for determining this type of application. Therefore, the developer cannot assume that they have completed the prior approval process as a result of the LPA failing to issue a decision within the standard deadline of 8 weeks. Article 7(b) of the GPDO sets out that, where no time period is specified within Schedule 2 of the GPDO, the LPA must issue the decision "within a period of 8 weeks" unless the developer and the LPA can agree a "longer period" as allowed by article 7(c)). However, this does not mean that the development can proceed if the LPA fails to issue a decision. The explanatory memorandum confirms; *"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"*.

#### **Other changes**

- 3.11 The existing suite of prior approval developments and permitted development rights are set out in Part 3 - Changes of Use of the GDPO. There are amendments to all categories that permit new residential development to ensure that these new homes can provided natural light to habitable rooms for the occupants. From now on prior approval decisions will need to assess floor plans to ensure there will be adequate natural light in all habitable rooms. The applications must therefore be accompanied by detailed floor plans indicating the dimensions and proposed use of each room, the

position and dimensions of windows, doors and walls, and the proposed elevations of the homes. Local planning authorities are expected to exercise their planning judgement when considering the detailed floor plans and elevations in their assessment of adequate natural light in habitable rooms. Local planning authorities are required to refuse prior approval applications where inadequate natural light is provided.

3.12 On 30th June, the Prime Minister outlined his approach to address the negative impacts of Covid-19, intending to “build, build, build”. Many of the measures were announced by the Ministry of Housing, Communities and Local Government in March and are included in the Business and Planning Bill 2020 due to be enacted on 20 July:

- Extension of planning permission deadlines, so that permissions due to expire by 31 December 2020 and those that have expired since 23 March will be automatically extended to 1 April 2021.
- a building with a retail use could be permanently used as a café or office, without requiring planning permission
- planning permission would not be required to demolish and rebuild vacant and/or redundant residential commercial and residential buildings, if they are rebuilt as homes
- an extension of planning permissions and consents, by extensions of time, to implement those that have lapsed during lockdown to 1st April 2021 (subject to requiring additional environmental approval - LPA’s would ensure that requirements for Environmental Impact Assessments and Habitats are met

3.13 These measures are to come in to force from September. The government has announced that further guidance on these measures will be provided via a policy paper, to be published in July. If this information is available in time for 15 July’s meeting a supplementary report will be provided in the Update Pack.

#### 4. OFFICER COMMENTARY ON THE CHANGES

4.1 The changes to allow more use of external spaces makes sense as a response to allowing businesses to re-open and events to take place while remaining aware that the coronavirus is still a threat. It is complementary to changes coming in with the Business & Planning Bill to make applying for pavement licences more streamlined.

4.2 On the bright side it will mean that officers will have more time to deal with the complicated prior approval assessment process for extending on top of existing blocks of flats. I have yet to confirm what the application fee will be for these Part 20 applications will be. We are told that ***“Regulations to set a fee per dwelling, which will reflect the consideration required for a prior approval application compared with a full planning application, will be brought forward at an early opportunity to offset local authorities’ costs of considering these applications.*** but I am confident that it will not begin to cover the costs of processing them.

4.3 For example, Part 20 includes a condition requiring the developer to provide a report on how the impacts of the construction on the occupiers of the existing block of flats and adjoining buildings will be mitigated. Sub-paragraph 12 confirms that the local planning authority must give notice of the proposed development—  
(a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which

- (i) describes the proposed development;
- (ii) provides the address of the proposed development; and
- (iii) specifies the date by which representations are to be received by the local planning authority;

(b) by serving a notice in that form on all owners and occupiers of the flats within existing block of flats; and

(c) by serving a notice in that form on any adjoining owner or occupier.

The administrative cost of this consultation process alone could be substantial.

4.4 It has also been spotted that the condition referred to in para 3.9 above requiring the developer to submit a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated does not include any requirement for the LPA to approve the report or require the developer to carry out the development in accordance with the report. It will be difficult to enforce should the developer not comply with a report that has not been authorized as being acceptable.

