

# DEVELOPMENT and the GPDO and UCO

## And one decision

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1. This talk starts with the General Permitted Development Order (England) (Amendment Nos. 2 and 3) Orders 2020.<sup>1</sup> They deal with a large number of amendments, mostly very detailed, to the original Order. It is a summary of provisions and, as always, the detail of the changes should be looked at carefully.

2. An overview:

- Houses – detached, semi-detached and terraces – and some commercial properties – can have two storeys added to them up to a maximum of 18 to 30 metres to create new homes. Excluded if certain GPDO rights already used. And there are tight definitions of ‘storeys’.
- These rights come either as an amendment to Class A on dwellinghouses (with a sub-class AA) or entirely new classes AA, AB, AC, AD and ZA.
- They must have been built between 1/7/48 and two cut-off dates.
- Not in Conservation Areas, etc. For listed buildings, see below.
- Prior approval must be sought. Note – no cut-off date with automatic approval.
- If AA, must continue as C3 dwellinghouse; can't be used as HMO. There are conditions under this head about the pitch of the roof, windows and materials. Must have regard to the NPPF when deciding the application.
- Then there are 4 new Use Classes, AA, AB, AC, AD. Common features are that they allow the construction of flats on top of commercial and residential buildings; they require prior approval which includes providing a construction method statement; there are exclusions, including in these cases listed buildings although not, curiously, in the sub-class AA, above.
- New class ZA which is a demolition and rebuild permission for vacant and detached purpose built blocks of flats and a single detached commercial building (B1 uses) to allow a rebuild of flats or a detached dwelling.
- It is subject to extensive prior approval conditions (below).
- Old building must have been vacant for 6 months.

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<sup>1</sup> SI 2020 Nos . 755 and 756.

- Conservation Areas, Listed buildings and Scheduled monuments are excluded.
- Within the footprint of the original building (max 1,000m<sup>2</sup> and max height of 18m of old building).
- New UCO: classes E and F1, F2. The new class E replaces, amalgamates and extends a number of existing commercial uses (mainly A1, A2, A3 and B1) into a new commercial, business and service use class.
- The new F1 and F2 classes deal with community and neighbourhood uses which are largely uncontroversial and also provide a boost for small, neighbourhood shops.

*Class AA (enlargement of dwellinghouse by additional storeys)*

3. First, there is an amendment to the existing GPDO amending Part 1 of Schedule 2 to the 2015 Order to introduce a new PD right, Class AA. This makes consequential amendments to existing provisions of Class A relating to the enlargement, improvement or other alteration of a dwellinghouse and permits the enlargement of a dwellinghouse (detached, semi-detached or in a terrace) by the construction of new storeys on top of the highest existing storey of the dwellinghouse. The number of storeys and their definition is limited; see below.

The circumstances and limitations are much the same as the new rights granted under new classes AB to AD:

3.1 If the houses are detached, semi-detached or terrace houses. They must have been built between 1<sup>st</sup> July 1948 and 28<sup>th</sup> October 2018. And Class AA cannot be used if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Classes M, N, O, P, PA or Q of the GPDO. Nor can Class AA be used if the dwellinghouse has already been enlarged by the addition of one or more storeys, whether under Class AA 'or otherwise'.

3.2 The maximum height is 18 m. If in a terrace they must be not more than 3.5 m higher than the next tallest house in the terrace and the same difference where a semi is concerned. Note: there are detailed rules about the height of one- and two-storey dwellings and floor to ceiling internal heights to control the measurement of storeys.

3.3 Construction of up to 2 additional storeys on the topmost storey of the principal part of a detached house of 2 storeys or more, or 1 additional storey on a

detached house of 1 storey, above ground level. There are similar limitations for terraces or semi-detached houses. Existing accommodation in the roof space of the existing house, including a loft extension, is not considered as a storey for the purposes of this right.

3.4 Materials of the extra storeys must be similar to those existing so far as external appearance is concerned.

3.5 This class does not apply in Conservation Areas, National Parks and the Broads, AONBs, or SSSIs. Listed buildings are not excluded but LB consent would be necessary.

