
Decision Maker: **DEVELOPMENT CONTROL COMMITTEE**

Date: **24 September 2020**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **PLANNING LEGISLATION UPDATE - PERMITTED
DEVELOPMENT RIGHTS AND CHANGES TO THE USE
CLASSES ORDER**

Contact Officer: Ben Johnson, Head of Planning Policy and Strategy
E-mail: ben.johnson@bromley.gov.uk

Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: (All Wards);

1. Reason for report

- 1.1 The Government have recently introduced several new Permitted Development (PD) rights. These PD rights will allow blocks of flats to extend upwards by up to two storeys to provide new residential units; and will allow existing office blocks to be demolished and rebuilt. There are a number of restrictions on the use of these PD rights and prior approval is required in relation to a number of potential impacts. This report provides information on the new PD rights.
- 1.2 The report also provides an update on changes to the Use Classes Order, and an update on proposed future PD rights relating to 5G.

2. **RECOMMENDATION(S)**

- 2.1 **That Development Control Committee note the details of the new planning legislation and the discussion of potential impacts as set out in this report.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: No impact
-

Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Regeneration
-

Financial

1. Cost of proposal: No upfront cost, but potential for loss of application fees for new prior approval applications. New fees regulations have been introduced which propose fees similar but not equal to fees for planning applications. The assessment of prior approval is likely to be akin to a full planning application in terms of complexity and resources required. The amendments to the Use Classes Order mean that a number of changes of use that would have previously required planning permission will now not require permission; this is likely to lead to a small reduction in the number of planning applications in future.
 2. Ongoing costs: As above, there is potential for ongoing loss of planning application fees and a reduction in the quantum of planning applications.
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: N/A
 5. Source of funding: N/A
-

Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: The Town and Country Planning (General Permitted Development) Order 2015 (as amended); and the Town and Country Planning (Use Classes) Order 1987 (as amended).
 2. Call-in: Not Applicable
-

Procurement

1. Summary of Procurement Implications: N/A
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

3.1 On 20 July 2020, the Government published the following regulations:

- The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020, which came into force on 31 August 2020;
- The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020, which came into force on 31 August 2020; and
- The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which came into force on 1 September 2020.

3.2 The regulations listed in bullet point 1 include a number of amendments to the Town and Country Planning (General Permitted Development) Order 2015 (“the GPDO”), specifically five amended or new Permitted Development (PD) rights to allow upwards extensions to detached and terraced buildings in residential or mixed use. All these PD rights are subject to a number of limitations and conditions, including a requirement for prior approval from the local planning authority in relation to certain matters.

3.3 The regulations listed in bullet point 2 also amend the GPDO to allow for the demolition of a single detached building that was used for office, research and development or industrial processes, or a free-standing purpose-built block of flats; and its replacement by an individual detached block of flats or a single detached dwellinghouse within the footprint of the old building. The PD right is subject to a number of limitations and conditions, including a requirement for prior approval from the local planning authority in relation to certain matters.

3.4 The regulations listed in bullet point 3 amend the Town and Country Planning (Use Classes) Order 1987 (“the UCO”), which includes significant merging of and alterations to the current planning use classes.

Upwards extensions

3.5 At the 14 July 2020 meeting of the Development Control Committee, there was discussion of a report on Upwards Extension PD Rights¹. The background set out in this report, at paragraphs 3.2 to 3.4, is relevant to the five new PD rights noted above.

3.6 The new/amended PD rights are as follows:

- Part 1, Class AA - permits the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwellinghouse. Two storeys may be added if the existing dwellinghouse is two or more storeys tall, or one additional storey where the dwellinghouse consists of one storey. This PD right is discussed in more detail in paragraphs 3.15 to 3.18 below.
- Part 20, Class AA – permits construction of up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use. This PD right is discussed in more detail in paragraphs 3.19 to 3.21 below.

¹ Available here:

<http://cdslbb/documents/s50082500/UPWARDS%20EXTENSION%20PERMITTED%20DEVELOPMENT%20RIGHTSPA RT%201%20REPORT%20TEMPLATE.pdf>

- Part 20, Class AB - permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey. This PD right is discussed in more detail in paragraphs 3.22 to 3.26 below.
- Part 20, Class AC - permits the construction of new flats on top of terrace dwellinghouses (including semi-detached houses); two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey. This PD right is discussed in more detail in paragraphs 3.27 to 3.30 below.
- Part 20, Class AD - permits the construction of new flats on top of detached dwellinghouses; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey. This PD right is discussed in more detail in paragraphs 3.31 to 3.34 below.

