

PLANNING BOARD

Item 6

Ward:

All

Portfolio:

Built Environment

FROM: Matt Williams
Planning Team Manager

Date: 5th June 2013

SUBJECT: New Permitted Development Rights – Prior Approval Determination Process

Summary:	<p>The Town & Country Planning (General Permitted Development) Order 1995 (as amended) gives deemed planning permission for a range of different types of development (aka 'permitted development rights'). Certain permitted development rights are, however, conditional on the Local Planning Authority's (LPA) prior approval (notably agricultural and telecommunications development).</p> <p>Further permitted development rights came into force on 30th May 2013 although many are conditional on the need to seek the LPA's prior approval. However, unlike the current prior approval arrangements, there is a requirement for the LPA to undertake consultation and there will inevitably be conflict between case officer recommendations and representations made.</p> <p>If a determination is not made within a certain timescale (6 or 8 weeks, depending on the proposal), planning permission is automatically granted for the proposed development and it is therefore necessary to introduce a specific prior approval determination process as an amended to the adopted 'Guide to the Determination of Planning Applications'.</p>
Recommendation:	It is recommended that the determination of applications for prior approval is delegated to the Planning Team Manager.
Links to Priorities:	Delivery of regulatory service.
Impact on Service Plans:	Within existing resource.
Financial Implications:	See Legal implications.
Legal Implications:	Planning permission is automatically granted for proposals where a prior approval is not determined within 6 or 8 weeks, and there is a risk of judicial review or maladministration if the determination process is not amended to ensure that consultation

	responses are fully taken into account.
Crime and Disorder Implications:	None identified.
Equalities Implications:	None identified.
Risk Assessment:	Not applicable.

1.0 BACKGROUND

- 1.1 From 30th May 2013, the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 introduces new permitted development rights which enables certain development to be carried out without the need to submit an application for planning permission to the Local Planning Authority (LPA). A summary of these new rights is provided in paragraphs 2.1 – 2.13 of this report.
- 1.2 Many of the new permitted development rights are conditional on the developer seeking the LPA's prior approval but, unlike other existing types of application for prior approval, the LPA are obliged to undertake certain consultations. Any representations then to be taken into account by the LPA before deciding whether to give or refuse prior approval. There is no fee required with these applications.
- 1.3 Importantly, planning permission is automatically granted for the proposed development if an application for prior approval is not determined within 6 or 8 weeks, and it is therefore essential that there is an efficient decision-making process in place to avoid developers receiving automatic permission, particularly when objections are received which would place an unacceptable level of risk of judicial review or formal complaint to the Council and Local Government Ombudsman.

2.0 SUMMARY OF NEW PERMITTED DEVELOPMENT RIGHTS

A Glossary of use classes and abbreviations referred to in this summary is on page 8 of this report)

Part 1 (Householder, Class A, Rear Extensions)

- 2.1 Until 30th May 2016, for a dwellinghouse not in a CA, AONB or SSSI, single storey rear extensions which do not exceed 4 metres in height can extend beyond the original rear wall of a detached dwelling by up to 8 metres, or 6 metres for non-detached dwellings. This is subject to a **6-week prior approval process** to assess the impact upon amenities of any neighbouring properties if objection/s are received.

Part 2 (Minor Operations, Means of Enclosure for Schools)

- 2.2 Schools, including those created under the new Class K (see below), can erect or construct any gate, fence, wall or means of enclosure up to two metres above ground level adjacent to the highway, provided that any part of the gate, fence, wall or means of enclosure which is more than one metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons.

Part 3 (Change of Use)

Amendment to Class B

- 2.3 The amount of building floor space that can be changed from B8/B2 to B1, or from B1/B2 to B8, has increased from 235 square metres to 500 square metres. This is not subject to a prior approval process.

New Class J (Offices to Residential)

- 2.4 Change of use of a building and land from Class B1(a) to a use falling within Class C3 except where:
- the building was not used for a use falling within Class B1(a) immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use;
 - the Class C3 use begins after 30th May 2016;
 - the site is or forms part of a safety hazard area;
 - the site is or forms part of a military explosives storage area;
 - the building is a listed building or a scheduled monument.

