



City of Westminster

## Planning & City Development Committee

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**Classification:** General Release

**Title:** Recent Changes to Planning Legislation and Regulations

**Report of:** Director of Place Shaping and Town Planning

**Financial Summary:** None.

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### **1. Executive Summary**

1.1 This report provides an update on recent changes to planning legislation and regulations and identifies where these may impact upon planning decision making in Westminster.

### **2. Recommendation**

2.1 Members are asked to consider the contents of this report and to note the likely impacts recent changes to planning legislation and regulations on future planning decision making.

### **3. Background**

3.1 There have been a number of changes made to certain aspects of the planning system in recent months. Some of these changes are temporary and seek to assist the recovery from the immediate impacts of the COVID-19 pandemic, both from a public health and economic perspective. Other changes are permanent and seek to address the longer-term impacts of COVID-19, as well as the issues related to the long-term decline in traditional high street retailing and to seek to promote the delivery of more housing.

3.2 The overview below sets changes that have been introduced to date in 2020 to make permanent changes to the planning legislation and regulations.

#### **The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020**

- Came into force on 1 August 2020 and is a permanent change to the General Permitted Development Order (GPDO).
- Introduces a new permitted development right allows construction of upwards extensions of up to two storeys to create new flats above the topmost residential storey of a block of flats built after 1 July 1948 and before 5 March 2018 without the requirement for planning permissions. This new PD right permits various

related works including reasonably necessary engineering works to construct the additional storeys and the new flats and is subject to many caveats and restrictions.

- Existing permitted development rights that allow delivery of new housing have been amended to require that they must provide adequate natural light in all habitable rooms.

#### **The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020**

- Came into force on 31 August 2020 and is a permanent change to the GPDO.
- Five new Permitted Development rights are introduced in the Order to achieve the following ability to deliver additional residential floorspace or units
- The new permitted development rights allow erection of up to two new storeys on a detached, semi-detached or terrace house to extend the existing dwellinghouse; up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use; construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use; construction of new flats on top of terrace dwellinghouses (including semi-detached houses); and construction of new flats on top of detached dwellinghouses.
- There is a prior approval regime for each of the new permitted development rights.

#### **The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020**

- Came into force on 31 August 2020 and is a permanent change to the GPDO.
- Allows demolition of vacant detached purpose-built blocks of flats and single detached buildings used as offices or other uses within Class B1 that were constructed before 31 December 1989, have a footprint of not more than 1,000m<sup>2</sup> and be not more than 18m in height.
- Criteria are applicable to the footprint and height of the replacement building and there is a prior approval process requiring the developer to apply for approval in respect of a wide range of impacts of the proposed building.

#### **The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020**

- Came into force on 1 September 2020.
- Classes A and D of the Use Classes Order (Retail and Non-Residential Institutions and Assembly and Leisure uses) have been revoked and Class B (Offices and Industrial Uses) has been modified.
- The effects of the modifications are to create a new broad Class E group titled 'Commercial, Business and Service', which contains uses between which changes of use can occur without the need for planning permission (i.e. changes between them are no longer constitute development). The uses contained within the new Class E include, retail shops, financial and professional services (estate agents etc.), offices, medical uses, gyms and other indoor sport uses, creches and nurseries.
- A new Class F.1 has been created titled 'Learning and non-residential institutions' to allow change between education uses, museums, art galleries, libraries, places of worship etc. without the need for planning permission.
- A new Class F.2 'Local Community' has been created to protect certain uses, such as isolated small shops (where they are less than 280m<sup>2</sup> and more than 1km from the nearest shop selling essential goods). Class F.2 also includes halls or meeting places for local communities, outdoor sport and recreation facilities

and indoor or outdoor swimming pools and skating rinks. Changes between the Class F.2 uses would not require planning permission.

- 3.3 The overview below sets changes that have been introduced to date in 2020 to make temporary changes to the planning legislation and regulations, all of which currently expire at various dates in 2021.

**The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020**

- Came into force on 2 April 2020 and allows local authorities to hold virtual planning committee meetings up to 7 May 2021.

**Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020**

- Came into force on 14 May 2020.
- New regulations to support timely decision-making and avoid delays to development as a result of the effects of the coronavirus pandemic, while maintaining public participation in the decision-making process. Regulations include measures to relax requirements for site notices, publication of notices in newspaper and physical inspection of documents.