3.7 For the purposes of Part 1 PD rights, a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building. For the purposes of Part 20 PD rights, the definition of a dwellinghouse does include flats. The regulations include a number of specific definitions which apply to the new PD rights.

3.8 The PD rights allow any or all of the following engineering operations or work:

- engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses;
- for Class AA and AB only, works for the replacement of existing plant or installation of additional plant on the roof of the extended building reasonably necessary to service the new dwellinghouses;
- works for the construction of appropriate and safe access to and egress from the new dwellinghouses and existing premises in the building, including means of escape from fire, via additional external doors or external staircases;
- works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses.

3.9 The new PD rights all share a number of similar restrictions, conditions and procedural requirements. This includes a requirement that development must be completed within a period of 3 years starting with the date prior approval is granted. Before beginning any permitted development (except for Part 20 Class AD), the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on adjoining owners or occupiers will be mitigated.

3.10 Any new dwellinghouse created under the new PD rights is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

3.11 Permitted development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval. Unlike other PD rights with prior approval, the new PD rights have no deemed approval if a decision is not made after 8 weeks; however, applicants could appeal non-determination.

- 3.12 The local planning authority may require the developer to submit other such information as the authority may reasonably require in order to determine the application, including assessments of impacts or risks; statements setting out how impacts or risks are to be mitigated, having regard to the NPPF; and details of proposed building or other operations.
- 3.13 The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The local planning authority can refuse an application where, in the opinion of the authority, the proposed development does not comply with any conditions, limitations or restrictions set out in the GPDO; or where the developer has provided insufficient information to enable the authority to establish compliance.
- 3.14 The Community Infrastructure Levy (CIL) will be payable on the new floorspace. The local planning authority can also require planning obligations, although national Planning Practice Guidance (PPG) states that any obligations should be limited only to matters requiring prior approval and should not, for instance, seek contributions for affordable housing.

Part 1, Class AA

- 3.15 Part 1 PD rights permit certain development within the curtilage of a dwellinghouse. The new Class AA PD right permits the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwellinghouse; this part does not allow the construction of new dwellinghouses, which is covered by PD rights in Part 20 discussed below. Two storeys may be added if the existing dwellinghouse is two or more storeys tall, or one additional storey where the dwellinghouse consists of one storey. Engineering operations reasonably necessary for the purpose of that construction are also permitted.
- 3.16 Development is not permitted in any of the following circumstances:
- The existing residential use was granted through the following PD rights.
 - Part 3, Class M (change from retail, financial and professional services, betting offices, pay day loan shops or launderettes to residential use)
 - Part 3, Class N (change from amusement arcade/centres or casinos to residential use)
 - Part 3, Class O (change from offices to residential use)
 - Part 3, Class P (change from storage or distribution centres to residential use)
 - Part 3, Class PA (change from light industrial to residential use)
 - Part 3, Class Q (change from agricultural buildings to residential use)
 - The land or site on which the building is located on:
 - article 2(3) land, which includes conservation areas and areas of outstanding natural beauty (AONB). Bromley has 44 conservation areas and part of the Kent Downs AONB covers the south east of the Borough; or
 - a site of special scientific interest (SSSI). There are six SSSIs in Bromley.
 - The building was constructed before 1st July 1948, or after 28th October 2018. Construction is not defined in the GPDO; regardless, information on definite construction dates is often limited, which means that assessment against this part of the regulations could be difficult.

- The existing dwellinghouse has been enlarged by the addition of one or more storeys above the original dwellinghouse, either through the explicit grant of planning permission or through PD granted by Part 1, Class AA. This would preclude a one-storey dwellinghouse using the Part 1, Class AA PD rights to extend by a single storey and then subsequently applying for the resulting two-storey dwellinghouse to extend by up to two further storeys. The GPDO defines “original” as, in relation to a building other than a building which is Crown land, existing on 1st July 1948 (as existing on that date); or built on or after 1st July 1948 (as so built).
- The height of the highest part of the roof of the dwellinghouse would exceed 18 metres following the extension.
- The height of the highest part of the roof of the dwellinghouse (following the extension) would exceed the height of the highest part of the roof of the existing dwellinghouse by more than 3.5 metres, where the existing dwellinghouse consists of one storey; or 7 metres, where the existing dwellinghouse consists of more than one storey.
- The dwellinghouse is not detached and following the development the height of the highest part of its roof would exceed by more than 3.5 metres—
 - (i) in the case of a semi-detached house, the height of the highest part of the roof of the building with which it shares a party wall (or, as the case may be, which has a main wall adjoining its main wall); or
 - (ii) in the case of a terrace house, the height of the highest part of the roof of every other building in the row in which it is situated;
- The floor to ceiling height of any additional storey is more than 3 metres in height; or more than the floor to ceiling height of any storey of the principal part of the existing dwellinghouse, whichever is the lesser, where such heights are measured internally. Principal part is defined as the main part of the building excluding any front, side or rear extension of a lower height, whether this forms part of the original building or a subsequent addition.
- Any additional storey is constructed other than on the principal part of the dwellinghouse.
- The development would include the provision of visible support structures on or attached to the exterior of the dwellinghouse upon completion of the development.
- The development would include any engineering operations other than works within the curtilage of the dwellinghouse to strengthen its existing walls or existing foundations.