3.6 The property must be used as a C3 dwellinghouse thereafter and so it cannot be in use as a house in multiple occupation, or a change to that use. This means that an application for planning permission would be required for a home extended under the right to construct additional storeys to become a house in multiple occupation.

3.7 Prior approval must be sought dealing with a number of matters which are similar to those under new classes AC to AD:

- the impact on the amenity of neighbouring premises, including overlooking, privacy and over-shadowing;
- the design, including the architectural features of the principal elevation of the house, and of any side elevation which fronts a highway;
- the impacts a taller building may have on air traffic and defence assets and on protected vistas in London;
- before beginning the development, the developer must provide the LPA with a report for the management of the construction of the development.

#### *New classes AA, AB, AC and AD*

4. Then there are four new and separate classes. Class AA, AB, AC and AD. The common feature of each is that up to two new storeys of flats may be built on top of existing buildings. These will be very 'orthodox' buildings since "storey" is defined so as to exclude

any storey below ground level, and any living space within the roof of the dwellinghouse. Two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.

5. Class AA permits construction of 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. Class AB permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in **commercial or mixed (including residential) use**. Class AC permits the construction of new flats on top of **terrace dwellinghouses**, including **semi-detached houses**. Class AD permits the construction of new flats on top of **detached dwellinghouses**.

6. There are common features to these permitted uses:

6.1 Thus the commercial uses are shops (Class A1), financial and professional services (Class A2), restaurants and cafes (Class A3), or offices (Class B1(a)), or as betting shops, pay day loan shops or launderettes, or in mixed use within these uses and mixed use with an element of housing.<sup>2</sup>

6.2 There are maximum height restrictions for the new building: 30 metres under class AA; 18 metres, but not more than 3.5 metres higher than the next tallest building or house in the terrace, under classes AB and AC; 18 metres under class AD. And the existing building, under class AA, must be at least three storeys above ground. Note that existing accommodation in the roof space of an existing commercial building or house, including a loft extension, is not considered as a storey for the purposes of these rights.

6.3 Under classes AC and AD, the appearance of the materials used in the construction of the additional storeys must be similar to that of the existing house.

6.4 The developer must prepare a report setting out the proposed hours of operation and how they intend to minimise any adverse impacts of noise, dust, vibration and traffic movements during the building works on occupiers of the building and neighbouring premises before commencing works under these rights

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<sup>2</sup> These uses can already be changed to residential use under Part 3 Sched. 2 of the existing GPDO.

during the construction of the additional storeys and any permitted engineering works to strengthen the building.

6.5 Prior approval must be obtained from the LPA who must consider:

- the potential transport and highways impacts;
- contamination and flood risk;
- the appearance of the proposed upward extension and
- the design and architectural features of the principal elevation of the house or building, and of any side elevation which fronts a highway;
- the impact on the amenity of neighbouring premises, and those in the building being extended, including overlooking, privacy and overshadowing;
- the provision of adequate natural light in all habitable rooms of the new homes;
- impact of noise from existing commercial premises on the intended occupiers of the new homes;
- the impact on businesses or the use of land in the surrounding area of introducing, or increasing the number of, homes in an the area;
- and the impacts a taller building may have on air traffic and defence assets and on protected vistas in London.

6.6 The GPDO lists the consultees including, obviously neighbours, and must make a decision within 8 weeks. Failure to do so triggers a right of appeal. It does not result in a default permission.

6.7 The PD rights do not apply if the land or site on which the building is located, is or forms part of –

- (i) article 2(3) land (conservation areas, AONBs etc.);
- (ii) a site of special scientific interest;
- (iii) a listed building or land within its curtilage;
- (iv) a scheduled monument or land within its curtilage;

- (v) a safety hazard area;
- (vi) a military explosives storage area; or
- (vii) land within 3 kilometres of the perimeter of an aerodrome.

6.8 Nor do the PD rights apply if the building was constructed before 1<sup>st</sup> July 1948 or after 5<sup>th</sup> March 2018. Note also the uses that the buildings must comply with on 5<sup>th</sup> March 2018 (e.g. in C3 dwellinghouse use or commercial uses).