**The Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020**

- Introduces a time limited emergency permitted development right that came into force on 9 April 2020 and lasts until 31 December 2020.
- Allows local authorities to carry out development, both for works and change of use of facilities, required to respond to the spread of coronavirus.

**The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020**

- Came into force on 24 March 2020.
- Allows restaurants and cafes and drinking establishments to provide takeaway food without the need for planning permission for a temporary period of 12 months (ending on 23 March 2021).

**The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020**

- Came into force on 1 August 2020.
- Allows local authorities to hold markets at any time between 25 June 2020 and 31 December 2020.

**The Business and Planning Act 2020**

- Came into effect on 22 Jul 2020 and introduces (i) a temporary licencing process; (ii) allows for extension of construction hours; (iii) extension of planning permissions that expired during the period of 2020 impacted by COVID-19.
- (i) 'Pavement Licences' have been introduced as a temporary licencing regime to enable food and drink establishments to apply to place tables and chairs on the highway adjacent to their premises.
- Pavement Licences are a temporary regime up until 30 September 2021
- The Act sets out that the Pavement Licence constitutes deemed planning permission for anything done by the licence-holder pursuant to the licence and therefore planning permission is not required in addition to a Pavement Licence.

- (ii) Allows extension of construction hours for a temporary period until 1 April 2021.
- Developers must apply to the Council to seek approval for extended construction hours and developer should provide information to explain what works are to be carried out in the extended hours to aid the LPAs assessment.
- (iii) Allows extensions of time for implementation of planning permissions and listed building consents that expire between 23 March 2020 and 31 December 2020. The permissions and listed building consents are extended until 1 May 2021.

#### **4. Consideration of Permanent Changes**

##### *Upward Extensions Permitted Development*

- 4.1 The Council has yet to receive any applications for upward extensions of existing buildings pursuant to the new permitted development rights that have been introduced by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 and the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020.
- 4.2 As these new permitted development rights are limited to buildings outside conservation areas that are not listed, on buildings built post 1948 they are only likely to be used in isolated cases in Westminster given the extent of the city covered by conservation areas (78%) and as much of the building stock pre-dates 1948.
- 4.3 In those cases where these permitted development rights are applicable, there are prior approval processes which will enable the City Council to assess certain aspects of schemes, such as their appearance and amenity impact.

##### *Demolition and Replacement of Vacant Buildings Permitted Development*

- 4.4 The new permitted development introduced under the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 to allow demolition of certain detached vacant buildings is only applicable outside conservation areas. Furthermore, for buildings to benefit from this permitted development they must be vacant, detached and to have formally been in residential or Class B1 office use. Consequently, despite this permitted development being applicable to all unlisted buildings built before 31 December 1989, it is unlikely to be widely utilised in Westminster. Additionally, it should be noted that the permitted development right is subject to a prior approval process that would allow the Council to assess most of the key assessments made as part of a planning application.

##### *Amendments to the Use Classes Order – New Classes E, F.1 and F.2*

- 4.5 The amendments to the Use Classes Order ('UCO') are the most significant and wide-reaching amendments introduced to the planning system during 2020. They have a fundamental impact on the extent to which the Council as Local Planning Authority can manage different uses, particularly within designated centres and within the Central Activities Zone (CAZ). Many changes of use, which formally required planning permission are now no longer development and can therefore occur without the need for planning permission.
- 4.6 As changes of use between uses within the same Use Class do not constitute 'development' as defined in the Town and Country Planning Act 1990 (as amended)

(‘the TCPA’), new Article 4 Directions cannot be introduced to regain control of changes between uses within the new broad Use Classes. Article 4 Directions can only be issued by local planning authorities to require that planning permission is required for development, including changes of use between different use classes, that would otherwise be permitted development by virtue of the GPDO 2015. They cannot be used to control works or changes of use that fall outside of the definition of ‘development’ in the TCPA.