3.17 Development is only permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval related to the following potential impacts (where they are relevant):

- Impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light;
- the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation of the dwellinghouse, and any side elevation of the dwellinghouse that fronts a highway;
- air traffic and defence asset impacts of the development; and

- whether, as a result of the siting of the dwellinghouse, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15th March 2012(a) issued by the Secretary of State. None of the protected vistas identified relate to Bromley.

3.18 The following conditions also apply:

- the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
- the development must not include a window in any wall or roof slope forming a side elevation of the dwelling house; and
- the roof pitch of the principal part of the dwellinghouse following the development must be the same as the roof pitch of the existing dwellinghouse.

Part 20, Class AA

3.19 The new Part 20, Class AA PD right permits development consisting of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building to within the following use classes², or in a mixed use combining two or more of these uses along with C3 residential use:

- Class A1 (shops);
- Class A2 (financial and professional services);
- Class A3 (restaurants and cafes);
- Class B1(a) (offices); or
- Sui Generis betting office, pay day loan shop or launderette use.

3.20 Development is not permitted in any of the following circumstances:

- The existing building is less than 3 storeys in height, above ground level. As noted above, storey is not defined but 3 storey buildings would generally be around 9-10 metres in height. The GPDO defines ground level as the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.
- The building was constructed before 1st July 1948, or after 5th March 2018. Construction is not defined in the GPDO; regardless, information on definite construction dates is often limited, which means that assessment against this part of the regulations could be difficult.
- As of 5th March 2018, the building was not in use/mixed-use within the use classes specified above.
- The additional storeys are constructed other than on the principal part of the building.

² As noted elsewhere in this report, the Use Class Order has now been amended. However, transitional provisions apply to the GPDO and Article 4 Directions, meaning that the former Use Classes Order will continue to apply until 31 July 2021, at which point new, revised permitted development rights will be introduced.

- The floor to ceiling height of any additional storey is more than 3 metres in height; or more than the floor to ceiling height of any of the existing storeys, whichever is the lesser, where such heights are measured internally.
- The new dwellinghouses are not flats. Houses are not eligible to use this PD right; only Part 1, Class AA rights (discussed above) allow upwards extension of houses.
- The overall height of the roof of the extended building would be greater than 7 metres higher than the highest part of the existing roof (not including existing plant).
- The extended building (not including plant) would be greater than 30 metres in height (measured from ground level, the definition of which is set out above). 30 metres is the definition of a tall building as set out in the draft new London Plan.
- Any engineering operations to facilitate the new dwellinghouses would include the provision of visible support structures on or attached to the exterior of the building upon completion of the development. This means that the building itself must be structurally capable of accommodating the additional storey(s). The PD right allows some engineering operations to strengthen existing walls and foundations (see below).
- Any engineering operations would fall outside the existing curtilage of the building. Engineering operations are permitted within the existing curtilage to strengthen existing walls; strengthen existing foundations; or install or replace water, drainage, electricity, gas or other services.
- Works for the installation of additional plant on the roof of the extended building is not permitted if there is no existing plant on the building.
- Works for the replacement of existing plant or installation of additional plant on the roof of the extended building is not permitted if the height of any replaced or additional plant (as measured from the lowest surface of the new roof) on the principal part of the new building would exceed the height of any existing plant (as measured from the lowest surface of the existing roof) on the principal part of the existing building. "Principal part" has the same meaning as noted above.
- Works for the construction of appropriate and safe access and egress to the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases, would extend beyond the curtilage of the existing building.
- Works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses would:
 - extend beyond the curtilage of the existing building;
 - be situated on land forward of a wall forming the principal elevation of the existing building; or
 - be situated on land forward of a wall fronting a highway and forming a side elevation of the existing building.
- The land or site on which the building is located, is or forms part of:
 - article 2(3) land, which includes conservation areas and areas of outstanding natural beauty (AONB). Bromley has 44 conservation areas and part of the Kent Downs AONB covers the south east of the Borough;

- a site of special scientific interest (SSSI). There are six SSSIs in Bromley;
- a listed building or land within its curtilage. There are 410 listed buildings in Bromley;
- a scheduled monument or land within its curtilage. There are nine scheduled monuments in Bromley;
- a safety hazard area;
- a military explosives storage area; or
- land within three kilometres of the perimeter of an aerodrome. Biggin Hill is defined as an aerodrome for the purposes of the GPDO.

