

WIRRAL COUNCIL

PLANNING COMMITTEE

30 MAY 2013

SUBJECT:	CHANGES TO PERMITTED DEVELOPMENT RIGHTS
WARD/S AFFECTED:	ALL
REPORT OF:	HEAD OF REGENERATION & PLANNING
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR PAT HACKET
KEY DECISION? <i>(Defined in paragraph 13.3 of Article 13 'Decision Making' in the Council's Constitution.)</i>	NO

1.0 EXECUTIVE SUMMARY

- 1.1 This report outlines for Members a number of changes to permitted development rights for home owners and commercial premises that are due to take effect on 30 May 2013. This report will summarise the main changes together with any potential issues which may arise as a result of the Government introducing these changes to regulations.
- 1.2 The main change is to increase the size limits for the depth of single-storey domestic extensions from 4 metres to 8 metres (for detached houses) and from 3 metres to 6 metres for all other houses, in non-protected areas, for a period of three years. The Government has also announced changes to extend existing permitted development rights for certain telecommunications equipment and to grant new permitted development rights to change offices into residential use without the need for planning permission.

2.0 BACKGROUND

- 2.1 The Government issued a new Statutory Instrument (2013 No. 1101) on 9 May 2013 setting out new provisions for permitted development through the planning system. This significantly relaxes the controls on what will require planning permission. The new regulations come into force on **30 May 2013**.

3.0 CHANGES TO REGULATIONS

- 3.1 **HOUSE EXTENSIONS** – Article 4 of Statutory Instrument 2013 No. 1101 amends A1 (e) of Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995 to allow for an increase in the size limits for the depth of single-storey rear extensions. This increase in size limits is only for a temporary period of 3 years (until 30 May 2016). The Government has clarified that existing limitations and conditions designed to protect the amenities of neighbouring properties would remain. For example, development will not be able to cover more than 50% of the

curtilage of the house, single-storey extensions must not exceed 4 metres in height and any extensions which have an eaves height of more than 3 metres must not be within 2 metres of the boundary. It has also been clarified that the proposed changes do not apply to certain protected types of land such as National Parks, Areas of Outstanding Beauty, World Heritage Site and Conservation Areas (only the latter (Conservation Areas) applies to Wirral).

- 3.2 The new, temporary permitted development right is subject to a new procedure which would take the form of the following:

Homeowners wishing to build extensions under the new powers will notify their local planning authority with the details. The Council will then inform the adjoining neighbouring properties. If no objections are made to the Council by the adjoining neighbours the development can proceed. If objections are received the Council must then consider whether the development would have an unacceptable impact on neighbours' amenity. The development may not proceed until the local planning authority have given notification of their decision or until the expiry of 42 days without such a decision being notified.

- 3.3 In terms of the specifics of this new regulation, a homeowner wishing to benefit from the larger single-storey rear extension permitted development right must provide in writing the following:

- a. a written description of the proposal which includes the length that the extension extends beyond the rear wall of the original house, the height at the eaves and the height at the highest point of the extension;
- b. a plan of the site, showing the proposed development;
- c. the addresses of any adjoining properties, including at the rear; and
- d. a contact address for the developer and an email address if the developer is happy to receive correspondence by email.

There is no fee in connection with this process.

- 3.4 If any adjoining neighbour raises an objection within the (minimum) 21-day notification period, the local authority will take this into account and make a decision about whether the impact on the amenity of all adjoining properties is acceptable. No other issues aside from amenity can be considered. In terms of adjoining neighbour, this will be held to be those properties "next to and joined with." (The legal definition of adjoining goes further and defines it as "persons, such as next door neighbours or backyard neighbours, who own lands that share common boundaries").
- 3.5 The development can proceed if there have either been no objections (therefore, it has not been necessary to consider the impact on amenity) or following objections and having considered those objections, it has been decided that the effect on amenity of adjoining properties is acceptable.
- 3.6 Members will need to be aware that if the local authority does not notify the developer of its decision within the 42-day (6 weeks) determination period, the development may go ahead as consent will be deemed to have been given.
- 3.7 If approval is refused, the homeowner may appeal.

