

**EXPLANATORY MEMORANDUM TO**  
**THE TOWN AND COUNTRY PLANNING (NAPIER BARRACKS) SPECIAL**  
**DEVELOPMENT ORDER 2021**

**2021 No. 962**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The instrument grants temporary planning permission for development consisting of the use of land at the former military barracks site near Folkestone in Kent, to provide accommodation to asylum seekers and failed asylum seekers who would otherwise be destitute and therefore fall to be supported by the Home Office under the powers set out in the Immigration and Asylum Act 1999 (“the 1999 Act”). The use must end by the end of 20th September 2026 or, if earlier, on the date the Secretary of State permits possession of the whole of Napier Barracks to enable building operations to be undertaken pursuant to a specific outline planning permission granted by Shepway District Council.
- 2.2 No permission for operational development is granted by this instrument. Any operational development will be covered by Part 19 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

**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 As the instrument is subject to the negative resolution procedure there are no matters relevant to the Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**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 only.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Home Office's request to use Napier to provide accommodation for eligible asylum seekers was approved by the Secretary of State for Defence as landowner on

18 August 2020. Planning permission was granted as permitted development under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (“2015 Order”) for the use set out in Class Q Part 19 of Schedule 2 of the 2015 Order (“Class Q”). The Class Q notice was served on the local planning authority stating that development commenced on 21 September 2020. The planning permission granted by Class Q automatically expires after 12 months beginning on the date at which development began and, in the case of Napier, is due to expire at the end of 20 September 2021.

- 6.2 The provision of asylum accommodation on the site will involve a material change in the use of land and constitute development for the purposes of section 55 of the Town and Country Planning Act 1990 and therefore planning permission is required for a change of use before it can be progressed.
- 6.3 The extension of permission through a Special Development Order has been chosen because it allows permission to be secured in a timely manner, in view of the urgent need to continue to use Napier for asylum seekers who would otherwise be destitute when the current planning permission expires.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Home Office provides support to asylum seekers, failed asylum seekers and their dependants who would otherwise be destitute under the powers set out in sections 4, 95 and 98 of the Immigration and Asylum Act 1999. Support is usually provided in the form of accommodation and cash or other assistance to meet their essential living needs (food, clothing and other items).
- 7.2 Before the COVID-19 pandemic, asylum seekers with an immediate accommodation need were generally placed in “initial accommodation” (usually full-board, multi-person facilities), where they would typically stay for around 4-6 weeks before moving to “dispersal accommodation” (generally flats and houses). Hotels were also sometimes used as a short-term contingency.
- 7.3 This system relies on turnover – in that as asylum claims of those in dispersed accommodation are resolved the individuals leave the asylum support system (“support cessations”), thus freeing up spaces for new asylum seekers entering the system.
- 7.4 However, for most of the period since March 2020 turnover has been substantially reduced because of the impact of COVID-19, most particularly because of the need to pause support cessations in order to manage public health risks and because of the difficulty of identifying and bringing on new dispersal accommodation at a time of restrictions on movement and economic activity.
- 7.5 The Home Office is taking measures to ensure that it has sufficient capacity across the estate to meet its statutory duty to provide accommodation to eligible asylum seekers who would otherwise be destitute. The measures are necessary to deal with both the impacts of Covid and continued high levels of intake of new asylum claimants, in particular the large numbers of arrivals by small boats in Kent. The number of people supported under section 4, 95 and 98 of the 1999 Act as at 31 March 2021 was 61,241, an increase of over 20% from the number supported as at 31 March 2020 (50,898).

- 7.6 In August 2020, following a call out across Government, the former military barracks site at Napier, situated near Folkestone in Kent, was provided to the Home Office by the Ministry of Defence to support this work. The continued use of Napier Barracks is an essential part of the Home Office’s ongoing strategy to ensure there is sufficient asylum accommodation available.
- 7.7 The use of the Napier site may also form part of the Home Office’s longer-term plans to reform the asylum system, as set out in the New Plan for Immigration published on 24 March 2021. The plan includes the provision, through the Nationality, Immigration and Asylum Act 2002, for the greater use of accommodation centres to provide housing and other services to asylum seekers and failed asylum seekers who would otherwise be destitute. The continued use of the Napier site may enable the new processes to be tested and piloted, and so inform the final design of how accommodation centres will operate.
- 7.8 Several key changes have recently been made to the arrangements at Napier including, but not limited to, the introduction of NGO staff to provide advice and assistance, provision of free travel to medical appointments, and vaccinations against Covid-19 being offered. In light of the intention to remain at the site until it is handed back to the MoD for housing development, a further programme of works is planned to make improvements to the living accommodation facilities and the available amenities for those accommodated there.
- 7.9 Special Development Orders are a long-established part of the planning system, capable of handling proposals of national significance. This Special Development Order will secure planning permission for the continued use of Napier without delay and is critical to the continued use of the Napier site and the nationally important objective of ensuring that destitute asylum seekers are provided with secure accommodation whilst their claims are processed.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 Not applicable.

## **10. Consultation outcome**

- 10.1 The Town and Country Planning Act 1990 does not impose a statutory requirement to consult before making a Special Development Order. The urgent need to provide asylum accommodation at Napier Barracks when the existing planning permission expires, taken with the detailed work needed before the Special Development Order could be made, has meant that engagement on the provisions of the Special Development Order has not been possible.
- 10.2 Aligned with laying the Special Development Order the Home Office will have informed local stakeholder and partners including the local Member of Parliament, Folkestone & Hythe District and Kent County Council, statutory bodies including police and fire authorities and other organisations such as Public Health England and NGOs of the Department’s plans to continue using the site. Once the SI is laid we will

continue to engage with partners include, for example, the local planning, highway, police and fire authorities, and the statutory environmental bodies.

## **11. Guidance**

11.1 Not applicable.

## **12. Impact**

12.1 No significant impacts on business, charities or the voluntary sector are expected from this instrument. This instrument, for continued use, does not place any additional regulatory burden on the private or public sector.

12.2 This instrument grants temporary permission for use of the site at Napier Barracks to provide essential support to asylum seekers and failed asylum seekers who would otherwise be destitute. This Order does not affect landowners or existing occupiers' commercial rights, and permission will cease and revert to its previous lawful use, on the date on which the developer requires access to Napier Barracks to commence building operations in accordance with the outline planning permission granted by Shepway District Council pursuant to application number Y14/0300/SH.

12.3 An Impact Assessment has not been prepared for this instrument because the instrument extends the current use of the site, and there is no, or no significant, impact on business.

## **13. Regulating small business**

13.1 The legislation does not place any additional regulatory burdens upon small businesses.

## **14. Monitoring & review**

14.1 The instrument does not include a statutory review clause as the instrument is not regulatory in nature.

## **15. Contact**

15.1 Oliver Banner at the Home Office email: [oliver.banner1@homeoffice.gov.uk](mailto:oliver.banner1@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Oliver Banner, Deputy Director in Resettlement, Asylum Support and Integration, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Greenhalgh of Fulham, Minister of State for Building Safety, Fire and Communities at the Home Office can confirm that this Explanatory Memorandum meets the required standard.