3.21 Development is only permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval related to the following potential impacts (where they are relevant):

- transport and highways impacts of the development;
- air traffic and defence asset impacts of the development;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- the external appearance of the building including the design and architectural features of the principal elevation and any side elevation that fronts a highway; and the impact of any allowed works for the construction of appropriate and safe access to and egress and storage, waste or other ancillary facilities.
- the provision of adequate natural light in all habitable rooms of the new dwellinghouses.
- impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;
- impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses. “Commercial premises” means any premises in the surrounding area which are normally used for the purpose of any commercial or industrial undertaking which existed on the date of the application;
- impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area; and
- whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State. None of the protected vistas identified relate to Bromley.

Part 20, Class AB

3.22 The new Part 20, Class AB PD right permits development consisting of the construction of new dwellinghouses (Use Class C3) immediately above the topmost storey on a terrace building within the following use classes³, or in a mixed use combining two or more of these uses along with C3 residential use:

³ Ibid

- Class A1 (shops);
- Class A2 (financial and professional services);
- Class A3 (restaurants and cafes);
- Class B1(a) (offices); or
- Sui Generis betting office, pay day loan shop or launderette use.

3.23 The PD right permits up to two additional storeys, in the case of an existing building consisting of two or more storeys; or one additional storey, in the case of an existing building consisting of one storey.

3.24 Development is not permitted in any of the following circumstances:

- The building was constructed before 1st July 1948, or after 5th March 2018. Construction is not defined in the GPDO; regardless, information on definite construction dates is often limited, which means that assessment against this part of the regulations could be difficult.
- As of 5th March 2018, the building was not in use/mixed-use within the use classes specified above.
- The additional storeys are constructed other than on the principal part of the building, defined as the main part of the building excluding any front, side or rear extension of a lower height, whether this forms part of the original building or a subsequent addition.
- The floor to ceiling height of any additional storey is more than 3 metres in height; or more than the floor to ceiling height of any of the existing storeys, whichever is the lesser, where such heights are measured internally.
- The new dwellinghouses are not flats. Houses are not eligible to use this PD right; only Part 1, Class AA rights (discussed above) allow upwards extension of houses.
- The extended building (not including plant) would be greater than 18 metres in height (measured from ground level, the definition of which is set out above).
- The height of the highest part of the roof of the extended building would exceed by more than 3.5 metres the height of the highest part of the roof of every other building in the row of terrace buildings of which it forms part (not including plant, in each case).
- The height of the highest part of the roof of the extended building would exceed the height of the highest part of the roof of the existing building (not including plant, in each case) by more than 3.5 metres, where the existing building consists of one storey; or 7 metres, where the existing building consists of more than one storey. Given the maximum 18 metre height restriction noted above, the most extensive extension possible is likely to be a two-storey extension of an existing three-storey terraced building.
- The existing building has been enlarged by the addition of one or more storeys above the original building, whether this is through use of relevant PD rights or through full planning permission.
- Any engineering operations to facilitate the new dwellinghouses would include the provision of visible support structures on or attached to the exterior of the building upon

completion of the development. This means that the building itself must be structurally capable of accommodating the additional storey(s). The PD right allows some engineering operations to strengthen existing walls and foundations (see below).

- Any engineering operations would fall outside the existing curtilage of the building. Engineering operations are permitted within the existing curtilage to strengthen existing walls; strengthen existing foundations; or install or replace water, drainage, electricity, gas or other services.
- Works for the installation of additional plant on the roof of the extended building is not permitted if there is no existing plant on the building.
- Works for the replacement of existing plant or installation of additional plant on the roof of the extended building is not permitted if the height of any replaced or additional plant (as measured from the lowest surface of the new roof) on the principal part of the new building would exceed the height of any existing plant (as measured from the lowest surface of the existing roof) on the principal part of the existing building. "Principal part" has the same meaning as noted above.
- Works for the construction of appropriate and safe access and egress to the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases, would extend beyond the curtilage of the existing building.
- Works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses would:
 - extend beyond the curtilage of the existing building;
 - be situated on land forward of a wall forming the principal elevation of the existing building; or
 - be situated on land forward of a wall fronting a highway and forming a side elevation of the existing building.
- The land or site on which the building is located, is or forms part of:
 - article 2(3) land, which includes conservation areas and areas of outstanding natural beauty (AONB). Bromley has 44 conservation areas and part of the Kent Downs AONB covers the south east of the Borough;
 - a site of special scientific interest (SSSI). There are six SSSIs in Bromley;
 - a listed building or land within its curtilage. There are 410 listed buildings in Bromley;
 - a scheduled monument or land within its curtilage. There are nine scheduled monuments in Bromley;
 - a safety hazard area;
 - a military explosives storage area; or
 - land within three kilometres of the perimeter of an aerodrome. Biggin Hill is defined as an aerodrome for the purposes of the GPDO.