- 3.8 The extension must be built in accordance with the details either approved by the local authority or, if no objections were raised by adjoining neighbours, the details as submitted.
- 3.9 The extension will still need to meet other tests set out by Part 1 of Schedule 2 of the Regulations which include the fact the extension cannot cover more than 50% of the curtilage or that the extension must be constructed using materials of a similar appearance to those used in the construction of the dwellinghouse.
- 3.10 To benefit from these permitted development rights, the extension **must** be completed on or before 30 May 2016. The developer/homeowner must notify the local planning authority in writing of the date of the completion.
- 3.11 **OFFICE TO RESIDENTIAL** – Article 6(2) of the Statutory Instrument inserts a new Class J into Part 3 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 under Changes of Use. This allows the change of use from B1 (Office) to a C3 (Dwelling) without the need for planning permission (unless it is a listed building).
- 3.12 Again, this new permitted development right is temporary and will expire on 30 May 2016. Development will not be permitted where the site is or forms part of a safety hazard area, is or forms part of a military explosives storage area or, as mentioned above, the building is a listed building or a scheduled monument.
- 3.13 The new Class J development will be permitted subject to the condition that before development begins, the developer shall apply for a determination as to whether the prior approval of the authority will be required as to the following matters:
- a. Transport and highways impacts of the development;
 - b. Contamination risks on the site; and
 - c. Flooding risks on the site.
- No other issues can be addressed.
- 3.14 Normal procedures for Prior Approval apply to this class of permitted development and the Council will have 56-days (8 weeks) to determine whether prior approval is required. A fee is also payable for determining applications for a determination as to whether the prior approval will be required under this Class.
- 3.15 Where the application relates to prior approval as to transport and highways impacts of the development (where in the opinion of the local planning authority the development is likely to result in a material increase or change in the character of traffic in the vicinity of the site) the local planning authority shall consult:
- a. the Secretary of State for Transport, where the increase or change relates to traffic entering or leaving a trunk road;
 - b. the local highway authority, where the increase or change relates to traffic entering or leaving a classified road; and

- c. the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.
- 3.16 Where the application relates to prior approval as to the flooding risks on the site, the local planning authority shall consult the Environment Agency where the development is:
 - a. in an area within Flood Zone 2 or Flood Zone 3; or
 - b. in an area within Flood Zone 1 which has critical drainage problems
- 3.17 The local planning authority shall notify the consultees referred to Paragraphs 3.15 and 3.16 specifying the date by which they must respond (being not less than 21 days from the date of the letter).
- 3.18 Other publicity requirements also apply, such as the posting of Site Notices and notification to adjoining owner(s)/occupiers(s).
- 3.19 Members will need to be aware that if the local authority does not notify the developer of its decision within the 56-day (8 weeks) determination period, the development may go ahead as consent will be deemed to have been given.
- 3.20 **AGRICULTURAL BUILDINGS** – Article 6(2) of the Statutory Instrument also inserts a new Class M into Part 3 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 under Changes of Use. This allows existing agricultural buildings to change its use to a flexible use falling within Use Class A1, A2, A3, B1, B8, C1 or D2 in the Schedule to the Use Classes Order. Such uses include shops/retail, financial and professional services, restaurants and cafes (for the consumption of food/drink on the premises), light industry, storage or distribution, guest houses or boarding houses or assembly/leisure uses.
- 3.21 To benefit from the new permitted development right the building must have:
 - a. been solely in agricultural use since 3 July 2012; or
 - b. if the use began later than that date, for a period of at least 10 years.
- 3.22 No more than 500 square metres of floorspace in the building can be converted to a new use under the new permitted development right.
- 3.23 Before beginning the development, the person relying on the new right must notify the local planning authority giving details of the date the site will begin to be used for any of the flexible uses, the nature of the use or uses proposed and a plan indicating the site and which buildings will change use.
- 3.24 If the change of use relates to more than 150 square metres of floor space (and less than 500 square metres), the new permitted development right is subject to determination as to whether the prior approval of the authority will be required as to:
 - a. transport and highways impacts of the development;

- b. noise impacts of the development;
- c. contamination risks on the site; and
- d. flooding risks on the site

and the provisions as set out in Paragraphs 3:15 to 3:19 shall again apply in relation to any such application.

3.25 AMENDMENTS IN RELATION TO MINOR OPERATIONS – Article 5 of the Statutory Instrument amends Class A of Part 2 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 to allow schools to build a higher boundary fence or wall up to 2 metres in height adjacent to a highway, provided it does not create an obstruction which is likely to be a danger to highway safety. “School” is defined to include buildings which qualify for the right to change temporarily to use as a state-funded school under the new Class C of Part 4 of Schedule 2 (see 3.26 below) from the date the local planning authority is notified by the relevant Minister that the site has been approved for temporary school use.

