

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 791

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2012 (“the 2012 Regulations”) to prescribe the fees payable to local planning authorities for applications for prior approval relating to the permitted development rights set out below.
- 2.2 Prior approval for the enlargement of a dwellinghouse by construction of additional storeys made under Class AA of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”): a fee of £96.
- 2.3 Prior approval for the change of use from Commercial, Business and Service use (Class E) to residential use (Class C3) under Class MA of Part 3 of Schedule 2 of the General Permitted Development Order: a fee of £100 per dwellinghouse.
- 2.4 Prior approval for erection, extension or alteration of university buildings made under Class M of Part 7 of Schedule 2 of the General Permitted Development Order: a fee of £96.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England only.
- 3.3 This instrument amends the 2012 Regulations which apply in relation to England only (see Regulation 1(2) of the 2012 Regulations). The instrument does not have minor or consequential effects outside of England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Orders Nos. 83P and 83T, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; and the Scottish Parliament if equivalent

provision in relation to Scotland were included in an Act of the Scottish Parliament; and the Welsh Parliament if equivalent provision in relation to Wales were included in an Act of the Welsh Parliament.

- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to planning, which is within the devolved legislative competence of the three devolved legislatures. [Specifically, the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedule 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within Part 1 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the Welsh Parliament (see section 108 of that Act). Under section 303 of the 1990 Act the Welsh Ministers can, for example, make provision in regulations for the payment of a fee or charge to a local planning authority in respect of the performance of any function or anything calculated to facilitate or is conducive or incidental to the performance of such function (see subsection (1)).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 Christopher Pincher, the Minister of State for Housing, has made the following statement regarding Human Rights:

“In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”) grants planning permission for a range of specific 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 for development within the scope of the permitted development right. However, in some cases permitted development rights require the local planning authority to approve certain key planning matters before the development can proceed. This is known as “prior approval” for which a fee can be charged.
- 6.2 The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020 (S.I 2020/755) (“the 2020 Order”) introduced a new permitted development right under Class AA of Part 1 of Schedule 2 of the General Permitted Development Order. This allows existing houses to be extended to provide

more living space by constructing additional storeys. The 2020 Order came into force on 31 August 2020.

- 6.3 The Town and Country Planning (General Permitted Development Etc.) (England) (Amendment) Order 2021 (S.I 2021/428) (“the 2021 Order”) introduced a new Class MA permitted development right to allow for the change of use from Commercial, Business and Service use (Class E) to residential use (Class C3) in Part 3 of Schedule 2. It also expanded the scope of an existing permitted development right under Class M of Part 7 of Schedule 2 of the General Permitted Development Order to allow for more development by existing schools, colleges, universities, hospitals and, for the first time, prisons. A prior approval process was also introduced by the 2021 Order specifically for the development of university buildings under this permitted development right. The 2021 Order came into force on 21 April 2021 in respect of applications for prior approval for the development of university buildings, while applications for prior approval for the change of use from Commercial, Business and Service use (Class E) to residential use (Class C3) under Class MA can be made from 1 August 2021.
- 6.4 Planning fees in England are set nationally by Government in the 2012 Regulations. This instrument amends regulation 14 of the 2012 Regulations to introduce a fee where applications for prior approvals are required for the new permitted development rights in the General Permitted Development Order introduced by the 2020 Order and 2021 Order.

7. Policy background

What is being done and why?

- 7.1 Permitted development rights have an important role to play in the planning system. They provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through a light-touch prior approval process. Permitted development rights can incentivise certain forms of development by providing developers with a greater level of certainty, within specific planning controls and limitations. Individual rights provide for a wide range of development and include measures to incentivise and speed up housing delivery.
- 7.2 This instrument introduces fees for applications for prior approval for the permitted development set out below.

Prior approval for permitted development right to extend existing homes by construction of additional storeys

- 7.3 Following the consultation *Planning Reform: Supporting the high street and increasing the delivery of new homes* in October 2018, the 2020 Order introduced a new permitted development right to allow existing homes which are detached, semi-detached or in a terrace to be extended upwards to provide additional living space by constructing additional storeys.
- 7.4 The permitted development right is subject to obtaining prior approval from the local planning authority, which will consider certain matters relating to the proposed construction of additional storeys. These are 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 and on protected vistas in London.

- 7.5 The permitted development right came into force on 31 August 2020. Currently, applications for prior approval for this permitted development right are not subject to a fee despite the resource requirements of local authorities to determine them.
- 7.6 In considering an appropriate fee level for applications for prior approval of such permitted development, it is recognised that the additional matters for local authorities to consider have similar resource implications as prior approvals for larger home extensions. Therefore, a fee of £96 is being introduced. This is less than the fee that a planning application would cost (£206) had the permitted development right not been introduced.
- 7.7 Consistent with other applications for prior approval to extend existing homes, Regulation 2(3) of this instrument provides for applicants to be exempt from paying the prior approval fee in two certain circumstances. Firstly, where a corresponding application for planning permission on the same site is made at the same time as the application for prior approval, and secondly where the development which is the subject of the application for prior approval consists of operations designed to provide access to disabled persons or provide facilities to secure that person's greater safety, health or comfort.