3.25 Development is only permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval related to the following potential impacts (where they are relevant):

- transport and highways impacts of the development;
- air traffic and defence asset impacts of the development;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- the external appearance of the building including the design and architectural features of the principal elevation and any side elevation that fronts a highway; and the impact of any allowed works for the construction of appropriate and safe access to and egress and storage, waste or other ancillary facilities;
- the provision of adequate natural light in all habitable rooms of the new dwellinghouses.
- impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;
- impacts of noise from any commercial premises (as defined above) on the intended occupiers of the new dwellinghouses;
- impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area; and
- whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State. None of the protected vistas identified relate to Bromley.

3.26 Any development under Class AB is permitted subject to the condition that the development must not include a window in any wall or roof slope forming a side elevation of the building.

Part 20, Class AC

3.27 The new Part 20, Class AC PD right permits development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a terrace building in use as a single dwellinghouse (Use Class C3). The PD right permits up to two additional storeys, in the case of an existing dwellinghouse consisting of two or more storeys; or one additional storey, in the case of an existing dwellinghouse consisting of one storey.

3.28 Development is not permitted in any of the following circumstances:

- The building was constructed before 1st July 1948, or after 5th March 2018. Construction is not defined in the GPDO; regardless, information on definite construction dates is often limited, which means that assessment against this part of the regulations could be difficult.
- As of 5th March 2018, the building was not in use/mixed-use within the use classes specified above. This in theory means that the PD right applies to buildings either in fully commercial use or mixed residential and commercial uses, similar to Class AB, although there are less restrictions attached to Class AC, notably no prior approval to assess the impact of noise from any existing commercial premises). Class AC itself is titled “*new dwellinghouses on terrace buildings in use as dwellinghouses*” and the PD explicitly

permits development above the topmost storey on a terrace building in use as a single dwellinghouse. This is a potential conflict within the PD right.

- The additional storeys are constructed other than on the principal part of the dwellinghouse, defined as the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition.
- The floor to ceiling height of any additional storey is more than 3 metres in height; or more than the floor to ceiling height of any of the existing storeys, whichever is the lesser, where such heights are measured internally.
- The new dwellinghouses are not flats. Houses are not eligible to use this PD right; only Part 1, Class AA rights (discussed above) allow upwards extension of houses.
- The extended building would be greater than 18 metres in height (measured from ground level, the definition of which is set out above).
- The height of the highest part of the roof of the extended building would exceed by more than 3.5 metres the height of the highest part of the roof of every other building in the row of terrace buildings of which it forms part.
- The height of the highest part of the roof of the extended building would exceed the height of the highest part of the roof of the existing dwellinghouse by more than 3.5 metres, where the existing dwellinghouse consists of one storey; or 7 metres, where the existing dwellinghouse consists of more than one storey. Given the maximum 18 metre height restriction noted above, the most extensive extension possible is likely to be a two-storey extension of an existing three-storey terraced dwellinghouse.
- The existing dwellinghouse has been enlarged by the addition of one or more storeys above the original dwellinghouse, whether this is through use of relevant PD rights or through full planning permission.
- Any engineering operations to facilitate the new dwellinghouses would include the provision of visible support structures on or attached to the exterior of the building upon completion of the development. This means that the building itself must be structurally capable of accommodating the additional storey(s). The PD right allows some engineering operations to strengthen existing walls and foundations (see below).
- Any engineering operations would fall outside the existing curtilage of the dwellinghouse. Engineering operations are permitted within the existing curtilage to strengthen existing walls; strengthen existing foundations; or install or replace water, drainage, electricity, gas or other services.
- Works for the construction of appropriate and safe access and egress to the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases, would extend beyond the curtilage of the existing dwellinghouse.
- Works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses would:
 - extend beyond the curtilage of the existing dwellinghouse;
 - be situated on land forward of a wall forming the principal elevation of the existing dwellinghouse; or