6.9 And homes created using these permitted development rights cannot change use to a small house in multiple occupation and the right is not available to houses currently in such (an application for planning permission is necessary). Nor can they be used where there has been an existing PD extension.

#### *Demolition and rebuild for residential use*

7. There is a separate GPDO dealing with this topic – this time the No. 3 Order (No. 756).

8. It adds a new class ZA to the GPDO. This allows:

8.1 Demolition of vacant and freestanding buildings which are within certain UCO classes on 12<sup>th</sup> March 2020. They can be replaced with residential development consisting of a single building of either a purpose-built detached block of flats, or a purpose-built detached dwellinghouse, which must be only used as such. And the developer must supply detailed, scale drawings and other detailed information,

8.2 This applies first to a single, purpose-built detached block of flats and then separately to any other single detached building, comprising premises within the UCO 1987 for office use falling within Class B1(a); for research and development falling within Class B1(b); or for an industrial process falling within Class B1(c); or for any combination of them. And therefore not, unlike some of the other GPDO rights to terraced buildings, detached dwellings or mixed use buildings.

9. There are a huge number of highly detailed and technical limitations so that development is not permitted by Class ZA:

(a) if land covered by, or within the curtilage of, the old building –

(i) is occupied in any part under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

(ii) is or forms part of article 2(3) land (conservation areas, AONBs etc.);

(iii) is or forms part of a site of special scientific interest;

(iv) is or forms part of a listed building or land within its curtilage;

(v) is or forms part of a scheduled monument or land within its curtilage;

(vi) is or forms part of a safety hazard area;

(vii) is or forms part of a military explosives storage area; or

(viii) is within 3 kilometres of the perimeter of an aerodrome.

(b) if the old building was constructed after 31<sup>st</sup> December 1989;

(c) if the footprint of the old building exceeds 1,000 square metres;

(d) if the height of the highest part of the roof of the old building above ground level (not including plant, radio masts and antennae) is greater than 18 metres at any point;

(e) unless the old building has been vacant for a period of at least 6 months immediately prior to the date of the application for prior approval;

(f) if the old building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the old building stands and it is practicable to secure safety or health by works of repair or works for affording temporary support (and for this purpose keeping the old building vacant does not of itself count as action or inaction);



(g) if the demolition is "relevant demolition" for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area);

(h) if any of the footprint of the new building falls outside the footprint of the old building;

(i) if any part of the exterior wall of the new building nearest to a highway is nearer to the highway than the part nearest the highway of the exterior wall nearest the highway of the old building;

(j) if the height (not including plant, radio masts and antennae) of the new building would at any point exceed the lower of –

(i) 7 metres above the height (not including plant) of old building; or

(ii) 18 metres,

above ground level;

(k) if the new building has more than  $X + 2$  storeys, where "X" is the number of storeys in the old building;

(l) if the new building has more storeys than the old building and the floor to ceiling height of any additional storey in the new building, measured internally, would at any point be greater than the lower of –

(i) the floor to ceiling height, measured internally, of any storey in the old building; or

(ii) 3 metres; or

(m) if the height of any plant on the roof of the new building as measured from the lowest surface of that roof would be greater than the height of any existing plant as measured from the lowest surface of the existing roof on the principal part of the old building.

10. Prior approval must be obtained for transport and highway impacts of the development, contamination and flooding risks, the impact of noise from any commercial premises on future residents, the design and external appearance of the new building, the adequacy of natural light in all habitable rooms of each new dwelling, the impact of the introduction of residential use into an area, the impact of the development on the amenity of the new building and of neighbouring premises (including overlooking, privacy and light), impacts of noise from commercial premises, impact on surrounding businesses, impact on heritage and archaeology, method of demolition, plans for full landscaping, and impact on air traffic and defence.

11. And a construction and management report must be provided to the LPA before development takes place setting out the method of demolition, hours of operation and so on.