4.5 The consultation last year was looking at options for building upwards. For residential and certain commercial premises, it was proposed to 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. A third option was to allow additional storeys to be built on top of existing purpose-built free-standing blocks of flats over 5 storeys. It is a blessing that only building on top of existing blocks of flats has been progressed and that it is limited to 2 storeys with a maximum increase of 7 metres in height overall (plant etc on top of this where needed). It also only applies to purpose-built blocks of flats (so office blocks converted to residential use will not benefit) and those built between 1948 and March 2018.

4.6 Officers will provide information on these types of applications within the standing report on all other prior approval applications that appears in the agenda for Planning Applications Committee.

## **5. ENVIRONMENTAL AND CLIMATE IMPLICATIONS**

5.1 The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).

5.2 The use of open space to run events and to host markets and the building on top of existing blocks of flats can be accepted as making best use of existing space and efficient use of land. In terms of the additional flats it remains to be seen if the intensification of use achieves environmental protection and improvement objectives.

## **6. CONTRIBUTION TO STRATEGIC AIMS**

6.1 The changes to permitted development rights for use of outdoor areas will contribute to the Council's strategic aims in terms of:

- Seeking to meet the 2019 Corporate Plan objectives for "Keeping the town clean, safe, green and active."

- Seeking to meet the 2019 Corporate Plan objectives for “Providing infrastructure to support the economy.”
- It will also complement the Council’s approach to the recovery from the Covid Pandemic (as reported to Policy Committee 22 June 2020).

6.2 The extending upwards for residential use brought about through the prior approval process described above will be beyond the control or influence of the Council’s adopted policies and Supplementary Planning Documents. While officers will rely on these policies and guidance when assessing those elements that we can consider when determining this sort of application, it will not be possible to confirm how or if these schemes will contribute to the strategic aims of the Council.

## **7. COMMUNITY ENGAGEMENT AND INFORMATION**

7.1 There is no requirement or facility for community engagement or public consultation for works which are carried out as PD. Statutory consultation takes place in connection with applications for prior-approval as specified in the Order and as discussed above.

## **8. EQUALITY IMPACT ASSESSMENT**

8.1 Where appropriate the Council must have regard to its duties under the Equality Act 2010, Section 149, to have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.2 There are no direct implications arising from this report.

## **9. LEGAL IMPLICATIONS**

9.1 There may be other restrictions on the use of land for events, trading or markets (such as charters or covenants) so interested parties will need to seek their own legal advice before benefitting from the temporary permitted development rights under Class 4 & 12.

9.2 For prior approval applications legal advice is sometimes needed to verify that a property meets the criteria for benefitting from this regime and as above, there may be other restrictions or covenants that might prevent a third party from building upwards. Building regulations will also need to be met.

## **10. FINANCIAL IMPLICATIONS**

10.1 It is not known at this stage what the financial implications will be for the Council arising from the temporary open-air permitted development rights.

10.2 Prior approval applications for new development were introduced in May 2013 in place of applications for full planning permission. Since then officers have been

providing an estimate of the loss of fee income assuming that full planning applications might have been submitted if the prior approval regime did not exist.

- 10.3 It is difficult to predict how many developers will be interested in top hatting blocks of flats given the additional construction costs involved. The indications are that the fee for Part 20 applications will be based on the number of dwellings created - the current planning application fee per dwelling is £462 so it is hoped that the fee charged will be at this level to reflect the work required of LPA.s to process the applications.
- 10.4 Officers have commented in the standing prior approval report on this agenda that “it should be borne in mind that the prior notification application assessment process is simpler than would have been the case for full planning permission”. However, given the information required from the applicant, the consultations and the assessments that officers will need to make, such as reading objections received, considering impacts on neighbours and on wider views, it is anticipated that officers will be carrying out almost the same amount of work as they would do for a planning application.
- 10.5 The new dwellings created will be CIL liable.

#### Background

- SI 2020 No. 632 - The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 <http://www.legislation.gov.uk/uksi/2020/632/contents/made>.
- Business & Planning Bill - <https://services.parliament.uk/Bills/2019-21/businessandplanning.html>