- be situated on land forward of a wall fronting a highway and forming a side elevation of the existing dwellinghouse.
- The land or site on which the dwellinghouse is located, is or forms part of:
 - article 2(3) land, which includes conservation areas and areas of outstanding natural beauty (AONB). Bromley has 44 conservation areas and part of the Kent Downs AONB covers the south east of the Borough;
 - a site of special scientific interest (SSSI). There are six SSSIs in Bromley;
 - a listed building or land within its curtilage. There are 410 listed buildings in Bromley;
 - a scheduled monument or land within its curtilage. There are nine scheduled monuments in Bromley;
 - a safety hazard area;
 - a military explosives storage area; or
 - land within three kilometres of the perimeter of an aerodrome. Biggin Hill is defined as an aerodrome for the purposes of the GPDO.

3.29 Development is only permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval related to the following potential impacts (where they are relevant):

- transport and highways impacts of the development;
- air traffic and defence asset impacts of the development;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- the external appearance of the building including the design and architectural features of the principal elevation and any side elevation that fronts a highway; and the impact of any allowed works for the construction of appropriate and safe access to and egress and storage, waste or other ancillary facilities;
- the provision of adequate natural light in all habitable rooms of the new dwellinghouses.
- impact on the amenity of the neighbouring premises including overlooking, privacy and the loss of light; and
- whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State. None of the protected vistas identified relate to Bromley.

3.30 The following conditions also apply:

- the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
- the development must not include a window in any wall or roof slope forming a side elevation of the dwelling house; and

- the roof pitch of the principal part of the dwellinghouse following the development must be the same as the roof pitch of the existing dwellinghouse.

Part 20, Class AD

3.31 The new Part 20, Class AD PD right permits development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a terrace building in use as a single dwellinghouse (Use Class C3). The PD right permits up to two additional storeys, in the case of an existing dwellinghouse consisting of two or more storeys; or one additional storey, in the case of an existing dwellinghouse consisting of one storey.

3.32 Development is not permitted in any of the following circumstances:

- The building was constructed before 1st July 1948, or after 5th March 2018. Construction is not defined in the GPDO; regardless, information on definite construction dates is often limited, which means that assessment against this part of the regulations could be difficult.
- As of 5th March 2018, the building was not in use/mixed-use within the use classes specified above. This in theory means that the PD right applies to buildings either in fully commercial use or mixed residential and commercial uses, similar to Class AB, although there are less restrictions attached to Class AC, notably no prior approval to assess the impact of noise from any existing commercial premises). Class AD itself is titled “*new dwellinghouses on terrace buildings in use as dwellinghouses*” and the PD explicitly permits development above the topmost storey on a terrace building in use as a single dwellinghouse. This is a potential conflict within the PD right.
- The additional storeys are constructed other than on the principal part of the dwellinghouse, defined as the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition.
- The floor to ceiling height of any additional storey is more than 3 metres in height; or more than the floor to ceiling height of any of the existing storeys, whichever is the lesser, where such heights are measured internally.
- The new dwellinghouses are not flats. Houses are not eligible to use this PD right; only Part 1, Class AA rights (discussed above) allow upwards extension of houses.
- The extended building would be greater than 18 metres in height (measured from ground level, the definition of which is set out above).
- The height of the highest part of the roof of the extended building would exceed the height of the highest part of the roof of the existing dwellinghouse by more than 3.5 metres, where the existing dwellinghouse consists of one storey; or 7 metres, where the existing dwellinghouse consists of more than one storey. Given the maximum 18 metre height restriction noted above, the most extensive extension possible is likely to be a two-storey extension of an existing three-storey terraced dwellinghouse.
- The existing dwellinghouse has been enlarged by the addition of one or more storeys above the original dwellinghouse, whether this is through use of relevant PD rights or through full planning permission.
- Any engineering operations to facilitate the new dwellinghouses would include the provision of visible support structures on or attached to the exterior of the building upon completion of the development. This means that the building itself must be structurally

capable of accommodating the additional storey(s). The PD right allows some engineering operations to strengthen existing walls and foundations (see below).

