

BODY: Planning

DATE: 2 December 2008

SUBJECT: Summary of 2008 Changes to the Town and Country Planning (General Permitted Development) Order and Revised Approach to Handling "Permitted Development" Enquiries

REPORT OF: Planning Manager

Ward(s): All

Purpose: To inform Members of:

- (a) the recent changes to the Town and Country Planning (General Permitted Development) Order and
- (b) the revised approach to handling "permitted development" enquiries.

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Recommendations:

- (a) That the changes to the Town and Country Planning (General Permitted Development) Order (GPDO) which came into force on 1 October 2008 are noted.
- (b) That the approach to handling "permitted development" enquiries through the submission of applications for Lawful Development Certificates is noted.

1.0 Background

- 1.1 On 1st October 2008 changes to the Town and Country Planning (General Permitted Development) Order (GPDO) came into force. The legislation represents a significant change to the previous system. The Order amends Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) by putting into place a new permitted development regime for householders.
- 1.2 This report summarises the main changes brought into force by the legislation and informs Members of a revised approach to the handling of "permitted development" enquiries. Currently the

planning service provides free advice for enquiries as to whether proposals (or in some cases completed developments) are “permitted development” within the terms of the General (Permitted Development) Order. In view of the extent of the changes to the permitted development regime which will inevitably lead to legal debate and interpretation of what is and what is not permitted, combined with the fact that the informal nature of the advice that officers have been able to offer, does not provide owners with the legal certainty required when selling a property, permitted development enquiries by developers/owners are now being dealt with through an application for a Certificate of Lawful Development. Such applications require the payment of a fee.

2.0 Summary of the Changes to the Town and Country Planning (General Permitted Development) Order (GPDO)

2.1 The Government’s objectives in making the changes to permitted development (PD) rights which came into force on 1st October 2008 are:

- to provide clarity, simplicity and consistency
- to make the need for specific planning permission proportionate to the impact of the development
- to keep the number of planning applications to a minimum
- to ensure the legislation is and can remain relevant to new technologies and changing lifestyles.

The Order amends permitted development rights for certain categories of development within the curtilage of a dwelling (Part 1 of Schedule 2) and confers a more restricted set of permitted development rights in relation to development within sensitive areas such as Conservation Areas (Part 2 of Schedule 1).

2.2 Householder Development

The changes to Part 1 Schedule 2 confer amended permitted development rights for certain categories of development within the curtilage of a dwelling. Such rights have existed for many years and have provided householders with the freedom to make many types of improvements or alterations to their homes without the need for planning permission. However as previously framed they have prevented certain types of uncontentious development being undertaken without the benefit of planning permission whilst allowing other forms of development that can have significant impacts on others. They have also been difficult to interpret and have frequently given rise to misunderstandings. Therefore while the overall aim is to relax the planning regime, the changes also

introduce a need for planning applications for householder developments which have potential adverse impacts, and that have previously been allowed. Thus many household projects which previously required a planning application to be made to the Council, will no longer do so and conversely some works which were previously allowed may now require a planning application if work had not commenced before 1 October. The changes in the new Part 1 and a summary of the development permitted are set out below.

2.2.1 Class A - enlargement, improvement or alteration of a dwellinghouse

Main changes:

- Calculations are now dimension based and not volume based.
- Existing extensions and garages etc. within 5 metres of the original dwelling are no longer taken into account in assessing the quantum of development permitted.
- Permitted development for extensions to the elevation fronting a highway but over 20 metres distance from that highway has been removed.
- Extensions which include verandas, balconies or raised platforms will not be permitted development.
- Specific constraints are set for extensions of more than one storey.
- The scale and type of development permitted is subject to a revised set of conditions.

Permitted Development:

- No more than half the area of land around the "original house"* can be covered by additions or other buildings.
- No extension forward of the principal elevation or side elevation fronting a highway.
- No extension to be higher than the highest part of the roof.
- Maximum depth of a single-storey rear extension of 3 metres from the rear wall of the original house for an attached house and 4 metres for a detached house.
- Maximum height of a single-storey rear extension of 4 metres.
- Maximum depth of a rear extension of more than one storey of 3 metres from rear wall of original dwelling house or within 7 metres of any boundary opposite the rear wall of the house.
- Maximum eaves height of an extension within 2 metres of the boundary of 3 metres.
- Maximum eaves and ridge height of extension no higher than existing house.
- Side extensions to be single storey with maximum height of

4 metres and width no more than half that of the original house.

- Two-storey extensions no closer than 7 metres to rear boundary.
- Roof pitch of extensions higher than one storey to match existing house so far as practicable.
- Materials to be similar in appearance to the existing house.
- No verandas, balconies or raised platforms.
- Upper-floor, side-facing windows to be obscure-glazed; any opening to be 1.7 metres above the floor.
- On designated land* no permitted development for rear extensions of more than one storey.
- On designated* land no cladding of the exterior.
- On designated* land no side extensions.

