

## **EXPLANATORY MEMORANDUM TO**

### **THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) (No. 2) ORDER 2017**

**2017 No. 619**

**AND**

### **THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) (AMENDMENT) (No. 2) REGULATIONS 2017**

**2017 No. 620**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

#### **2. Purpose of the instruments**

- 2.1 The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017 (“the Amendment Order”) amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to remove the existing permitted development rights which allow drinking establishments, including pubs, to change use or to be demolished. The Order also introduces a new permitted development right to enable drinking establishments to expand their food offer, or to change from a drinking establishment with an expanded food offer to use as a drinking establishment, without the need to apply for planning permission.
- 2.2 The Town and Country Planning (Compensation) (England) (Amendment) (No.2) Regulations 2017 amend the Town and Country Planning (Compensation) (England) Regulations 2015 (“the Compensation Regulations”) to enable local planning authorities to exclude their liability to pay compensation in specified circumstances where they decide to withdraw the new right introduced by the Amendment Order to allow drinking establishments to expand their food offer.

#### **3. Matters of special interest to Parliament**

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As these instruments are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 Under Part 3 of the Town and Country Planning Act 1990 (“the 1990 Act”) planning permission is required for the development of land. “Development” is defined in section 55 and includes any material change in the use of any buildings or other land. Under section 58, planning permission may be granted on application to a local planning authority, or by a development order made under the 1990 Act.
- 4.2 The General Permitted Development Order grants planning permission for a range of descriptions (classes) of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a “permitted development right”. The effect is that an application for planning permission does not need to be made to the local planning authority, although in some cases permitted development rights require the local planning authority to approve certain matters before development can proceed. This is known as “prior approval”. Development may include change of use or demolition of a building.
- 4.3 Permitted development rights for change of use of buildings make reference to the use classes set out in the Town and Country Planning (Use Classes) Order 1987, which groups together uses having similar planning impacts. The classes in the Use Classes Order which are relevant to the Amendment Order are:
- **A1:** Shops
  - **A2:** Financial and professional services
  - **A3:** Restaurants and cafés
  - **A4:** Drinking establishments
  - **B1:** Business
- 4.4 Before amendment by this Order, permitted development rights allowed:
- (a) the change of use of a building used for a purpose within Class A4 (drinking establishments) to:
- a use within Class A1 (shops) or Class A2 (financial and professional services) (as per Class A of Part 3 of Schedule 2);
  - a use within Class A3 (restaurant or café) (as per Class B of Part 3 of Schedule 2);
  - a temporary state-funded school (as per Class C of Part 4 of Schedule 2);
  - a temporary flexible use within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurant or café), or B1 (business), including offices (as per Class D of Part 4 of Schedule 2);
- (b) the demolition of buildings, including buildings used for a purpose within Class A4 (drinking establishments), subject to prior approval (as per Class B of Part 11 of Schedule 2).
- 4.5 Planning permission to use a building for a particular purpose (“the primary use”) includes a right to use that building for a different purpose, as long as the different purpose is ancillary to the primary use. Planning permission is required in order to commence a concurrent use which is more than ancillary.
- 4.6 Where it is expedient to do so, local planning authorities can withdraw certain permitted development rights by making a direction under article 4 of the General

Permitted Development Order. Some local planning authorities have removed all or some of the rights listed in paragraph 4.4 by making such a direction.

- 4.7 Where planning permission granted by a development order is withdrawn, those with an interest in the land may have a right to compensation from the local planning authority under section 108 of the Town and Country Planning Act 1990. The Compensation Regulations limit to twelve months the period during which a local planning authority may be liable to pay compensation in relation to specified permitted development rights. They also exclude compensation liability altogether where the local planning authority withdraws the permitted development right by a direction under article 4 of the General Permitted Development Order for which they have given at least 12 months' notice.
- 4.8 In 2015, the permitted development rights outlined in paragraph 4.4 were removed in respect of a building which was nominated or listed as an asset of community value under Part 5 of the Localism Act 2011. Before relying on the permitted development rights allowing drinking establishments to change use or be demolished, developers were required to send a written request to local planning authorities to find out whether the building had been nominated or listed as an asset of community value. In the case of demolition, developers are also required to apply for a determination of whether prior approval from the local authority is required. To allow time for the local planning authority to notify the developer of any nomination or listing as an asset of community value, development could not begin before the expiry of 56 days from the date of the written request. Where the building was not nominated or listed, the rights required the development to be completed within one year of the written request. If the building was nominated or listed after the 56 day period had expired and change of use or demolition had not yet been undertaken, permitted development rights were removed from the point at which the local planning authority notified the developer of the nomination or listing. The Amendment Order removes these permitted development rights in all cases, and consequently these provisions requesting details as to nomination or listing are no longer necessary, apart from in the transitional provisions made in article 5 of the Amendment Order.
- 4.9 The Amendment Order will implement section 15 of the Neighbourhood Planning Act 2017 which came into force on 27th April 2017. That section requires that an order is made, "as soon as reasonably practicable after the coming into force". In order to comply with the duty set out in that section, the Secretary of State is required to make a development order which removes permitted development rights which allow the change of use or demolition of drinking establishments, and to grant planning permission for a drinking establishment to change use to become a mixed use consisting of a drinking establishment use with a restaurant/café use.

