

REPORT TO: Environment and Urban Renewal Policy
and Performance Board

DATE: 30th September 2020

REPORTING OFFICER: Strategic Director – Enterprise,
Community and Resources

PORTFOLIO: Physical Environment

SUBJECT: Proposed Changes to National Permitted
Development Rights

WARDS: Borough wide

1.0 PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to update the Board on imminent changes to planning regulations which give greater freedoms for certain forms of development to be undertaken without planning permission.
- 1.2 It should be noted that there is a legal challenge to both the General Permitted Development Order (GPDO) and Use Classes Order (UCO) changes. The High Court has directed that this action will be heard in a “rolled-up” hearing in the first half of October. This means that the Court will deal with both the application for leave to proceed and with the substantive claim at the same time. This is a procedure that is sometimes adopted in cases of urgency. The legal challenge to the legislation is serious, and the grounds on which this challenge is based raise important legal issues, especially in relation to the failure to carry out a Strategic Environmental Assessment. The alleged failure to take proper account of the responses to consultation, or to consider the government’s own specialist advice, also raises a serious *Wednesbury* (unreasonableness) issue.

2.0 RECOMMENDATION: That

- 2.1 **The Board note the proposed changes to national permitted development rights that allow certain types of development without the need to apply for planning consent.**

3.0 SUPPORTING INFORMATION

- 3.1 Many forms of home extensions and alterations, extensions to commercial premises, alongside a wide range of changes in the use of buildings (and land), and the undertaking of specific development (such as the erection of certain telecommunication masts and associated equipment), do not require the submission and approval of a planning application before work can take place. This is because these certain

types of development have deemed planning consent from Parliament in the form of the “General Permitted Development Order”

- 3.2 The above is as a consequence of national planning regulations granting explicit “Permitted Development Rights”; with the result that the development can take place without the need for a planning permission from the Council, or in some instances a planning-light, “Prior Approval” process, must be followed, with the Council only having the ability to influence certain limited details.
- 3.3 New planning regulations came into force on 31 August 2020 to further extend national Permitted Development Rights, as described below. The Government’s aim through these changes is to “*boost housing delivery*”.
- 3.4 *Extensions on top of existing homes.*
- 3.5 The new Regulations introduce a new class of Permitted Development that allows:-
 - the construction of up to two additional storeys (up to an additional 7m high) on a dwelling which has two or more storeys, and;
 - the construction of one additional storey (up to 3.5m high) on a dwelling that has one storey (along with any engineering operations necessary to facilitate the development), subject to a Prior Approval process.
- 3.6 The right is subject to obtaining Prior Approval from the Council, for the consideration of:-
 - the impact on the amenity of neighbouring premises, including overlooking, privacy and overshadowing;
 - the design, including the architectural features of the principal elevation of the house, and of any side elevation which fronts a highway, and;
 - the impacts a taller building may have on air traffic and defence assets.
- 3.7 The new rights do not apply to older or recently constructed buildings (buildings constructed before 1st July 1948 or after 28th October 2018 are excluded), or buildings in a Conservation Area. Also, for semi-detached and terrace dwellings, an extension cannot exceed the height of an adjoining property, or a property in the same terrace by more than 3.5 metres.
- 3.8 *Additional homes on top of existing commercial or mixed use buildings.*
- 3.9 The construction of up to two additional storeys of dwellings on top of buildings in commercial or mixed use, or existing dwelling houses will now be classed as Permitted Development; subject to a Prior Approval

process. The additional dwellings must be self-contained flatted accommodation and not a House in Multiple Occupation.

- 3.10 The commercial uses above which extensions can take place (including a mixture of such uses, or one combined with a residential use) are: shops; financial and professional services; restaurants and cafes; certain offices; betting offices; pay day loan shops, and; launderettes.
- 3.11 Again, the new rights do not apply to older or recently constructed buildings (buildings constructed before 1st July 1948 or after 28th October 2018 are excluded). Listed Buildings or buildings in a Conservation Area are also excluded.
- 3.12 For extensions above existing dwellings:-
- the increase in height is limited to 7m, and;
 - for semi-detached and terrace dwellings, an extension cannot exceed the height of an adjoining property, or a property in the same terrace by more than 3.5 metres.
- 3.13 For extensions above commercial buildings:-
- the height increase is limited to 7m, and;
 - the overall height of the building cannot exceed 30m on detached buildings and 18m on semi-detached and terrace buildings.
- 3.14 The Prior Approval process to be introduced allows the local planning authority to consider a fairly comprehensive range of matters, including:-
- Appearance;
 - transport impacts;
 - the amenity of existing residents and future occupants, and;
 - the impact of the change on existing businesses.
- 3.15 *The demolition of buildings and construction of new homes in their place.*
- 3.16 The demolition of a detached purpose-built detached block of flats, or a detached building used as an office, for light industry or research and development¹ and its replacement with a purpose built detached block of flats or a detached dwelling house (including some additional operations such as provision of services, works to enable access and egress etc.), will be classed as Permitted Development, subject to a Prior Approval process.
- 3.17 However, the above changes do not apply to buildings:-
- constructed before 1 January 1990;
 - that are nationally listed or in a conservation area;
 - with a footprint of more than 1000sqm, or;
 - that have been entirely vacant for less than six months before the application is made.

