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Permitted Development: The new regime and its implications

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Framework of the changes

- | | | |
|----|--------------------|---------------------|
| 1. | PD and Misc Amends | 2020/632 – 23/6/20 |
| 2. | PD Amend no 2 | 2020/755 – 20/7/20 |
| 3. | PD Amend no 3 | 2020/756 – 20/7/20 |
| 4. | Use Classes Amend | 2020/757 – 20/7/20 |
| 5. | PD Amend | 2020/1243 – 9/11/20 |
| 6. | PD Amend no 4 | 2020/1459 – 7/12/20 |

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Today's webinar

- AFU : PD rights (1,2,3,6)
- CF: Use Classes
- AFU: Caselaw: *Community Rights, Gluck*
- CF: Space Standards and proposed Use Class rights
- AFU: Summary and implications
- Questions and *Read the Regs*



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1. PD and Misc Amends 2020/632 – 23/6/20 In force 1/8/20

- new [Part 20](#) containing a new PD right, referred to as Class A, for the construction of new dwelling houses on top of detached blocks of flats.
- construction of up to 2 additional storeys of new dwelling houses immediately above the existing highest storey of a purpose built, detached block of flats (as defined in paragraph C).



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- exclusions - only applies *inter alia*
 - if the existing building has 3 or more storeys above ground
 - the extended building would not exceed 30m in height
 - highest part of the roof would not be increased by more than 7m. Class A
 - does not apply to *inter alia* a listed building or to a building on [article 2\(3\)](#) land or on a site of special scientific interest (SSSI)

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Prior Approval of *inter alia*:

- transport and highway impacts
- contamination risks,
- flooding risks,
- the external appearance of the building
- adequate natural light in all habitable rooms
- impact on the amenity of the existing building and neighbouring premises (including overlooking, privacy and loss of light).

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LPA allowed to refuse the application by reference to the subjects listed in paragraph A.2(1) (previous page),

- or the list of exclusions,
- or because of a failure by the developer to provide sufficient information to enable the LPA to determine whether the proposal complies with those matters.

LPA must have regard to NPPF as if planning app

LPA may impose conditions reasonably related to the subject matter of the prior approval.

No development without prior approval

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- Developers must provide details of the application site, the new dwelling houses and related works, floor plans and elevations.
- Any development authorised must be carried out in accordance with the details authorised
- Consultations, as appropriate, with the highway authority and the EA (on flood risk) and requirements for notifying members of the public.
- LPA must refuse prior approval if "*adequate natural light*" is not provided in all habitable rooms.

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2. PD Amend no 2 2020/755 – 20/7/20 In force 31/8/20

- Adds new Class AA to Part 1 (Development in curtilage of dwelling house – allows new storeys on existing dwelling house)
- Adds 4 new classes to (the new) Part 20 allowing new dwellings above a range of existing buildings



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Class AA

- enlargement of a single dwelling house
 - by the construction of two additional storeys, where the existing building consists of two or more storeys
 - otherwise one additional storey.
 - "Storey" excludes basements and any accommodation in the roof (NB re-create existing roof units?)



Exclusions

- Highest part of the roof of the extended building must not exceed an overall height of 18m.
- The increase in the height of the building must not exceed 3.5m (single storey), or 7m if more than one storey.
- Any additional storey may only be built on the "principal part" of the dwelling (defined)
- This PD right does not apply if one or more storeys have already been added to the original building



- Prior approval is required:
 - impact on the amenity of any adjoining premises, the external appearance of the dwelling house, and impacts on air traffic and "protected vistas".
 - NB not traffic
- Completed building may only be used as a single dwelling house (paragraph AA.2(2)).
- The structure of the prior approval procedure is similar to that previously described, but the detailed requirements have been adapted to reflect the nature of this PD right.



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Part 20: Class Aa (note lower case for clarity)

- Up to two additional storeys of new dwelling houses above the topmost storey of a detached 3+ storey building before 5/3/18 used for retail purposes (Use Classes A1 to A3), offices, a betting office, launderette or pay day loan shop ("commercial uses") or a mixture of such uses, with or without dwelling houses.
- Overall height of the completed development may not exceed 30m
- Prior Approval (plus noise, effect on trade)

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Part 20: Class Ab

- One additional storey of new dwelling houses (where the existing building is single storey), or otherwise up to two additional storeys, above a terraced building used for the same purposes as in Class AA.
- Overall height of the completed development may not exceed 18m.
- Prior approval (noise, impact on trade)

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Part 20: Class Ac

- One additional storey of new dwelling houses, (where the existing building is single storey), or otherwise up to two additional storeys, above a terraced building before 5/3/18 in use as a single dwelling.
- Overall height of the completed development may not exceed 18m.
- Prior approval



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Part 20: Class Ad

- One additional storey of new dwelling houses (where the existing building is single storey) or otherwise up to two additional storeys, above a detached single dwelling.
- Overall height of the completed development must not exceed 18m.
- Prior approval



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3. PD Amend no 3 2020/756 – 20/7/20 In force 31/8/20

- Paragraph ZA defines new PD rights for the demolition of
 - a single purpose-built block of flats,
 - or of a single detached building with use rights within the B1 Use Class (ie. offices, light industry or research and development),and its replacement by either a purpose-built block of flats or a detached dwelling house.