## **5. Extent and Territorial Application**

- 5.1 The extent of these instruments is England and Wales.
- 5.2 The territorial application of these instruments is England.

## **6. European Convention on Human Rights**

- 6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## 7. Policy background

### *What is being done and why*

- 7.1 National permitted development rights serve to reduce bureaucracy and cost, and provide developers with a greater level of speed and certainty by prescribing what types of development can be undertaken without applying for planning permission. They are subject to certain conditions and limitations to ensure potential impacts can be mitigated.
- 7.2 During the passage of the Neighbourhood Planning Act 2017 through Parliament, concerns were raised in both Houses about the number of pubs changing use, or being demolished, across the country, and the lack of an opportunity for local communities to have a say when this happened under permitted development rights.
- 7.3 As noted in paragraph 4.8 above, in 2015 permitted development rights were removed for those drinking establishments nominated or listed as an asset of community value. However, members of both Houses believed that this amendment had led to unnecessary process and that permitted development rights should be removed for all drinking establishments, to enable local consideration in all cases.
- 7.4 Parliament questioned whether the removal of the permitted development right for a drinking establishment to change to a restaurant might make it more difficult for pubs to expand their food offer. The government committed to ensure this was not the case.
- 7.5 There was cross-party support for the government amendment now contained in section 15 of the Neighbourhood Planning Act 2017. This section was debated in Parliament and came into force on 27th April 2017. It places a duty on the Secretary of State to use his existing powers to make a development order as soon as reasonably practicable after Royal Assent to remove the permitted development rights which allow drinking establishments to change use or be demolished, and to grant planning permission for a drinking establishment to change use to become a drinking establishment with a restaurant/café use. The Amendment Order implements this duty.
- 7.6 These instruments will come into force during the period between the dissolution of Parliament and commencement of the next Parliament in order to comply with the duty set out in section 15 of the Neighbourhood Planning Act 2017. Parliamentary debate made clear that a development order should be brought forward quickly to allow for local consideration and avoid opportunistic use of the permitted development rights before their removal.
- 7.7 The removal of existing permitted development rights which allow pubs to change use or be demolished will enable local consideration through the planning application process in all cases. Planning applications will be determined by the local planning authority in accordance with the local plan for the area, national planning policy, and any other material considerations, and there will be an opportunity for the local community to comment on the future use of the drinking establishment.
- 7.8 To address the concerns noted in paragraph 7.4, a new permitted development right is introduced to allow drinking establishments to expand their food offering beyond that which is considered ancillary, and to change from such use to use as a drinking establishment. The new right does not allow drinking establishments to expand their restaurant or café use in such a way that use as a drinking establishment becomes ancillary, as would have been the case under the now withdrawn right for a drinking

establishment to change to a restaurant or café. This new right ensures that a Class A4 drinking establishment use continues, but avoids uncertainty as to whether planning permission is needed where a drinking establishment wishes to expand its food offering. The Amendment Order does not affect the existing planning status of buildings in Classes A4 and A3 use – it provides a freedom which drinking establishments can choose to utilise following the entry into force of the Amendment Order.