¹ All uses falling within Use Class B1 - Business

- 3.18 Also, a replacement building cannot be larger than the footprint of the building it replaces. However, it can be up to seven metres higher to accommodate up to two additional residential storeys, within a final overall maximum height of 18m.
- 3.19 The Prior Approval process allows for a fairly comprehensive range of matters to be considered by the Council, encompassing:-
- the transport and highways impacts;
 - contamination and flooding risks;
 - the impact of noise on the future residents;
 - design and external appearance of the new building;
 - the adequacy of natural light in all habitable rooms of each new dwelling house;
 - the impact of the introduction of residential use into an area, and;
 - the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light.
- 3.20 Unlike some other forms of Prior Approval, for the classes of new Permitted Development Rights described above there is no deemed (default) approval should the Council fail to make a timely decision (within 8 weeks).
- 3.21 Councils are also required to only have regard to national planning guidance (the National Planning Policy Framework) and not to their own local planning policies – which may in some instances be contrary to and seeks to resist or shape the development to be granted by the new Permitted Development Rights.

4.0 POLICY IMPLICATIONS

- 4.1 A significant quantity of the housing stock in Halton, given its age, will be eligible to use the new Permitted Development Rights to extend upwards. However, the necessity to obtain separate approval under the Building Regulations remains and the cost (and significant disruption) of adding an additional storey may discourage many households from pursuing such an option. The Borough's proportion of social housing stock is also likely to impact upon take-up of this new 'right', due to this sector being rent stock, rather than home owners who would capture any uplift in the value of their property.
- 4.2 Consequently, a rush of such schemes in Halton is not expected, although developers could also see an opportunity to buy up homes and extend them, with the Council having only limited control over the appearance and impacts of the resultant extension. These may be of particular concern in streets demonstrating some uniformity and rhythm of building design and appearance, which would be significantly disrupted by the extensions allowed by the new Permitted Development Rights.

- 4.3 However, it is reasonable to assume that the greatest interest (in extending homes upwards) will be in the most affluent areas of the Country, in London and the south east, where the property values are high enough to make these extensions viable.
- 4.4 The extension above vacant business buildings for residential purposes may also be attractive for the re-purposing of office buildings in the light of the likely reduced requirements for some office and business spaces, with the shift to more home working – if this is sustained. However, again a rush of schemes in Halton is not considered likely given the nature of such buildings across the Borough, which are unlikely to be viable to extend in this manner, or attractive to occupants if located at a distance from facilities such as shops and schools.
- 4.5 In the event that such changes are considered locally to result in significantly negative consequences (although this is not currently anticipated), the Council has the option of restricting the Permitted Development Right in parts of the borough by introducing additional planning controls (an “Article 4 direction”), meaning that the changes require planning permission. However, such a direction would require ratification from the Secretary of State.
- 4.6 It is also worthwhile highlighting that under the new Permitted Development Right and need for Prior Approval, the Council continues to assess a proposal's design quality. In terms of extensions to existing homes, this includes the architectural features of the house's principal elevation and the impact on neighbouring properties. It is understood that this strand of the new Prior Approvals has been introduced by Government in response to criticisms about the design quality of schemes built under earlier office-to-residential Permitted Development rights, such as proposed at East Lane House in Halton Lea, Runcorn.
- 4.7 The new Permitted Development Rights are similar to an outline planning permission, which means that the principle of development is not a consideration for the Council. This will be of particular significance in relation to dwellings in the Green Belt where an extension's impacts on the openness (of the Green Belt) is currently a key part of the consideration of the related planning application. For developments which in future will only need to follow the Prior Approval process, this will no longer be a consideration and as a consequence, larger obtrusive extensions in the Green Belt may result.
- 4.8 Any extensions creating additional residential accommodation through these additional rights cannot be subject to any s106 agreement – to pay for, for example, highway works or the provision of Public Open Space - or require the provision of affordable housing. Furthermore, a smaller application fee (than for a planning application) will be payable to the Council. Consequently, any developments coming forward via this route will not contribute towards mitigating their impacts on local infrastructure. Nevertheless, they will require careful consideration and

scrutiny by Council officers, primarily within the Planning Service, whilst not supported by a fee to cover the cost of doing so.

- 4.9 Lastly, the introduction of further Prior Approvals as a route for a wider range of developments, further dilutes local decision-making from Halton and creates a more complex planning system for local communities to understand. Based upon experience of the operation of Prior Approval processes already in place, many communities find Prior Approval applications difficult to understand.

5.0 OTHER IMPLICATIONS

- 5.1 There are no other implications arising from the subject of this report.

6.0 RISK ANALYSIS

- 6.1 The key risks, as outlined above, are reduced controls on development and reduced planning fees. Prior Approval application will still require careful consideration and scrutiny by Council officers, primarily within the Planning Service

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 There are no equality and diversity implications arising from the subject of this report.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
<u>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020</u>	Planning & Transport Strategy, Municipal Building	Alasdair Cross
<u>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020</u>		