This is subject to an **8-week prior approval process** to assess the following:

- transport and highways impacts of the development;
- contamination risks on the site; and
- flooding risks on the site

New Class K (Change of Use to a State-Funded School)

- 2.5 Change of use of a building and any land within its curtilage from Classes B1, C1, C2, C2A or D2 to a state-funded school within Class D1 except where:
- the site is or forms part of a military explosives storage area;
 - the site is or forms part of a safety hazard area;
 - the building is a listed building or a scheduled monument.

This is subject to an **8-week prior approval process** to assess the following:

- transport and highways impacts of the development;
- contamination risks on the site; and
- flooding risks on the site

New Class L (Change of State-Funded School to Previous Use)

- 2.6 Development consisting of a change of use of land from a use permitted by Class K to the previous lawful use of the land.

New Class M (Change of Use of Agricultural Buildings to Flexible Uses)

- 2.7 Change of use of an agricultural building and any land within its curtilage to any use falling within Classes A1, A2, A3, B1, B8, C1 or D2 except where:
- the building has not been solely in agricultural use since 3rd July 2012 or, for buildings first brought into use after 3rd July 2012, for ten years;
 - the cumulative floor space of buildings within an original agricultural unit involves a change of use in excess of 500 square metres;
 - the site is or forms part of a military explosives storage area;
 - the site is or forms part of a safety hazard area;
 - the building is a listed building or a scheduled monument.

Conditions

- A site which has changed use under Class M may, subject to prior notification/approval, subsequently change use to another use falling within one of the use classes specified in Class M.
- After a building/land has changed use under Class M, it is to be treated as having a sui generis use.
- After a building/land has changed use to Class B1 (a) under Class M, the permitted development rights granted by Part 41 of the Order apply (extension or alteration of an office building).
- Before change of use commences in relation to buildings where the cumulative floor space does not exceed 150 square metres, the developer shall provide the following information to the LPA (**prior notification**):
 - the date the site will begin to be used for any of the flexible uses
 - the nature of the use or uses, and
 - a plan indicating the site and which buildings have changed use.
- Before change of use commences in relation to buildings where the cumulative floor space is between 151 and 500 square metres, there is an **8-week prior approval process** to assess the following:
 - transport and highways impacts of the development;
 - noise impacts of the development;
 - contamination risks on the site; and
 - flooding risks on the site.

Part 4 (Temporary Buildings and Uses)

New Class C (Use as a State-Funded School)

2.8 The use of a building and any land within its curtilage as a state-funded school for a single academic year except where:

- the existing use of the site is not a class of use specified in the Schedule to the Use Classes Order;
- the site is or forms part of a military explosives storage area;
- the site is or forms part of a safety hazard area;
- the building is a listed building or a scheduled monument.

Conditions

- the site must be approved for use as a state-funded school by the relevant Minister;
- the relevant Minister must notify the LPA of the approval and of the proposed opening date of the school (**prior notification**)
- the site is to be used as a state-funded school and for no other purpose, including
- any other purpose within Class D1 (non-residential institutions)
- the permission is granted for one academic year and it may be used only once in relation to a particular site;
- the site reverts to its previous lawful use at the end of the academic year.

New Class D (Temporary Permitted Use Class Changes)

2.9 Change of use of a building and any land within its curtilage from A1, A2, A3, A4, A5, B1, D1 or D2 to a flexible use falling within either Class A1, A2, A3 or B1 for a single continuous period of up to two years beginning on the date one of the flexible uses, except where:

- the change of use relates to more than 150 square metres of floor space
- the site has at any time in the past relied upon the permission granted by Class D
- the site is or forms part of a military explosives storage area;
- the site is or forms part of a safety hazard area;
- the building is a listed building or a scheduled monument.

Conditions

- Before the flexible use begins, the developer must first notify the LPA when the flexible use begins (**prior notification**).
- During the two year period, the site shall only be used for one of the flexible uses.
- The site may at any time during the two year period change use to a use falling within a different flexible use subject to prior notification.
- During the period of flexible use, the site retains the use class it had before changing to any of the flexible uses under Class D;
- The site reverts to its previous lawful use at the end of the period of flexible use.

Part 8 (Industrial and Warehouse development, Class A)

2.10 Until 30th May 2016, the floor space of any new building erected increases from 100 to 200 square metres where not in a CA, AONB or SSSI – subject to other existing criteria.