- 4.7 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 includes a 12-month transitional arrangements that allows existing Article 4 Directions, such as that preventing change of use between offices and residential uses within the CAZ, to be maintained during that period. However, the wording of this Article 4 Direction is likely to require amendment and updating for it to remain effective beyond the transitional period.
- 4.8 In light of these changes it has been necessary to introduce a wide range of amendments to the draft new City Plan shortly before the Examination in Public held between 28 September and 16 October 2020. Most notably it has been necessary to modify Policy 10, to introduce a tariff-based approach to securing affordable housing from commercial development in the CAZ following the introduction of Class E, which has subsumed office use into a wider group of commercial uses. The amendments made can be found at the following link: <https://www.westminster.gov.uk/cityplan2040>.
- 4.9 In terms of application of adopted development plan policies, the changes to the Use Classes Order present a number of challenges. For example, within designated shopping frontages, even where they are designated as Stress Areas, changes of use from retail use to a restaurant, café, estate agent, office or gym now no longer requires permission. This is likely to have consequential impacts on the health and vitality of our designated frontages (leading to a loss of independent and specialist shops) and the degree to which it is possible to protect neighbouring residents from noise and other disturbance from commercial uses (note there will be less opportunity to use planning conditions to control amenity impacts). Mechanical plant and other equipment required by restaurants and cafes will continue to require planning permission; however, there is likely to be an increase in such premises operating without appropriate ventilation equipment, placing greater pressure on Environmental Health officers to resolve via other legislation. There is also a risk of increased dead frontage within our designated centres.
- 4.10 There are also likely to be impacts on the international centres, although these are likely to differ from those felt by district and local centres. International centres are typically reliant on the clustering of similar retail offers and there is a risk that these clusters could be undermined, resulting in their decline over the longer term with resultant adverse impact on investment.
- 4.11 There may also be positive benefits from the relaxation of the UCO in terms of job creation and increased income from business rates. It is also likely to support growth in smaller offices in more peripheral areas of local centres and within NWEDA, which in turn could help to support the longer-term health and vitality of some designated centres through increased and more diverse footfall.
- 4.12 The new broad Class E enables developers and businesses to introduce hybrid uses comprising a mix of the different uses that fall within the same use class (e.g. a use that is part shop, part café and part gym, with no one use being the primary use). This could be another benefit of the recent changes and could be beneficial in terms of reinvigorating some shopping frontages, by enabling businesses to respond quickly to

market demand, have a unique retail offer and survive in the face of competition from on-line retailing. However, it should be noted that even prior to the changes in the UCO the City Council has taken a positive and pragmatic approach to such uses where they are likely to have a positive impact on the health and vitality of designated centres. An example of this is the recent planning permission for the use of 49 St. John's Wood High Street by 'By Maggies' as a family members hub, which was granted at the Planning Applications Sub-Committee on 7 July 2020. The family members club use is a mixed use comprising a retail unit, café, cookery school and kitchen at ground floor level, co-working space and nursery at first floor level and a family members club and playrooms at second floor level.

- 4.13 Shisha smoking place uses continue to be a Sui Generis use falling outside of a particular use class following the amendments and therefore the Council can continue to use planning control as one of its tools to implement its 'Reducing the Harm of Shisha' strategy (2017), which aims to reduce the adverse impacts of these uses on residential amenity and health.

#### Amendments to Existing Permitted Development to Improve Housing Quality

- 4.14 The amendments made to the GPDO to require habitable rooms in new residential units permitted via the prior approval process to have access to natural light are welcome and ensure improvement in the prevailing quality of accommodation delivered via this mechanism.
- 4.15 In early October 2020 the Secretary of State also indicated that further a statutory instrument will be introduced later in 2020 to require that housing delivered via the prior approval process to adhere to the same minimum standards that are required of planning application schemes. Currently prior approval schemes are not subject to this minimum standard and therefore the Secretary of State's announcement of this forthcoming amendment is a welcome step in ensuring that housing delivered via permitted development rights is of commensurate quality to that granted planning permission.

### **5. Consideration of Temporary Changes**

- 5.1 The measures introduced on a temporary basis by Government are more limited in scope than the permanent measures considered earlier. They seek to enable local authorities to function virtually and provide mechanisms for mitigating some of the impacts of COVID-19

#### Enabling Virtual Committee Meetings and Other COVID-19 Emergency Measures

- 5.2 The enabling of virtual meetings from 2 April 2020 has enabled the Council to continue to make planning decisions at Sub-Committee meetings on more complex and controversial applications, despite the impacts of COVID-19. The Council was quick to utilise this change in legislation and the first virtual meeting was held on 14 April 2020. Whilst initially meetings did not include public speaking, this was reintroduced from 26 May 2020 onwards. Since April, sub-committees have been held on a bi-weekly basis. Performance data relating to the virtual meetings is provided in the Planning Performance report also on this committee agenda.
- 5.3 In collaboration with Committee and Governance Services, officers are currently exploring options for moving from the Microsoft Teams platform to the CIVICO platform that was in use prior to lockdown. Moving back to CIVICO will enable the holding of hybrid rather than fully virtual, meetings in future when COVID-19 restrictions ease.