3.26 AMENDMENTS IN RELATION TO TEMPORARY USE OF BUILDINGS – Article 7 inserts a new Class C into Part 4 (Temporary Buildings and Uses) of the Town & Country Planning (General Permitted Development) Order 1995. This new permitted development right enables various types of building to change use to use as a state-funded school for a single academic year (meaning any period beginning with 1st August to ending with the next 31st July), subject to the following:

- a. the site must be approved for use by the relevant Minister (meaning the Secretary of State with policy responsibility for schools);
- b. the relevant Minister must notify the local planning authority of the approval and the proposed opening date of the school;
- c. the site is used as a state-funded school (a school wholly or mainly funded from public funds) and for no other purpose, including any other purpose falling within Class D1 (non-residential institutions);
- d. the site reverts to its previous lawful use at the end of the academic year.

3.27 Article 7 also inserts a new Class D into Part 4 of Schedule 2 to the 1995 Order which is a new permitted development right allowing any building within Use Classes A1 (Shops), A2 (Financial/Professional Services), A3 (Restaurants/Cafes), A4 (Bars) A5 (Hot Food Takeaways), B1 (Business), D1 (Non-Residential Institutions) and D2 (Assembly and Leisure) to change to a flexible use falling within either use class A1, A2, A3 or B1 for a single continuous period of up to 2 years beginning on the date the building and any land within its curtilage begins to be used for one of the flexible uses. The change of use only applies to floorspace of no more than 150 square metres and after the 2 year period, the building and any land within its curtilage will revert to its former use.

3.28 INDUSTRY AND WAREHOUSING DEVELOPMENT – Article 8 of the Statutory Instrument amends Part 8 of Schedule 2 of the 1995 Order to increase permitted

development rights to erect, extend or alter industrial and warehouse premises from 25% gross floor space or by 100 square metres (whichever is the lesser) to 50% or 200 square metres (or only by 10% in Conservation Areas). This new permitted development right is only temporary and will expire on 30 May 2016.

- 3.29 **ELECTRONIC COMMUNICATIONS** – Article 9 of the Statutory Instrument amends Part 24 of Schedule 2 of the 1995 Order which sets out permitted development rights in relation to developments by electronic communications code operators. Article 9 provides that, in relation to Article 1(5) land (i.e. National Parks, Areas of Outstanding Natural Beauty; Conservations Areas, Sites of Special Scientific Interests and the Norfolk Broads), the construction, installation or replacement of telegraph poles, cabinets or lines for fixed-line broadband services will not require prior approval for a 5-year period. In order to rely on this new permitted development right, development must have been completed before 30 May 2018. This new measure is to support the implementation and improvement of the broadband network.
- 3.30 **EXTENSIONS TO OFFICES** – Article 11 of the Statutory Instrument amends Part 41 of Schedule 2 of the 1995 Order to allow for increased permitted development rights to extend or alter an office building from 25% of gross floor space or 50 square metres (whichever is the lesser) to 50% or 100 square metres. This new permitted development right is temporary and will expire on 30 May 2016. In order to rely on this new right, development must have been completed before that date.
- 3.31 **EXTENSIONS TO SHOPS, CATERING FACILITIES OR FINANCIAL AND PROFESSIONAL SERVICES** – Article 12 of the Statutory Instrument Statutory Instrument amends Part 42 of Schedule 2 of the 1995 Order to allow for increased permitted development rights to extend or alter a shop, catering, professional or financial services establishment from 25% of gross floor space or 50 square metres (whichever is the lesser) to 50% or 100 square metres. This new permitted development right is temporary and will expire on 30 May 2016. In order to rely on this new right, development must have been completed before that date. The current exclusion of development within 2 metres of the boundary of the curtilage is also removed during the same time period (i.e. until 30 May 2013) unless the premises adjoin land or buildings which are in residential use. The extension can be up to the site boundary unless the site is in a Conservation Area or abuts a residential property.