**The term "original house" means the house as it was first built or as it stood on 1 July 1948 (if it was built before that date). Although you may not have built an extension to the house, a previous owner may have done so.*

**Designated land (article 1(5) land) includes National Parks and the Broads, Areas of Outstanding Natural Beauty, Conservation Areas and World Heritage Sites.*

2.2.2 Class B – enlargement of a dwellinghouse consisting of an addition or alteration to the roof

Main changes:

- Removal of cumulative calculation on extensions permitted under different classes (i.e. there is no longer a need to take into account the possible 50, 70 or 110 cubic metres allowed under Class A as in previous GPDO).
- Extensions which include verandas, balconies or raised platforms will not be permitted development.
- Inclusion of conditions limiting the scale and type of development, notably a condition in respect of windows on side elevations, i.e. that they should be obscurely glazed and non-opening unless they are more than 1.7 metres above floor level.

Permitted development:

- Additions or alterations of the roof of a dwelling subject to the works:
 - not exceeding highest part of existing roof
 - not resulting in any part of the dwelling extending beyond the plane of any existing roof slope forming the principal elevation

- any increase in cubic content of roof space by more than 40 cubic metres for terraced property or 50 cubic metres in any other case
- No PD for dwellings on article 1(5) land.
- Roof pitches for extensions of more than one storey are only limited to being of the same pitch as the existing roof "so far as practicable" which may have significant implications in terms of interpretation.

2.2.3 Class C – any other alteration to the roof of a dwellinghouse

Main changes:

- More specific set of criteria that need to be met for works to qualify as PD.

Permitted development:

- Any other alteration to roof of a dwellinghouse subject to:
 - No protrusion to be more than 150mm beyond plane of existing roof slope
 - Not exceeding highest part of existing roof

2.2.4 Class E - the provision within the curtilage of the dwellinghouse of any building, enclosure, pool or container

Main changes:

- Inclusion of container of no more than 3,500 litre capacity and used for domestic heating purposes (previously permitted under Class G).
- Removal of "10 cubic metres" and "not closer than 5 metres to house" restriction.
- Extensions which include verandas, balconies or raised platforms will not be permitted development.
- Removal of previous restrictions in Conservation Areas/Listed Buildings (previously not PD if +10 cubic metres and in Conservation Area or curtilage of Listed Building).
- In general the new GPDO seems to increase restrictions in respect of development within the curtilage of Listed Buildings but there is a significantly more relaxed approach in Conservation Areas than was previously the case.

Permitted Development:

- No more than half the area of land around the "original house"* can be covered by additions or other buildings.
- No development forward of the wall forming the principal elevation.
- Limited to single storey.
- Height limited to 4 metres with dual pitched roof; 2.5 metres

- if within 2 metres of boundary or 3 metres in any other case.
- Height of eaves limited to 2.5 metres.
- Container for oil storage subject to maximum capacity of 3,500 litres.

2.2.5 Class F – provision of a hard surface

Main changes:

- The hard surfacing of more than 5 square metres of domestic front gardens is permitted development **only** where the surface in question is of permeable material or if rainwater is directed to such as a lawn or border to drain naturally. The use of traditional materials, such as impermeable concrete, where there is no facility in place to ensure permeability, requires an application for planning permission.
- Elsewhere within the curtilage there is no restriction on the area of land that can be covered with hard surfaces.

Permitted development:

- Provision of hard surface for purpose incidental to enjoyment of dwelling.
- Replacement in whole or part of existing surface.

2.2.6 Class G – installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse

Main changes:

- This class previously related to the installation of a container for the storage of oil for domestic heating. This has been moved to Class E and the rights have been extended.
- Class G now allows the installation, alteration or replacement of a chimney, flue or soil and vent pipe subject to limitations.

Permitted Development:

- Height of chimney etc. not to exceed highest part of roof by more than 1 metre.
- On article 1(5) land, chimney etc. not to be on roof slope fronting a highway or which forms either principal or side elevation of the dwelling.

2.3 Conclusion

The changes made to the Order significantly widen the scope of works that householders can carry out without the need for making a formal planning application. However, there are many aspects of the changes which are ambiguous and raising concerns for local planning authorities in terms of the degree of interpretation of new terminology and complexity of the limitations and allowances.

