Landmark Chambers

Permitted Development: key issues

Permitted development has come into the spotlight once again as the government seeks to remove restrictions on development to stimulate economic recovery. We will post a series of short papers on key issues arising in permitted development. In the first of these papers, Ben Fullbrook gives an overview of permitted development law andGPDO identifies some recent developments in the GPDO.

1. What is Permitted Development?

Section 57 of the Town and Country Planning Act 1990 (**TCPA**) provides that planning permission is required for the development of land. *"Development"* is defined in s.55 TCPA in broad terms. Section 58 TCPA sets out how planning permission may be granted, including "by a development order". Section 59 TCPA makes provision for development orders, which may either grant permission, or provide for the grant of permission by the local planning authority. The development order may be of general application or specific to "only to such land or descriptions of land as may be specified in the order".

The principal development order applying in England is the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (**GPDO**). In essence, this grants planning permission for certain development provided the relevant qualifying criteria, limitations, conditions and restrictions are satisfied. The GPDO consolidated with amendments earlier development orders, and has itself been the subject of multiple amendments since it was made.

The scope and effect of the GPDO is a frequent source of planning disputes. The interpretation of the GPDO is a question of law and useful guidance on this issue was provided by Lindblom LJ in ***R (Mawbey) v Lewisham LBC*** [2019] EWCA Civ 1016 at §20.

2. The Scope of Permitted Development Rights

Article 3(1) GPDO grants planning permission for the development listed in Sch. 2 (subject to a number of exceptions and restrictions – see below). Schedule 2 is currently divided into 19 parts and each part is sub-divided into various classes of development. Some more commonly used rights are as follows:

- Part 1 *"Development within the curtilage of a dwellinghouse"*. Includes rights relating to the extension and alteration of dwellinghouses (Classes A-D)[1], the erection of ancillary buildings (Class E) and hard surfacing (Class F).
- Part 2 *"Minor operations"*. Includes the erection of gates, fences and walls (Class A), the creation of access to a highway (Class B) and exterior painting (Class C).
- Part 3 *"Changes of use"*. Includes restaurants/cafes/takeaways to retail (Class A) and vice versa (Class C), shops to financial and professional (Classes D & F) and vice versa (Class E), offices and storage to dwellinghouses (Classes O & P), agricultural buildings to dwellinghouses (Class Q)
- Part 4 *"Temporary buildings and uses".*
- Part 6 *"Agricultural and forestry".*
- Part 14 *"Renewable energy"*. Includes installation of solar equipment (Classes A, B, J & K), ground source heat pumps (Classes C & D), installation or alteration of wind turbines (Classes H & I).

[1] Although this does not extend to rebuilding: ***Sainty v Minister of Housing and Local Government*** (1964) 15 P. & C.R. 432

3. When are Permitted Development Rights not available?

The following factors may restrict the availability of permitted development rights:

- Where regs. 75-8 of the Conservation of Species and Habitats Regulations 2017 apply (Art. 3(1) GPDO). An appeal decision in Hart DC (ref. 3141706)[2] confirmed that the mere fact that a proposed development requires compliance with these regulations does not prevent it from being permitted development. Rather, it is a condition of any planning permission granted under the GPDO that development must not begin until the developer has received written notification of the approval of the LPA under reg. 77.[3]
- Where the existing building or use which is relied upon for the right is unlawful, unless it has subsequently become lawful by virtue of the 4 and 10 year rules in s.171B TCPA: see Art. 3(5) GPDO.
- Where Permitted Development rights have been removed by virtue of a condition attached to an existing planning permission: Art. 3(4) GPDO.
- Where the use of the land is controlled by a section 106 obligation. This does not actually remove permitted development rights, but development in contravention of it would be a breach of covenant and could be restrained by injunction.
- Where an Article 4 Direction is in place. This power is contained in Art. 4 GPDO and allows local planning authorities (and the Secretary of State) to direct that certain permitted development 0rights shall not be available in a defined area. It should be noted that this does not prevent any development of the type specified; it merely prevents it from being carried out without an express grant of planning permission.
- Development falling within either sch. 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (i.e. development that may require EIA) is not permitted by the GPDO unless the LPA has adopted a screening opinion or the SoS has made a direction that it is not EIA development: see Art. 3(10) GPDO.
- Where land falls within an AONB, National Park or World Heritage Site certain permitted development rights are restricted or not available (e.g. Part 1, Class E)

4. Forthcoming Changes to Permitted Development Rights

A key element of the government's promised overhaul of the planning system is an expansion in permitted development rights.[4] The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020/632[5] will bring into force a number of *permanent* (i.e. not merely Coronavirus-related) new rights from 1 August 2020.

The most significant of these is the addition of a Part 20 to sch. 2 GPDO, which will permit the addition of two extra storeys to certain purpose-built, detached blocks of flats. Among other things this will not apply to buildings which are less than three storeys about ground level in height, were constructed before 1st July 1948 or after 5th March 2018, are in mixed use (e.g. residential/commercial) and/or within the curtilage of a listed building. Prior approval is required on a number of matters including transport and highways and residential amenity and loss of light.

A further, important change is to be made to Part 3 of sch. 2 in respect of prior approval applications relating to residential conversions under Classes M, N, O, PA and Q. The LPA will now be required to approve "*the provision of adequate natural light in all habitable rooms of the dwellinghouses*" created under these rights. There are consequential changes to the requirements in respect of the information to be submitted with an application for prior approval. This is intended to address concerns about the living conditions of occupiers of buildings which have been converted to residential use under the GPDO. The 2020 Regulations also make a

[2] https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3141706

[3] See Goodall, *A Practical Guide to Permitted Change of Use* (Bath 2019), p.3.

[4] https://www.thetimes.co.uk/article/planning-reform-2020-what-changes-is-pm-boris-johnson-making-to-the-uks-planning-system-dst3wz30z (£).

[5] http://www.legislation.gov.uk/uksi/2020/632/contents/made

number of changes to other existing permitted development rights, including those in respect of the extensions to dwellinghouses.

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