4.0 POTENTIAL ISSUES ARISING FROM THESE CHANGES TO PERMITTED DEVELOPMENT RIGHTS

- 4.1 In relation to the changes to the permitted development rights for domestic rear extensions, Wirral Council processed 109 applications for rear extensions in 2012/13 which would now be subject to the new permitted development right. This number of applications generated fees of £17,472. As no fee will be chargeable for under the new process for dealing with these types of notifications from 30 May, the Development Management teams will need to do this work for no charge.
- 4.2 Only neighbours physically adjoining the site can be notified of the proposals which will, in turn trigger the additional assessment of amenity. In some cases, the neighbour notification will be less that the Council's current practice. In addition, if adjacent properties are rented or vacant or the homeowner is away, then no assessment about the impact of the proposed extension could be made as it is likely that no objections

would be received to trigger the further consideration of amenity. Objections received after the 21 days cannot be taken into account.

- 4.3 It is likely that these changes will result in increased enforcement investigations/complaints as officers will be asked to check that new extensions fall within the scope of the new regulations. Additionally, there could be more challenges and complaints to through the Council's complaints procedures and the Local Government Ombudsman.
- 4.4 In terms of the changes relating to change of use from offices to residential, the Council applied to the Secretary of State for an exemption from this change in relation to the Wirral International Business Park. This application was refused and as such, no parts of the Wirral are currently exempt from this relaxation in permitted development rights. Again, the Council will lose fee income and also loses the opportunity to apply Section 106 Legal Agreements that may otherwise have been considered. Whilst there is a requirement on the local planning authority to notify adjoining owners, any representations received can only be considered in relation to the aspects that require prior approval (as set out 3.13 above). No other matters could be considered.
- 4.5 Having regard to the new provision for temporary permitted development to allow for new state-funded schools for a single academic year, the provision contains no power for the local authority to intervene at all. There is no requirement to notify neighbours, to assess transport, parking and drop-off arrangements or safe-routes-to-schools, noise or any other matters.
- 4.6 The new permitted development rights relating to agricultural buildings are designed to help the rural economy and farm diversification but there is the potential to result in an uses being located in unsustainable locations (although for uses over 150 square metres, prior approval will be required for some aspects of the proposals).
- 4.7 Having regard to the proposals for other commercial changes of use, as outlined at Paragraph 3.27 above, these changes are trying to ensure a range of services to meet local needs. However, the relaxation in permitted development will allow changes of use to cafes, restaurants or betting shops, for example, but without any assessment of noise or odours or controls on opening hours, since applications for planning permission will not be needed.

5.0 CONSULTATION

- 5.1 A consultation, *Extending Permitted Development Rights for Homeowners and Businesses* was published in November 2012. The proposals have controversial, with local authorities and professional bodies (such as the Royal Town Planning Institute and the Planning Officers Society) have been critical of them. In response to the concerns that were raised the Government amended the Growth and Infrastructure Act 2013 to ensure that there will be a neighbour consultation processes on new domestic extensions.
- 5.2 The new rules on the new permitted development rights are now provided for by statutory instrument and come into force on 30 May 2013.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 There are no direct impacts for voluntary, community and faith groups.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 There is likely to be a reduction on fee income from the relaxation of permitted development rights, particularly with regards single storey rear domestic extensions. It is difficult to predict the reduction in income that might be lost from these changes but given the extent of applications and fee income generated last year from applications that will now be exempt from charges, there is likely to be a significant reduction in fee generation although the Development Management teams will be expected to process the new procedures for notification and prior approvals for no charge from 30 May 2016. The regulations do mention a fee for some aspects of the Prior Notification but the amount has not been announced yet although there is an indication that it will be £80. No additional I.T. will be required as it is proposed to use the existing Development Management I.T systems. No additional staff will be required as existing staff will be able to provide the enhanced service.

8.0 LEGAL IMPLICATIONS

8.1 The Growth and Infrastructure Act 2013 and Statutory Instrument 2013 No.1101 Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 allow the changes to permitted development rights as outlined above. There are no further legal implications arising from these proposals.

9.0 EQUALITIES IMPLICATIONS

9.1 There are no direct implications arising from these proposals which adversely affect equality and diversity.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 The implications of these proposals on climate change and carbon resources are largely neutral.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 The planning implications arising from this report are outlined above and there are no direct Community Safety implications arising from this report.

12.0 RECOMMENDATION/S

12.1 That the Planning Committee note the contents of the report and the changes to permitted development rights

13.0 REASON/S FOR RECOMMENDATION/S

13.1 The recommendations reflect Central Governments relaxation of a number of permitted development rights which are set against the background of the provisions within the Growth and Infrastructure Act 2013.

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APPENDICES

None

REFERENCE MATERIAL

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date