3.0 Permitted Development Enquiries

- 3.1 Permitted development enquiries have always been handled free of charge. Written requests for advice as to whether or not planning permission is required have received a written response from planning officers. However, the complexity of the legislation governing what is and what is not permitted development is such that it is often the case that additional information is required to enable a meaningful response. This situation is not considered to have been alleviated by the revised PD rights which raise new problems in determining the types of development that qualify as PD. The quality and accuracy of the advice given is limited by the level, quality and accuracy of the information provided by the enquirer.
- 3.2 As the service does not fall under any statutory process, Officers' responses are by necessity caveated as being the informal opinion of officers and it is noted that the advice given is based solely on the information provided by the enquirer and without the benefit of a site visit. Thus the advice carries no legal weight. Following the issue of guidelines by the Mortgage Lenders for solicitors dealing with purchase of land and property which recommends that any development should have written confirmation that planning permission, if needed, was obtained or if planning was not required, that this also should be formally confirmed, vendors often find themselves in need of a certificate of lawfulness when seeking to complete a sale.
- 3.3 In addition, the time currently being taken by officers to provide permitted development advice results in an overall cost to the authority and diverts staff resources from other duties, including dealing speedily with planning applications for which fees have been paid and on which performance is assessed. Increased pressure on the planning service combined with a recognition of the problems that can be encountered by enquirers being provided with non legally binding advice has forced a reconsideration of how best to meet the needs of customers. The coming into force of the revised permitted development rights which are yet to be tested in the courts has added to the need to adopt a statutory process which provides certainty for applicants and that covers the cost of the service given.
- 3.4 The statutory system of "lawful development certificates" under Section 192 of the Town and Country Planning Act 1990, enables local planning authorities, when the appropriate conditions are satisfied, to grant a certificate saying that:

- (1) an existing use of land, or some operational development, or some activity in breach of a planning condition, is lawful; or
- (2) a proposed use of buildings or other land, or some operations proposed to be carried out would be lawful.

It is also useful evidence for solicitors acting in the event of future sale of the property, and can be included in a Home Information Pack.

- 3.5 The system provides that the lawfulness of operations carried out in conformity with a Certificate is "conclusively presumed", (unless there has been a material change in circumstances). It provides a statutory document confirming that the use, operation or activity named in it is lawful for planning control purposes on the dates specified in the document. Once it is granted, the certificate remains valid for the use or development described in it, on the land it describes, provided there is no subsequent material change in the circumstances. It is considered that this offers customers the benefit of ensuring that they have either a Certificate of Lawfulness or Planning Permission should that be required, when ownership of the property is transferred to another party meaning that there are no unnecessary delays in respect of planning matters.
- 3.6 The grant of a certificate applies only to the lawfulness of development carried out, or proposed, in accordance with planning legislation. It does not remove the need to comply properly with any other legal requirements, such as consents required under the Building Regulations, the Wildlife and Countryside Act 1981, or the Listed Building and Conservation Areas Act 1990. If the limitations specified in a certificate are exceeded, the landowner or occupier may be liable to enforcement action by the planning authority for any resulting breach of control.
- 3.7 The cost of making an application for a certificate of lawfulness are set by The Town and Country Planning (Fees for applications and deemed applications) (Amendment) (England) Regulations 2008. Such applications require the payment of a fee equivalent to the fee for a planning application for the same development if the development is existing, or 50% of the same fee if the development is proposed. The cost to a householder seeking legal confirmation of whether proposed development falls within their permitted development rights would currently be £75.

4.0 Consultation

- 4.1 No external consultations have been undertaken in compiling this report.

5.0 Financial Implications

- 5.1 There are several variables which need to be taken into account in estimating future income from the fees for certificates of lawfulness. The introduction of a formal application which carries a fee may act as a deterrent to applicants. However the increasing need for written confirmation of the legality of all development on a site at the time of sale means that those seriously considering undertaking development will submit the relevant application. For the Planning Service there is the possible benefit that charges might discourage poorly considered proposals from being put forward.

6.0 Human Resource Implications

- 6.1 There are no human resource/training and development implications. Planning Officers are trained to deal with applications for certificates of lawfulness.

7.0 Human Rights Implications

- 7.1 There are no Human Rights implications associated with this report.

8.0 Other Implications

- 8.1 The aim of the revised permitted development rights is to raise the quality of developments and reduce the environmental impacts. There are no youth, anti-poverty, equalities or community safety implications as a direct result of this report.

9.0 Conclusion

- 9.1 The changes made to the Order significantly widen the scope of works that householders can carry out without the need for making a formal planning application. In addition, the changes will provide clarity, simplicity and consistency; make the need for planning permission proportionate to the impact of the development; keep the number of planning applications to a minimum and ensure the legislation remains relevant to new technologies and changing lifestyles.
- 9.2 The handling of permitted development enquiries through the application of Certificates of Lawful Development provides owners with the legal certainty required when selling a property.

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Background Papers:

The Background Papers used in compiling this report were as follows:

The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (SI 2008 No. 2362)

The Town and Country Planning Act 1990: Section 191, as amended by Section 10 of the Planning and Compensation Act 1991.

The Town and Country Planning (General Development Procedure) Order 1995

The Town and Country Planning (Fees for applications and deemed applications) (Amendment) (England) Regulations 2008

'Ntfilesserver' (J:)/2007 Agenda reports/Proposed amendments to scheme of delegation