The CIVICO system also provides more accessible access to live streaming and recordings when compared to Microsoft Teams.

- 5.4 Other emergency provisions to relax requirements for site notices, publication of notices in newspaper and physical inspection of documents have not needed to be used in Westminster and officers have been able to work flexibly, using new methods of working where necessary to continue to provide the planning service without interruption.

#### Temporary Permitted Development for Take Away Food

- 5.5 Changes to the GPDO in March 2020 introduced a temporary permitted development right to allow Class A3 (restaurants and cafes) and Class A4 (drinking establishments) uses to provide takeaway food for 12 months until 23 March 2021. Pubs and restaurants seeking to serve take away food are required to notify the Council. To date we have received 3 notifications to date. These were at 198 Edgware Road, W2 (20/03701/APA), which was withdrawn, and at 10 - 14 Knightsbridge Green, SW1 (20/03616/APA) and 43 Chandos Place, WC2 (20/02992/APA).

#### Pavement Licences for Consumption of Food and Drink Outside

- 5.6 Pavement Licences were introduced by the Business and Planning Act from 22 Jul 2020 until 30 September 2021. The granting of a Pavement Licence provides deemed planning permission for the tables and chairs during this temporary period, thereby reducing the cost and administrative burden on food and drink businesses during this period. Up until 1 October the Licensing Service had received 348 applications and issued 210 Pavement Licences.

#### Extension of Construction Working Hours

- 5.7 The Business and Planning Act also introduced the opportunity for developers to extend construction working hours to mitigate the impact of 'Covid Secure' measures on the speed of construction work. To extend construction working hours the developer must make an application to the Council setting out the hours proposed, and any noise mitigation measures proposed. Given the proximity of neighbouring residents to many construction sites officers are taking a cautious approach to approval of extended construction hours and have required that the developer provides full details of what works will be carried out in the extended hours (to enable assessment of their potential noise generation) and what mitigation measures are proposed where appropriate.
- 5.8 To date the Council has received two applications. These were at 60 Grove End Road, NW8 (20/05023/FULL) and site at 117-125 Bayswater Road, 2-6 Queensway and 7 Fosbury Mews, W2 (20/05999/FULL). Both applications were refused due to their potential impact on the amenity of neighbouring occupiers.

#### Extensions of Planning Permissions, Outline Permissions and Listed Building Consents

- 5.9 The final temporary amendment to planning legislation made by the Business and Planning Act was the introduction of extensions to planning permissions and listed building consents expiring between 23 March 2020 and 31 December 2020. Whilst permissions and consents expiring after the date the Act came into force (22 July 2020) are automatically extended, those expiring between 23 March and the date of the Act require applicants to submit an 'additional environmental approval' application to the Council to demonstrate that the permission or consent would not cause any adverse environmental impact. To date the Council has received 2 additional environmental

approval applications relating to a single property at 26 Cavendish Avenue, NW8, both of which were approved (20/06063/FULL & 20/06064/LBC).

- 5.10 This temporary measure is welcomed as it will assist in reducing the immediate impact of COVID-19 on the development industry, particularly in respect of smaller schemes. However, this measure is likely to contribute to the overall COVID-19 impact on planning income up until 1 May 2021. Officers will monitor the impact of this measure going forward in combination with wider monitoring of the impact of COVID-19 on planning application numbers and income.

## **6. Financial Implications**

- 6.1 None.

## **7. Legal Implications**

- 7.1 None.

## **8. Conclusion**

- 8.1 The temporary changes to planning legislation and regulations have supported the response of the planning service to the impact of the COVID-19 on business within the City, particularly the hospitality and development sectors.
- 8.2 The permanent changes to planning legislation and regulations to introduce new permitted development rights are likely to have a relatively limited impact in Westminster due to the criteria that must be met for these new permitted development rights to be utilised.
- 8.3 The most significant permanent change comprises the amendments to the Use Classes Order. These amendments have implications in terms of the degree to which planning control can be used in future to manage our designated centres and other commercial centres and other Council services, such as Licensing and Environmental Health are likely to be relied upon to a greater degree to control and mitigate the impact of changes of use that formally required planning permission.
- 8.4 To ensure that the planning policy framework for Westminster remains effective in future where planning control over changes of use remains, the draft new City Plan has been amended prior to the Examination in Public held earlier in October 2020.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)**

## **Background Papers:**

N/A