



Guidance note

Changes to permitted development rights for vertical extensions

January 2021

Overview

As part of the [Building Safety Programme](#), on 30 December 2020 the government issued an amended Town & Country Planning (General Permitted Development) (England) Order 2015 ([SI 2015 No 596](#)) (the 'GPDO') along with a complementary [advice note](#).

The amendment – The Town & Country Planning (General Permitted Development) (England) (Amendment) (No 4) Order 2020 ([SI 2020 No 1459](#)) – supports the government's commitment to improve building safety and provides alignment with the Building Regulations specifically in respect of fire safety of external walls.

The original GPDO in 2015 was introduced to speed up development and broadened the range of properties where 'permitted development' (PD) rights could be used without necessarily having to apply for full planning permission.

The GPDO has been amended on numerous occasions since 2015, but those most relevant to vertical extensions, ahead of the most recent amendment, can be found at: -

- The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 ([SI 2020 No 632](#)), which came into force on 1 August 2020.
- The Town & Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2020 ([SI 2020 No 755](#)), which came into force on 31 August 2020.

In certain cases PD rights can be used without doing anything more than notifying the Local Planning Authority (LPA) that construction is intended to be carried out. In other specific cases 'Prior Approval' might be necessary through an application to the LPA. Such applications only require limited information to be supplied for consideration.

Under *Prior Approval* it is possible to extend an existing block of flats, commercial or mixed-use building to create 'dwellinghouses' (Planning use class C3), by way of adding a maximum of two storeys on a building to create new flat(s) where the building was constructed between 1 July 1948 and 5 March 2018 and where the height of the roof of the extended building does not exceed 30m – among other conditions.

However, the previous prior approval regulations did not require any information to be provided to the LPA to address fire safety matters. The 30 December 2020 amendment (No 4) now requires fire safety information to be supplied as part of the process for this type of development.

What is the purpose behind these new planning regulations?

The regulations remove PD rights to vertically extend buildings where the existing external walls have unsafe cladding. As a result, where an existing building has such cladding, it is expected the external walls will be remediated before making any prior approval application. The alternative is for a building owner to apply for full planning permission for the vertical extension(s) – which would be necessary in any case where the building or proposals would not meet any of the specified conditions in the amended GPDO.

From the [explanatory note](#) accompanying the new amendment, it appears the government expects full planning permission applications to include simultaneous remediation and vertical extension work. It also appears there is no mechanism to require the fire safety performance of the external walls to be a material consideration for the LPA as part of this full planning application.

What buildings will be affected?

Unlike those buildings captured by the building safety programme and various cladding remediation schemes and could otherwise be classed, under the Building Safety Bill, as a High-Risk Building (HRB), the GPDO amendment applies to existing buildings that are 18m high. Height for the purposes of the GPDO applies to the height of the topmost part of any roof and not to the highest occupied storey of the building.

What do these regulations require?

Where the existing (pre-extended) building exceeds 18m in height, then the LPA must be supplied with a report from either a Chartered Engineer or other competent professional that shows the external wall construction of the existing building complies with [requirement B4\(1\) of Schedule of 1 of the Building Regulations 2010 \(as amended\)](#).

Where no such report has been supplied the application must be refused prior approval.

There is, however, no specific format for such a report.

Who can produce a fire safety report?

The regulations do not detail the specific credentials of either the Chartered Engineer or other competent professionals who can supply a fire safety report for prior approval. However, there is guidance available on the types of credentials considered appropriate for competent professionals to carry out external wall surveys in the government document [Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings](#).

Five impacts on Local Planning Authorities

1. Planning teams need to validate prior approval applications having regard to the amended conditions in Part 20 of Schedule 2 (Class A and Class AA) of the GPDO.
2. Planning teams need to verify the credentials of the author of a fire safety report.
3. Planning teams may wish to consider how they deal with vertical extensions that do not/or cannot use the prior approval process – having regard to the intentions set out by government in the explanatory note to the amendment.
4. Planning teams might wish to engage with colleagues in Building Control in order to determine if the contents of any fire safety report are suitable and sufficient to demonstrate compliance with Building Regulations requirement B4(1).
5. Planning teams might wish to engage with colleagues in Building Control to agree any internal procedures for assessing fire safety reports.

Three impacts on Building Control teams

1. Building Control teams should have regard to the new GPDO amendment and engage with Planning colleagues about appropriate consultation procedures to assess any fire safety reports attached to prior approval applications.
2. Building Control managers should consider the resource impacts on advising Planners on the appropriateness of fire safety reports and any internal procedures to be put in place to offset the use of any building control resources.
3. Building Control teams might wish to consider what aspects of building regulations compliance may be appropriate should, at a later date, full plans be deposited under the building regulations.

Impacts for developers, their agents and contractors

If the rights allowed under the GPDO are to be enjoyed a report from a suitably competent fire safety professional must be obtained.

Fire safety reports should consider the whole of the external wall area. Elements that should be included are those mentioned in the [consolidated advice note](#) produced by the Independent Expert Advisory Panel in January 2020.

Where unsafe cladding is present this will need to be remediated before the prior approval process can start.

Where a fire safety report cannot be obtained, or the external walls are not compliant with Building Regulations requirement B4(1), then a full planning application must be submitted for work to create the vertical extension(s).

The buildings to which this amendment relates may be of a lower height than those under the scope of the Building Safety Fund and the ACM and non-ACM programmes.

Developers should be aware that vertical extensions will also need to be considered under the building regulations, since the work is controlled by virtue of:

- the extension of a building
- a material alteration of a building
- a material change of use of a building – where a new dwelling/flat is created, or where the building (which contains at least one dwelling) contains a greater or lesser number of dwellings than it did previously.

In cases where the existing or extended building is or will be 15m or more in height and results in a material change of use occurring, then all external walls will need to be considered for compliance with Building Regulation requirement B4(1) External fire spread (walls).

In cases where the existing or extended building has or will have an occupied storey 18m or more above the lowest ground level, then all external walls of the building will come within the scope of [the 2018 amendments to the building regulations](#), relating to the ban on the use of combustible material in/on external walls.

In a similar vein, where the existing or extended building, has or will have a storey 11m or more above the lowest ground level, sprinklers will need to be installed to satisfy building regulation requirement B3(3)(b) in relation to the installation of suitable automatic fire suppression systems. Wayfinding signage will need to be installed to satisfy requirement B5(1) for firefighting access purposes.

Guidance on the provision of sprinklers can be found in the 2020 amended version of [Approved Document B \(Volumes 1 and 2\)](#). Additional advice is also available in the MHCLG circulars [01/2020, dated 26 May 2020](#) and [03/2020, dated 10 August 2020](#).

Author and further information

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