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Briefing - New permitted development rights - England

(Prepared Oct 2013 with update May 2014)

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 came into force on 30th May 2013. It is intended to provide a much expanded set of circumstances where developers may apply for prior approval for change of use of existing buildings.

In practical terms, a developer is now able to give planning authorities “Prior Notification” of certain changes of use rather than applying for full planning permission. These changes of use include:

- Change of use of a building from business to residential
- Change of use of a building to a school
- Change of use from an agricultural building to another use

The above changes were made to schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

The process requires a developer to make an application to the local planning authority for a determination as to whether prior approval will be required as to the transport and highway impacts, flooding risk and (importantly for LQC) contamination risk. This application must be made before beginning a development and the application should consist of the developer's details and a plan showing the proposed development. Further information is only required if the local planning authority consider it necessary to assess the transport impact, flood risk and/or contamination risk. If there is no risk identified, prior approval is not required and the development can take place without further permission from the local planning authority.

There are particular criteria with regards qualifying development. Specifically the legislation states the circumstances:

Class J. - Development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order from a use falling within Class B1(a) (offices) of that Schedule.

Class K. - Development consisting of a change of use of a building and any land within its curtilage to use as a state-funded school, from a use falling within Classes B1 (business), C1 (hotels), C2 (residential institutions), C2A (secure residential institutions) and D2 (assembly and leisure) of the Schedule to the Use Classes Order.

Class M. - Development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Use Classes Order.



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The developer is required to apply to the local planning authority for a determination as to whether the prior approval of the local planning authority will be required in relation to the “contamination risk at the site”.

Procedure for applications for prior approval under Part 3

(8) The local planning authority shall, when determining an application—

- (a) take into account any representations made to them as a result of any consultation under paragraphs (3) or (4) and any notice given under paragraph (6);*
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application; and*

(c) in relation to the contamination risks on the site—

- *determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990, and in doing so have regard to the Contaminated Land Statutory Guidance issued by Secretary of State for the Environment, Food and Rural Affairs in April 2012, and*
- *if they determine that the site will be contaminated land, refuse to give prior approval.*

Comment: In most cases the LA in that time will only be able to indicate the land’s potential for Part 2a and not decide that it will definitely be so.

- Can the fact that the LA probably can’t decide if the land is statutory contaminated land be challenged?
- The test for statutory contaminated land under Part 2a has a different emphasis than exists under planning.

Comment: there appears to be no option to extend the decision time:

“(9) The development shall not be begun before the occurrence of one of the following—

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;*
- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or*
- (c) the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.*



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(10) The development shall be carried out—

- (a) where prior approval is required, in accordance with the details approved by the local planning authority;*
- (b) where prior approval is not required, or where paragraph (9)(c) applies, in accordance with the details provided in the application referred to in paragraph (1),*

unless the local planning authority and the developer agree otherwise in writing.

So far as I am aware, there is (as yet) no indication or guidance from government as to the interpretation and application of these amendments to the GPDO, and so the position regarding the way in which these provisions will be applied in practice is not yet entirely clear.

Some authorities have rejected prior approval applications because contaminated land information has either not been supplied or because the land has not been shown to be not be contaminated land. Here is one example:

“1. In accordance with the provisions of paragraph N (8)(c) of Class J, Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended, prior approval for the change of use from office to residential is required and hereby refused because it has not been demonstrated that the site will not be contaminated land. As such the proposal is contrary to policy SU11 of the Brighton & Hove Local Plan 2005.”

The planning inspectorate was asked whether they have received any appeals against any refusals for prior approvals but they haven't yet (as of end October 2013).

Update May 2014

1. Planning minister intervention

Nick Boles, Planning Minister, released this written statement to parliament on 6 Feb 2014, commenting on the application of the regulations:

<https://www.gov.uk/government/speeches/change-of-use-new-homes>

Specifically discussing change of use to provide new homes and disproportionate use by some local authorities on the disproportionate use of powers to exempt themselves from the application of these permitted development rights where they could demonstrate an adverse economic impact (Article 4 Directions), the Minister concluded that 2 of 8 authorities that have made directions which prevent office to home conversions under national rights are considered to have applied their directions disproportionately. They will be asked to consider reducing the extent of their directions so that they are more targeted, ie a less blanket coverage of their areas.

It also mentions that some local authorities have sought to levy developer contributions “where they are not appropriate” (on matters unrelated to the prior approval process). The minister states: “To ensure the permitted development rights are utilised fairly across England, my department will update our planning practice guidance to councils to provide greater clarity on these points”. There is no specific discussion of contaminated land matters.

2. Amending Legislation

The order is amended by the **Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014** from April 2014.

Additional use classes are added, eg the conversion of agricultural buildings and land within curtilage to Class C3 residential dwellings.

Previously there were concerns that it would be difficult to ensure that sufficient information on land contamination was submitted to support the application and that mitigation measures would be undertaken without the planning authority being able to resort to planning conditions. As a result of the new Order it is possible for conditions to be attached in relation to the granting of prior approval and the refusal of a prior approval request. Specifically Article 5 paragraph N provides for the authority to refuse an application when the developer has not provided sufficient information to enable the authority to establish if the proposed development complies:

(to the 2013 regs) “(8) In paragraph N- (b) after paragraph 2, insert-

(2A) The local planning authority may refuse an application where, in the opinion of the authority—

(a) the proposed development does not comply with, or

(b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,

any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.”

The same 2014 order also allows planning conditions to be placed on the prior approval, which can be used for other matters and in particular for contaminated land:

(to the 2013 regs) “(8) In paragraph N- (e) after paragraph (10) add: -

(11) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval”.



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Emerging Experience

Meanwhile some experience of the regime is emerging.

- Some authorities report minimal experience whilst others have received multiple applications across their areas, perhaps reflecting the degree to which commercial buildings are falling into disuse in some parts.
- One might expect concerns to emerge soon about consistency of the regulations' application across different authority areas. At least one authority has refused to grant PDR on the basis that no land contamination information was submitted with the PDR application.
- It seems unlikely that for a particular property a local authority would have made a decision on its status re contaminated land (in the Part 2a sense) or have the information or ability to do so within the 56 days allowed after receipt of the PDR application.
- Some of the more optimistic applications reported include conversion of a portacabin on a quarry to residential and separately offices attached to a large refrigerated warehouse in the centre of an industrial estate intended for residential conversion.