Prior approval for permitted development right to change use from the Commercial, Business and Service use class to residential use class

- 7.8 To deliver on the Government's commitment to support mixed and flexible high streets, stimulate economic recovery in response to the Covid-19 pandemic and deliver additional homes more easily, a new permitted development right to allow for the change of use from the Commercial, Business and Service use (Class E) to residential use (Class C3) will come into force on 1 August 2021.
- 7.9 The Government consulted on the introduction of the permitted development right in *Supporting housing delivery and public service infrastructure* in December 2020.
- 7.10 The permitted development right will be subject to prior approval by the local planning authority in respect of: flooding; transport impacts of the development, particularly to ensure safe site access; contamination; impacts of noise from existing commercial premises; adequate natural light in all habitable rooms; the impact of the loss of ground floor Commercial, Business and Service use on the character and sustainability of a conservation area; impact on future residents from the introduction of residential use in an area the authority considers is important for heavy industry, waste management, storage and distribution, or a mix of such uses; and impact of the loss of health centres and registered children's nurseries on the provision of local services.
- 7.11 Due to the demand on the resources of local authorities to assess the applications for prior approval it is considered appropriate to set a fee that reflects the level of the work required, but is less than the fee of £462 per dwellinghouse for a planning application for change of use to new dwellings. It is considered that a fee of £100 per dwellinghouse meets the right balance between encouraging development and meeting the costs of determining such applications.

- 7.12 Structuring the fee for this type of prior approval by reference to the number of dwellinghouses in the development proposed by the application is designed to be consistent with the established fee structure in the 2012 Regulations for other types of planning applications and applications for prior approval under Part 20 of the General Permitted Development Order for the construction of new dwellinghouses.
- 7.13 It is recognised that there are similarities between the application for prior approval for the change of use from Commercial, Business and Service use (Class E) to residential use (Class C3) under Class MA of Part 3 and applications for prior approval under Part 20 of the General Permitted Development Order for the construction of new dwellinghouses. It is therefore considered appropriate that, just as for those applications as well as certain full applications, applicants have a ‘second application’ exemption from payment of this application for prior approval. This exemption only applies where a fee was paid for an earlier application for prior approval for the same change of use and where the second application is made by the same applicant. This is conditional on it being in respect of the same development on the same site and within 12 months from when the earlier application for prior approval was determined or, where an earlier application for prior approval was withdrawn, 12 months from the date when that application was received by the local planning authority.

Prior approval for permitted development right for erection, extension or alteration to university buildings

- 7.14 In his 30 June 2020 economic speech, the Prime Minister announced ‘Project Speed’. Project Speed focuses on the delivery of important infrastructure and specifically the delivery of schools, colleges, hospitals and prisons. The 2021 Order expanded the existing permitted development rights for the erection, extension or alteration of school, college, university or hospital and prison buildings. This has the effect of giving additional flexibility to extend existing public service infrastructure as part of Project Speed.
- 7.15 Due to the concerns raised during the consultation *Supporting housing delivery and public service infrastructure* in December 2020 on the potential impacts of extensions to university buildings, particularly given the often city centre location and large scale of universities, a prior approval process has been introduced specifically for the erection, extension or alteration of university buildings.
- 7.16 Applications for prior approval for the erection, extension or alteration of university buildings will be required to consider transport and highways impacts, the design and external appearance of the development and the impact of the development on heritage and archaeology.
- 7.17 A £96 fee for these applications for prior approval is considered an appropriate fee to charge. The fee reflects the administrative costs to local planning authorities in assessing these types of application and is the same level as the fee for other applications for prior approval where a similarly limited number of additional matters are required to be considered.

Transitional Provision and Commencement

- 7.18 The fees introduced by this instrument will be payable in respect to applications made on or after the date this instrument comes into force. It will have no retrospective effect. Regulation 1 makes provision for a 28 day period after this instrument is made

before it comes into force which is intended to provide time for local planning authorities to put the mechanisms and communications in place for applicants to be made aware of and pay the newly introduced fees. We will notify local authorities to inform them when this instrument is made and the date from when the newly introduced fees can be charged.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The 2012 Regulations consolidated 12 statutory instruments dating back to 1989. This is the seventh amending instrument to the 2012 Regulations. There are no current plans for a consolidation.

10. Consultation outcome

Prior approval for permitted development right to extend existing homes by construction of additional storeys

10.1 The proposal for a new permitted development right to allow the extension of existing homes by the construction of additional storeys was included in the *Planning Reform: supporting the high street and increasing the delivery of new homes* consultation published in October 2018. A summary of responses to the consultation and the government's response was published in May 2019 and is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799220/Government_Response_to_Planning_Reform_Consultation.pdf

10.2 There were 281 responses to the proposal that existing homes should benefit from a permitted development right to extend upwards to provide additional living space, more than half of which were not supportive. Those supporting the proposal sought generous limits, including allowing development higher than neighbouring properties while concerns raised included possible adverse impacts on neighbour amenity and the character of residential areas, an increase in parking, a loss of bungalows and the creation of homes in multiple occupation from family homes.