- 7.9 Parliament was clear that there should be no opportunity for developers to seek opportunistically to change use of, or demolish, a pub before the regulations came into force. The government committed to mitigate this risk by taking action as quickly as possible, as set out in 7.6 above, and by considering appropriate transitional arrangements.
- 7.10 The Amendment Order therefore contains transitional arrangements to provide that:
- (a) where the developer has already put in a request to the local planning authority as to whether the building has been nominated or listed as an asset of community value, and the 56 day confirmation period has expired before 23<sup>rd</sup> May 2017 (and the building is not nominated or listed) (see paragraph 4.8 above); and
  - (b) in the case of demolition, an application for prior approval has been granted, determined not required, or deemed granted before the Order comes into force,

development is permitted in accordance with the terms of the permitted development rights before withdrawal by the Amendment Order. In accordance with those terms, any development must be completed within one year, and communities wishing to protect a local drinking establishment can still do so by nominating or listing it as an asset of community value before development commences.

- 7.11 The effect of these provisions is that development will not be permitted for development proposals made within 56 days prior to 23<sup>rd</sup> May 2017, when the Amendment Order comes into force. This reduces the risk of opportunistic development, and also provides certainty to developers who put in a request at least 56 days before 23<sup>rd</sup> May 2017. Those developers can proceed according to the relevant permitted development rights in force before withdrawal by the Amendment Order (provided that, in relation to demolition, they have also applied for prior approval before the Amendment Order comes into force and such approval has been granted, determined not required, or deemed granted).
- 7.12 Parliament wanted to protect the position of those areas that had already taken action to remove the existing permitted development rights for the change of use from a drinking establishment to a restaurant by making a direction under article 4 of the General Permitted Development Order 2015. To do so, the government has included transitional provisions in the Amendment Order in respect of the new permitted development right for an expanded food offer. These postpone by 18 months the application of the new permitted development right for buildings falling within the scope of an article 4 direction which removes the permitted development right to change use from a drinking establishment to a restaurant or café. This will allow those areas affected time to consult and, if appropriate, to make a new article 4 direction.

### *Compensation*

- 7.13 Where a permitted development right is withdrawn, those with an interest in the land may have a right to compensation from the local planning authority under section 108 of the 1990 Act. Section 108 provides for compensation where planning permission for development previously allowed by a permitted development right is refused, or granted subject to more onerous conditions. In respect of the removal of permitted development rights by the Amendment Order, s108(2) provides that compensation is only payable in respect of planning applications made within 12 months of withdrawal. In respect of the withdrawal by an Article 4 direction (see paragraph 4.6) of the new permitted development right introduced by the Amendment Order, the Compensation Regulations make provision to exclude liability for compensation altogether where at least 12 months', and not more than 2 years', notice is given.

### *Consolidation*

- 7.14 The General Permitted Development Order, which came into force on 15 April 2015, consolidated amendments made to the General Permitted Development Order 1995. This is the fourth Order to amend the General Permitted Development Order 2015. There are no current plans for a consolidation.

## **8. Consultation outcome**

- 8.1 The policy which the Order implements was subject to debate in Parliament, and the Amendment Order reflects the approach ultimately agreed by Parliament as reflected in section 15 of the 2017 Act and set out in paragraph 7 above. Section 15 of the Neighbourhood Planning Act 2017 sets out a duty for specific action to be taken by the Secretary of State 'as soon as reasonably practicable after' Royal Assent. In order to meet this requirement, no further consultation has been carried out.

## **9. Guidance**

- 9.1 There are no plans to issue specific guidance for this statutory instrument.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is that business owners will be subject to additional costs of submitting a planning application for the change of use of the drinking establishment to a restaurant or café, financial and professional service, shop, or a state funded school for two academic years, or to a range of other uses for a period of two years, or for demolition. Business owners may benefit from the new right that enables them to expand their food offer beyond that which is considered ancillary because they will not have to apply to the local planning authority for planning permission, involving extra expense, delay and uncertainty.
- 10.2 The impact on the public sector is that local planning authorities may face an increased administrative burden due to an increase in the number of planning applications, but this will be offset by the planning application fees. Compensation may be payable by local planning authorities where national permitted development rights are removed, and planning permission is refused for the same development, or granted subject to conditions. Such compensation is limited to a twelve month period.
- 10.3 An Impact Assessment is being prepared and will be available alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses. The removal of permitted development rights for drinking establishments is regulatory in effect.

## **12. Monitoring & review**

- 12.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1st July 2014 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. A clause requiring such a review was inserted into the General Permitted Development Order by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (S.I 2016/332). These regulations will be reviewed at the latest by May 2022.

## **13. Contact**

- 13.1 Maria Darby at the Department for Communities and Local Government, telephone: 0303 444 1463 or email: [maria.darby@communities.gov.uk](mailto:maria.darby@communities.gov.uk) can answer any queries regarding the instrument.