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Existing building must:

- have been constructed before 1 January 1990,
- have a footprint not exceeding 1,000sqm,
- a height not exceeding 18m,
- been vacant for at least 6 months immediately before the application for prior approval.
- not be a listed building, or an unlisted building in a conservation area,



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- The footprint of the new building must not fall outside of the footprint of the old and
- its height must not exceed 7m above the height of the old or an overall height of 18m, whichever lower.
- The number of storeys in the new building may not exceed the number of storeys in the old by more than two.
- Prior Approval (heritage, archaeology, design, l'scaping)



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6. PD Amend no 4 2020/1459 – 7/12/20
In force – 30/12/20

- Adds fire safety of external walls to list of prior approval matters for A, AA
- for prior approval apps submitted after 20/12/20





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Other misc matters

- Extended temporary uses incl LA markets
- Extended rights for takeaway food
- Prevention of demolishing venues
- Emergency-related development for Crown



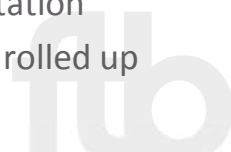
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R (Rights: Community: Action) v SSCLG [2020] EWHC 3073 (Admin), Divn Court

- Challenge to the July 2020 3 Orders (2,3,4)
- On grounds of:
 - Failure to do SEA
 - Failure to comply with PSED
 - Failure to have due regard to consultation
- Claim dismissed but on appeal to CA (NB: rolled up hearing)



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- SEA – held
 - Use classes define need for PP, do not give consent
 - PD orders not a framework for future development – instead a mechanism by which consent granted
 - Not a significant body of criteria about how to exercise power of development consent
 - Contrary decision would have wide implications

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PSED – held:

- Duty to consider (“due regard”) not give effect
- Sufficient assessment to meet that standard
- Not arguable

Consultation- held:

- Consultation paper pre-covid (2019) had occurred
- No requirement for technical consult
- Sufficient grounds to depart from promise to do so
- Legit expec arguable, rest not

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Gluck v SSCLG [2020] EWCA Civ 1756

- Power to extend time for prior approval can be extended by agreement
- Principle of, and duration of, extension must be agreed
- Agreement may be made orally and only later recorded in writing – and from one party only
- Quite loose and purposive interpretation of the Regulations.

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Some thoughts:

Prior approval – giveth just to take away??

But:

- Purpose of the new rights a factor?
- Requirement to treat as planning app with NPPF?
- Cumulative effect on townscapes?

Enforcement – will Ahmed principle be more widely used?

Affordable housing – a loss of smaller units?

Or will minimum standards be a ceiling not a floor?

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Changes to the Use Classes Order and the proposed changes to the GPDO re change of use from the new Class E to Class C3

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Use	Until 31/8/20	From 1/9/20
Shop no larger than 280sqm mostly selling essential goods, including food and at least 1km from another similar shop	A1	F.2
Shop (e.g. Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes)	A1	E
Financial & Professional Services (banks and building societies, professional services (other than health and medical services) and including estate and employment agencies)	A2	E
Café or restaurant (food and drink for consumption on the premises)	A3	E
Pub or drinking establishment incl with expanded food provision (not incl nightclubs)	A4	Sui generis
Takeaway (hot food for consumption off the premises)	A5	Sui generis
Office other than a use within A2	B1a	E
Research and development of products or processes	B1b	E
Industrial processes (which can be carried out in any residential area without causing detriment to the amenity of the area)	B1c	E

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Use	Until 31/8/20	From 1/9/20
General Industrial (other than falling within B1c now E)	B2	B2
Storage (incl open air storage) or distribution	B8	B8
Hotels, boarding and guest houses (excl hostels)	C1	C1
Residential institutions (Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres)	C2	C2
Secure Residential institutions (prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks)	C2a	C2a
Dwelling houses	C3a-c	C3a-c
HMO: use of a dwellinghouse by 3-6 residents	C4	C4
Non-residential institutions (clinics, health centres, creches, day nurseries, day centre)	D1	E
Non-residential institutions (Schools, non-residential education and training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts)	D1	F.1