10.3 These views have shaped the permitted development right and we have sought to address concerns where possible through the prior approval process introduced by the 2020 Order. Whilst the fee of £96 did not form part of the 2018 consultation, it is considered that it reflects the resourcing impacts on local planning authorities in processing such applications for prior approval and may help to address some of the concerns raised in consultation by enabling local planning authorities to appropriately resource the scrutiny of prior approval applications.

Prior Approval for permitted development right to change use from the Commercial, Business and Service use class to residential use class

10.4 The proposed permitted development right for the change of use from Commercial, Business and Service use (Class E) to residential use (Class C3) was part of the consultation *Supporting housing delivery and public service infrastructure*

consultation in December 2020. The government response to this consultation was published in March 2021 and is available at:

<https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure/outcome/supporting-housing-delivery-and-public-service-infrastructure-government-response>

- 10.5 The consultation asked whether an application for prior approval for the proposed change of use should attract a fee per dwellinghouse. Among the 674 responses to this question there was strong support for the introduction of a fee per dwellinghouse. The vast majority of local authorities agreed that the proposed permitted development right should attract a fee per dwellinghouse. In particular, it was felt that this would be more of a reflection of the costs of determining such applications. Private sector responses, which includes developers and builders etc, similarly supported a fee, noting that it would support the costs of local planning authorities.
- 10.6 The consultation also asked whether a fee should be set at £96. The 641 responses to this question were more mixed, but broadly the comments were in favour of a higher fee to that proposed ranging from £100 (rounded up), £206 (same as that for an extension to a dwellinghouse) and £462 (same as that for a planning application). There were varied views on whether there should be a maximum fee set or not.
- 10.7 Overall, the analysis of responses showed that there was strong support, including from local planning authorities and developers, for the introduction of a fee per dwellinghouse to help to meet the costs of local planning authorities. While there was support for a higher fee, the Government believes a fee of £100 per dwellinghouse meets the right balance between encouraging development and meeting the costs of determining such applications.

Prior approval for permitted development right for erection, extension or alteration to university buildings

- 10.8 The proposed permitted development for public service infrastructure, including universities, also formed part of the consultation *Supporting housing delivery and public service infrastructure consultation* in December 2020.
- 10.9 Through this consultation, concerns were raised regarding the impact of the expanded permitted development right given to universities considering their scale, scope of footprint and often sensitive locations. We have sought to address these concerns through the introduction of a prior approval process under the 2021 Order specifically in the case of universities that will allow for local consideration of the impact on design, heritage and archaeology, and highways and transport. Whilst the proposed fee of £96 did not form part of this consultation, it is considered that it reflects the resourcing impacts on local planning authorities in processing an application for prior approval and may help to address some of the concerns raised in the 2020 consultation by enabling local planning authorities to appropriately resource the scrutiny of prior approval applications.

11. Guidance

- 11.1 The Government has published guidance on Fees for Planning Applications at: <https://www.gov.uk/guidance/fees-for-planning-applications>. This will be updated and made available following the coming into force of this instrument.

12. Impact

- 12.1 An assessment of the overall impact of the 2020 Order has been completed. A copy of that assessment of impact has been published at:
https://www.legislation.gov.uk/ukia/2020/79/pdfs/ukia_20200079_en.pdf
- 12.2 A full Regulatory Impact assessment of the 2021 Order, including the introduction of a fee for applications for prior approval, will be produced in due course and submitted for independent verification against any Business Impact Target set under the requirements of the Small Business, Enterprise and Employment Act 2015. This impact assessment will also consider the prior approval fee in respect of extending homes to create additional living space.
- 12.3 The impact of the prior approval process on businesses, charities or voluntary bodies is that it provides greater planning certainty and reduces the cost and time burden of the requirement to submit a full planning application. The proposed prior application fees represent a reduction compared to the fee for a full planning application.
- 12.4 The impact on local planning authorities is a reduction in administrative cost and time of processing planning applications, where the development would otherwise have come forward through a planning application. The new fees for applications for prior approval reflect the administrative costs and time to local authorities for processing these applications. This will mitigate the impact on local planning authorities through the loss of full planning application fees which, now that the relevant permitted development right is introduced, will not be payable.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the decision for no specific action is that the impact does not fall more heavily on small businesses than on any other applicants for planning consent, nor is it anticipated that the fees will have a significant effect on the costs for business.

14. Monitoring & review

- 14.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1 July 2015 are reviewed 5 years after their commencement to review whether the objectives can be achieved with less regulations. The Government continues to keep the planning system and associated fees under review and maintains discussion with local planning authorities and users of the planning system.

15. Contact

- 15.1 Stephen Gee at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 0013 or email: stephen.gee@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning-Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State for Housing at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.