- Any engineering operations would fall outside the existing curtilage of the dwellinghouse. Engineering operations are permitted within the existing curtilage to strengthen existing walls; strengthen existing foundations; or install or replace water, drainage, electricity, gas or other services.
- Works for the construction of appropriate and safe access and egress to the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases, would extend beyond the curtilage of the existing dwellinghouse.
- Works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses would:
 - extend beyond the curtilage of the existing dwellinghouse;
 - be situated on land forward of a wall forming the principal elevation of the existing dwellinghouse; or
 - be situated on land forward of a wall fronting a highway and forming a side elevation of the existing dwellinghouse.
- The land or site on which the dwellinghouse is located, is or forms part of:
 - article 2(3) land, which includes conservation areas and areas of outstanding natural beauty (AONB). Bromley has 44 conservation areas and part of the Kent Downs AONB covers the south east of the Borough;
 - a site of special scientific interest (SSSI). There are six SSSIs in Bromley;
 - a listed building or land within its curtilage. There are 410 listed buildings in Bromley;
 - a scheduled monument or land within its curtilage. There are nine scheduled monuments in Bromley;
 - a safety hazard area;
 - a military explosives storage area; or
 - land within three kilometres of the perimeter of an aerodrome. Biggin Hill is defined as an aerodrome for the purposes of the GPDO.

3.33 Development is only permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval related to the following potential impacts (where they are relevant):

- transport and highways impacts of the development;
- air traffic and defence asset impacts of the development;
- contamination risks in relation to the building;
- flooding risks in relation to the building;

- the external appearance of the building including the design and architectural features of the principal elevation and any side elevation that fronts a highway; and the impact of any allowed works for the construction of appropriate and safe access to and egress and storage, waste or other ancillary facilities;
- the provision of adequate natural light in all habitable rooms of the new dwellinghouses.
- impact on the amenity of the neighbouring premises including overlooking, privacy and the loss of light; and
- whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State. None of the protected vistas identified relate to Bromley.

3.34 The following conditions also apply:

- the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
- the development must not include a window in any wall or roof slope forming a side elevation of the dwelling house; and
- the roof pitch of the principal part of the dwellinghouse following the development must be the same as the roof pitch of the existing dwellinghouse.

Upwards extension discussion

3.35 The upwards extension PD rights set out detailed requirements and limitations on use. The determination of these applications is likely to be akin to a full planning application in terms of required officer resources, although it is likely to attract a lower fee than an equivalent full planning application. These applications are likely to be contentious and complex, and it is envisaged that there will be significant procedural difficulties, for example related to information requests.

3.36 The PD rights will heighten expectations of applicants about what development is permissible, but it is important to note that there are numerous prior approval categories and that Development Plan policy will apply where related to these categories. This may result in an increase in appeals, which will further strain resources.

3.37 In terms of the built environment, the implications of the PD rights are as yet unknown and will only become evident once it comes into force. However, the potential impacts are significant, in terms of the impact on local character and amenity. As noted above, Development Plan policies could apply where related to prior approval categories, for example, policies covering non-designated heritage assets, areas of special residential character (ASRCs) and development adjacent to conservation areas could apply to the assessment of external appearance.

3.38 As noted above, there are a number of restrictions on the use of the upwards extension PD rights. Bromley has a number of conservation areas, SSSIs and listed buildings, as well as a portion of the Kent Downs AONB and an aerodrome at Biggin Hill (which means that PD rights are restricted within 3km of its perimeter).

3.39 The Biggin Hill and AONB restrictions effectively rule out the use of the upwards extension PD rights across much of the south of the borough. In the rest of the borough, conservation areas will be the main restriction on use of the PD rights, which means that the upwards extension PD rights will be eligible, in principle, in large parts of every ward (except Chislehurst which is largely covered by a conservation area).