### *Use Classes Order changes*

12. The Use Classes (Amendment)(England) Regulations 2020 creates three new Use Classes: E, F1 and F2. These are all uses which the Government considers are suitable for a town centre. The idea is that these are primarily aimed at "creating vibrant, mixed use town centres by allowing businesses greater freedom to change to a broader range of compatible uses which communities expect to find on modern high streets, as well as more generally in town and city centres." As is well known no planning permission is needed for changes within use classes. The Regulations also move certain uses out of the UCO.

13. The new Class E: "commercial business and service":

13.1 It incorporates the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), B1 (offices).

13.2 It also incorporates D1, D2, that is, gyms, nurseries, health centres and other suitable town centre uses.

13.3 For convenience the text is as follows:

Use, or part use, for all or any of the following purposes—

(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,

(c) for the provision of the following kinds of services principally to visiting members of the public—

(i) financial services,

(ii) professional services (other than health or medical services), or

(iii) any other services which it is appropriate to provide in a commercial, business or service locality,

(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,

(e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) for—

(i) an office to carry out any operational or administrative functions,

(ii) the research and development of products or processes, or

(iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

14. There is a new class F1 "learning and non-residential institutions" (incorporating libraries, art galleries etc.) from class D1. Again, for convenience I set out the text:

Any use not including residential use—

- (a) for the provision of education,
- (b) for the display of works of art (otherwise than for sale or hire),
- (c) as a museum,
- (d) as a public library or public reading room,
- (e) as a public hall or exhibition hall,
- (f) for, or in connection with, public worship or religious instruction,
- (g) as a law court.

15. There is a new class F2, "local community", which incorporates from D2 group activities of a more physical nature – swimming pools, skating rinks and areas for outdoor sports. I suspect that the totally non-controversial uses are (text again):

"(b) a hall or meeting place for the principal use of the local community,

(c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms,

(d) an indoor or outdoor swimming pool or skating rink."

16. However, it introduces a new use for local shops – the text:

"(a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—

(i) the shop's premises cover an area not more than 280 metres square, and

(ii) there is no other such facility within 1000 metre radius of the shop's location."

17. The rationale is to recognise the importance of small, local shops in meeting the day to day shopping needs of local communities, particularly in rural communities, large residential estates and outside main shopping areas generally. This is defined as a shop

mostly for the sale of a range of essential dry<sup>3</sup> goods and food to visiting member of the public where there is no commercial class retail unit within 1,000 metres and the shop area is no larger than 280m.<sup>2</sup> Plainly, while the ambition may be to have a range of goods, the definition does not stop a shopkeeper from selling exclusively a particular type of, e.g., food. No doubt the intention is to leave this to the market and the good sense of the proprietor. The size and radius requirements provide some protection for competitor shops. The larger shops found on high streets and town centres are in the new 'commercial' class.

18. There are a couple of important, incidental changes. The former A4 (drinking establishments, pubs, wine bars) and A5 (hot food takeaway) are new *sui generis* uses as are cinema, concert halls, live music performances, bingo and dance halls which were within the former D2 class.

19. Subject to transitional provisions, the UCO changes are in effect from 1<sup>st</sup> September 2020.

#### *Dwellings and the NPPF*

20. *Wiltshire Council v. SSHCLG* [2020] EWHC 954 Admin considered para. 79(d) of the NPPF. Para. 79 says the development of isolated homes in the countryside should be avoided but there are exceptions. Para. 79(d) is where development involves "the subdivision of an existing residential dwelling". The Inspector had dealt with a situation where there was an ancillary residential annexe close to, but separate from, the main house. The owner wanted to use it as an independent dwelling and relied on 70(d). The Inspector allowed his appeal holding that there was one residential 'dwelling' consisting of the annexe and the main house. There were Inspector's decisions which agreed with and disagreed with that interpretation. Lieven J allowed the Council's challenge and interpreted the sub-paragraph "as tending towards the 'dwelling' being one physical building rather than a wider residential unit encompassing other buildings."

21. She thought that was closer to the mischief guarded against in the policy namely, the proliferation of isolated, and hence unsustainable, dwellings in the countryside.

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<sup>3</sup> The use of 'dry' is from the Government's explanatory document and is not part of the UCO text. There is no definition of 'essential goods' in the UCO.

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