2.11 Until 30th May 2016, original buildings can be extended by 10% in a CA or AONB, (status quo), 25% in respect of development in a SSSI (status quo) and 50% in any other case (was 25%); OR 500 square metres in respect of development in a CA or AONB (status quo) or 1,000 square metres in any other case (status quo) whichever is the lesser – subject to other existing criteria.

Conditions

- The development shall be completed on or before 30th May 2016.
- The developer shall notify the LPA of the completion of the development as soon as reasonably practicable after completion in writing and shall include (**prior notification**):
 - the name of the developer,
 - the address or location of the development,
 - a description of the development, including measurements and calculations relevant to the PD requirements, and
 - the date of completion

Part 24 (Telecommunications Development)

2.12 Prior approval is not required for the construction, installation, alteration or replacement of a telegraph pole, cabinet or line, in connection with the provision of fixed-line broadband in a CA or AONB, provided that the development is completed on or before 30th May 2018.

Part 32 (schools, colleges, universities and hospitals)

- 2.13 For the purposes of Part 32, “school” includes a building permitted by the new Class C of Part 4 to be used temporarily as a school.

Part 41 (Office Buildings, Class A)

- 2.14 Until 30th May 2016, original office buildings not within a SSSI can be extended by 50% or 100 square metres, whichever is the lesser (instead of 25% or 50 square metres) – subject to other existing criteria.

Conditions

- The development shall be completed on or before 30th May 2016.
- The developer shall notify the LPA of the completion of the development as soon as reasonably practicable after completion in writing (**notification**) and shall include:
 - the name of the developer,
 - the address or location of the development,
 - a description of the development, including measurements and calculations relevant to the requirements, and
 - the date of completion.

Part 42 (Shops or Catering, Financial or Professional Services Establishments)

- 2.14 Until 30th May 2016, original shops or professional services establishments not within a SSSI can be extended by 50% or 100 square metres, whichever is the lesser (instead of 25% or 50 square metres).
- 2.15 Until 30th May 2016, development within two metres of the boundary is permitted, providing it does not adjoin land or a building within Class C or in a CA, AONB or SSSI.

Conditions

- The development shall be completed on or before 30th May 2016.
- The developer shall notify the LPA of the completion of the development as soon as reasonably practicable after completion in writing (**notification**) and shall include:
 - the name of the developer,
 - the address or location of the development,
 - a description of the development, including measurements and calculations relevant to the requirements, and
 - the date of completion.

3.0 PROPOSED PRIOR APPROVAL DECISION MAKING PROCESS

- 3.1 At present, it takes up to a week to check and register an application for prior approval and three weeks (minimum) must then be allowed for consultation. This then leaves insufficient time for representations to be considered and for the application determined in accordance with the current process which can involve consultation with Ward Members, consideration by the Chair and Vice-Chair and referral to the Planning Board.
- 3.2 If applications for prior approval are determined in accordance with the current process, it is highly likely that some applications will not be determined within the 6/8 week period, and developers will receive automatic permission as a result. If

objections have been received where automatic permission is granted, there is a significant risk of judicial review or maladministration which could result in potentially significant costs to the LPA. It is, however, considered that the risks would be minimised if the Board were to delegate the determination of applications for prior approval to the Planning Team Manager.

4.0 RECOMMENDATION

- 4.1 It is recommended that the Planning Board delegates the determination of applications for prior approval to the Planning Team Manager.
- 4.2 There will be resource implications to the determination of applications for prior approval, particularly as these applications do not attract a fee, and this will be reviewed after three months. The outcome of this review will be reported to the Planning Board.

Background Papers

Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

Glossary of Use Classes and Abbreviations

Abbreviations

CA	Conservation Area
AONB	Area of Outstanding Natural Beauty
SSSI	Site of Special Scientific Interest

Use Classes

A1	Shops
A2	Financial and professional services
A3	Restaurants and cafés
A4	Drinking establishments
A5	Hot food takeaways
B1	Business
	(a) offices
	(b) research and development
	(c) light industry
B2	General industrial
B8	Storage or distribution
C1	Hotels
C2	Residential institutions
C2A	Secure Residential Institution
C3	Dwellinghouses
C4	Houses in multiple occupation
D1	Non-residential institutions
D2	Assembly and leisure