

Exclusion / Loss of Permitted Development Rights



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Topics

- 1. Exceptions, limitations, conditions
- 2. Exclusion by condition
- 3. Exclusion where baseline unlawful
- 4. Exclusion by Article 4 Directions

When you don't get permission at all

Permitted development rights are the right to develop land in accordance with the planning permission granted by Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015:

“Subject to the provisions of this Order ... planning permission is hereby granted for the classes of development described as permitted development in Schedule 2”.

Exceptions, limitations and conditions

Article 3(2) brings into play the various exceptions, limitations and conditions that are set out in the different classes of development listed in Schedule 2.

“Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2”.

This is a reference to the exceptions etc set out in Schedule 2, e.g. the height limit on Class E buildings within the curtilage of a dwellinghouse.

Article 3(2) is authorised by s.60 of the 1990 Act – which allows permission granted under a development order to be conditional

PD rights excluded (1) – by conditions

Article 3(4) goes wider than Article 3(2), ruling out permitted development rights if the development would breach any conditions imposed on an extant planning permission, e.g. one issued by the Local Planning Authority:

“Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under [Part 3](#) of the Act otherwise than by this Order”.

How to interpret a condition

The starting point for the correct approach to the interpretation of planning conditions is set out in the Supreme Court's decision in Trump International v Scottish Ministers [2015] UKSC 74.

.... requires an open-textured approach to the objective exercise of construction of planning conditions, with due regard to the natural and ordinary meaning of the relevant words, but also consideration of the context (including purpose) and common sense.

What does a condition need to say to exclude PD rights?

In *Dunnett Investments Ltd v Secretary of State* [2017] EWCA Civ 192; [2017] JPL 848
the Court of Appeal considered whether a particular condition excluded PD rights.

The condition in Dunnett:

- This use of this building shall be for purposes falling within Class B1 (Business) as defined in the [Town and Country Planning \(Use Classes\) Order 1987](#) , and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained.
- In order that the Council may be satisfied about the details of proposal due to the particular character and location of this proposal."

Theme 1:

- a planning condition on a planning consent can exclude the application of the GPDO (see [Dunoon Developments v Secretary of State for the Environment and Poole Borough Council \(1993\) 65 P&CR 101](#))

Theme 2:

- Exclusion may be express or implied. However, because a grant of planning permission for a stated use is a grant of permission for only that use, a grant for a particular use cannot in itself exclude the application of the GPDO. To do that, something more is required (see, e.g. Dunoon at [107] per Sir Donald Nicholls VC).

Theme 3:

- In [Carpet Décor \(Guilford\) Limited v Secretary of State for the Environment \(1981\) 261 EG 56](#) , Sir Douglas Frank QC sitting as a Deputy High Court Judge said that, because in the absence of such a condition the GPDO has effect by operation of law, the condition should be in "unequivocal terms". ... [In order] to exclude the application of the GPDO, the words used in the relevant condition, taken in their full context, must clearly evince an intention on the part of the local planning authority to make such an exclusion.

PD rights excluded (2) – illegal baseline

Article 3(5) excludes reliance on permitted development rights where the underlying building or use is unlawful:

“The permission granted by Schedule 2 does not apply if—

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;

(a) in the case of permission granted in connection with an existing use, that use is unlawful.

Watch out for unlawful changes of use ...

Fairstate v Secretary of State [2004] EWHC 1807 (Admin) | [2004] 7 WLUK 191:

“... if there is a material change of use from use X which has continued for 10 years and has therefore become immune from enforcement action and lawful to use Y, then a change back from use Y to use X will be a further material change of use requiring planning permission. That is why, in shorthand form, it can be said that the right to continue with the immune use will have been “lost””.

NB s.57(4) of the 1990 Act: “Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out”.

PD Rights excluded (3) – Article 4 Direction

“If the Secretary of State or the local planning authority is satisfied that it is expedient that development described in any Part, Class or paragraph in [Schedule 2](#), other than Class DA of Part 4 or Class K, KA or M of Part 17, should not be carried out unless permission is granted for it on an application, the Secretary of State or (as the case may be) the local planning authority, may make a direction under this paragraph that the permission granted by [article 3](#) does not apply to—

- (a) all or any development of the Part, Class or paragraph in question in an area specified in the direction; or
- (b) any particular development, falling within that Part, Class or paragraph, which is specified in the direction ...”

Article 4 procedure and compensation

- Set out in Schedule 3 to the 2015 Order
- Different procedures for orders that come into force with immediate effect and those that do not.
- Compensation payable pursuant to Town and Country Planning (Compensation) (England) Regulations 2015

Conclusion

- PD Rights are subject to:
 - Exception, limitation or conditions in Schedule 2
- PD rights can be excluded by:
 - Condition imposed on grant of permission
 - Unlawful baseline
 - Article 4 Direction

Thank you for listening

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