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Use	Until 31/8/20	From 1/9/20
Assembly and leisure (cinemas, concert halls, bingo halls and dance halls)	D2	Sui generis
Assembly and leisure (gymnasiums, indoor recreations not involving motorised vehicles or firearms)	D2	E
Assembly and leisure (hall or meeting place for the principal use of the local community)	D2	F.2
Assembly and leisure (indoor or outdoor swimming baths, skating rinks and outdoor sports or recreations not involving motorised vehicles or firearms)	D2	F.2
Theatres; amusement arcades/centres or funfairs; launderettes; fuel stations, hiring, selling and/or displaying motor vehicles; taxi businesses; scrap yards, or a yard for the storage/distribution of minerals and/or the breaking of motor vehicles; hostels (providing no significant element of care); waste disposal installations for the incineration, chemical treatment or landfill of hazardous waste; retail warehouse clubs; nightclubs; casinos; betting offices/shops; pay day loan shops; other uses where they fall outside of defined limits	Sui generis	Sui generis

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1d) Application and transitional arrangements

- Apply in all England.
- Amendments in force since 1 Sept 2020.
 - As before, applies to land/buildings being used lawfully/with immunity.
 - As before, if land is not being used, it will need to be brought into use (e.g. through grant or implementation of PP) before it can benefit from use classes order (as amended e.g. wide Class E).
- Old use classes apply to planning apps submitted before 1 Sept 2020.
- Old use classes apply to any CIL charging schedule published prior to 1 Sept 2020 which sets differential rates by reference to different intended uses of development in UCO
- Until 31 July 2021, for the purposes of the GPDO (incl prior approval apps, Article 4 directions made before 1 Sept 2020 and the making, modifying, and revoking of an Article 4 direction) the old use classes will still apply to land.

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1e) Effects

- More flexibility: land can be more quickly and easily repurposed; Class E allows for a mix of uses because it provides for use, or part use, for all or any of the purposes set out therein.
- .Remaining constraints: existing conditions/s.106 excluding UCO, any need for PP for external works, licensing control system, private law- user restrictions in leases and restrictive covenants
- s.73 apps
- Article 4 directions (when new use classes are applied to GPDO)
- Conditions/s.106 excluding use classes order excluding UCO/GPDO
- Valuation
- Policy

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2a) Proposed new PD right for the change of use from Class E to C3- intro

- Consultation until 28 January 2021: 'Supporting housing delivery and public service infrastructure'
- Part of that is a proposed new PD right for the change of use from Class E (Commercial, Business and Service) to C3 (residential)
- To apply in England only
- Intended to come into effect on 1 August 2021. No accident as part of proposed PD right is merely transposing and therefore also consolidating pre-existing PD rights to change of use to C3 under GPDO (from use as shops, financial and professional services, offices, light industrial units) into amended GPDO in light of Use Classes Order law

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2b) Details

- New rights in proposed PD right: allows for whole/part of buildings used as cafes and restaurants, doctors' surgeries, clinics, creches and nurseries, day centres, and indoor sport and leisure facilities (such as gyms) to benefit from the change use to C3.
- No size limit on buildings that can benefit from proposed PD right
- Similar to other existing rights, the proposed PD right would not apply to:
 - SSSIs; LBs & curtilage; sites that are or contain scheduled monuments; safety hazard areas; military explosives storage areas and sites subject to an agricultural tenancy.
 - Article 2(3) land (AONB, s.41(3) WCA 1981, the Broads, National Park, World Heritage Site)
 - Except CAs, subject to allowance for prior approval of impact of the loss of the ground floor use to residential

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2c) Prior approvals

- Considerations
 - Similar to other PD rights for change of use to C3: flooding, transport, contamination
 - To ensure appropriate living conditions for future occupiers: impacts of noise from existing commercial premises, provision of adequate natural light in habitable rooms, fire safety
 - To ensure new homes are in suitable locations: impact on the intended occupiers from the intro of C3 use in an area the authority considers is important for heavy industry and waste management
- Not considerations: design, negative impact on neighbours, impact on other nearby commercial uses.
- Info accompanying prior approval app: detailed floor plans showing dimensions and proposed use of each room (including the position of windows), info necessary for the consideration of the matters for prior approval, and an appropriate fee (£96 per dwelling capped at £4800).

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Slide 2d)- Nationally described min space standards

- Dwellings under new PD right will have to meet nationally described min space standards (gross internal floor area) for all new PD dwellings in England (Reg.3 of the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020)
- Came into force on 3 Dec 2020, transitional arrangements mean it applies to any dwelling for which an application for prior approval is submitted on or after 6 April 2021
- Space standards:
 - Have a gross internal floorspace of at least 37sqm for a new one bed flat with a shower room (39m² with a bathroom); or
 - Nationally described space standard issued by the DCLG on 27th March 2015 (<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>)

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