- 3.40 Prior approval permissions have often been used as a ‘fallback’ position, whereby developers secure prior approval permission and then subsequently apply for full planning permission for a more comprehensive development on the same site, noting that if this permission was not granted then there is an extant prior approval that can be delivered. Fallback positions can be material considerations in the determination of planning applications although the weight given would depend on whether the applicant has secured the prior approval permission; it is not enough to just highlight that prior approval permission could be sought, as there is no guarantee prior approval will be granted. Where prior approval permission has been granted, an applicant would also need to demonstrate that there is a realistic intention to implement the prior approval, for the fallback to be given weight. It is noted that development granted through the upwards extension PD rights must be completed within three years of the date of grant of prior approval, which will factor into any consideration of the weight given to a fallback position.
- 3.41 As noted above, the PD rights allows various works to facilitate the addition of additional storeys, including works for the construction of appropriate and safe access and egress to the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases. Adding additional storeys to purpose-built blocks of flats may mean that existing internal means of access and escape, such as separate lift shafts and staircases, can be utilised. However, this does not mean that they will necessarily be able to meet building and fire safety requirements, which are covered by separate regimes. All development, whether granted permission following a planning application or through PD rights, is legally required to comply with relevant Building Regulations. Where additional storeys and homes are added to a building some aspects of the building as a whole may also be required to be upgraded under Building Regulations.
- 3.42 In principle, it is possible to withdraw the upwards extension PD rights through an Article 4 Direction. An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission be first obtained from the local planning authority for that development. This gives a local planning authority the opportunity to consider a proposal in more detail, i.e. assessing against policies in the Development Plan. The upwards extension PD rights requires prior approval of certain issues, but this determination is limited and does not allow for full consideration against adopted Development Plan policies.
- 3.43 As set out in the NPPF and PPG, the use of Article 4 Directions should be limited to situations where they are necessary to protect local amenity and / or the wellbeing of the area. These criteria are not further defined in the NPPF or the PPG. The PPG notes that the potential harm that a Direction is intended to address should be clearly identified.
- 3.44 Provided that the local authority considers it expedient, an Article 4 Direction can cover an area of any geographic size, from a specific site to a local authority-wide area. PPG advises that any Direction removing PD rights where prior approval powers are available to control PD should have particularly strong justification. The upwards extension PD right requires prior approval of a number of potential impacts, as noted above. Therefore, any Article 4 Direction removing the upwards extension PD right would need particularly strong justification.
- 3.45 An Article 4 Direction to remove upwards extension PD rights can only be made with non-immediate effect. Article 4 Directions can attract compensation liability based on abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, which in the case of upwards extensions could be a significant amount. However, a non-immediate Direction with a 12-month notice period would remove any compensation liability. During the 12-month notice period, the upwards extension PD rights would continue to apply.

- 3.46 The Secretary of State for Housing, Communities and Local Government has the power to revoke or modify Article 4 Directions at any time. There is evidence of past Government interventions in other boroughs where a PD right allowing change to residential use is being withdrawn. Intervention is considered a strong possibility in relation to any upwards extension Article 4 Directions, given that it is a key Government policy. Justification in line with the PPG criteria identified above will be key to ensuring that any proposed Direction stands up to scrutiny.
- 3.47 Officers consider that there may be scope to introduce Article 4 Directions to remove Part 20 PD rights, particularly in areas covered by certain Local Plan designations where character impacts may be more pronounced. Further work will be done to investigate this with the intention of reporting to the November meeting of Development Control Committee.

Office to residential demolition

- 3.48 Office to residential PD rights were first introduced in May 2013, allowing existing B1a offices to change use to residential use through a light touch prior approval process which only allowed consideration of highways impacts, flood risk and land contamination. Further prior approval category relating to noise impacts and provision of adequate natural light were subsequently introduced.
- 3.49 Bromley has experienced significant losses of offices due to this PD right; In total, approximately 53,000sqm of office floorspace has been granted approval since May 2013. To limit the impact of the PD right, Article 4 Directions were made and came into force in 2015; these Directions removed the PD right in designated Business Improvement Areas in Bromley Town Centre. Further Directions have also been made to remove the PD right in designated office clusters; if confirmed, these Directions will come into force in July 2021.
- 3.50 Variations to the office to residential PD right have been mooted since 2015, with a particular focus on a new PD right allowing the demolition of office buildings and its replacement with a new residential building. There have been a number of consultations on the principle and detail of this proposal.
- 3.51 The new PD right has now been introduced – Part 20, Class ZA – which permits:
- the demolition of any building comprising a single purpose-built detached block of flats, and any other single detached building comprising premises established for B1(a), B1(b) or B1(c) uses (or for any combination of them), as of 12 March 2020; and
 - its replacement by a single building comprising a purpose-built detached block of flats, or a purpose-built detached dwellinghouse.
- 3.52 The PD right allows the following operations to facilitate demolition and the development of the replacement building:
- operations reasonably necessary for the demolition and construction, which may include the installation of a basement or cellar in the new building, whether or not there is one in the old building;
 - works for the removal of plant servicing the old building;
 - works for the disconnection of services from the old building;
 - works for the removal of any means of access to and egress from the old building;
 - works for the removal of storage and waste from the old building;

- works for the installation of plant to service the new building;
- works for the installation of services - water, drainage, electricity, gas, and other services to the extent reasonably necessary for the new building to function - to be connected to the new building;
- works to enable access to and egress from the new building, including means of escape from fire;
- works for the construction, within the new building, of storage, waste or other ancillary facilities to support the new building; and
- the use of scaffolding and other temporary structures to support the operations, starting with their installation no earlier than one month before the beginning of those operations, and ending with their removal no later than one month after the completion of those operations.

3.53 Development is not permitted in any of the following circumstances:

- The land covered by, or within the curtilage of, the old building is:
 - occupied in any part under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;
 - article 2(3) land, which includes conservation areas and areas of outstanding natural beauty (AONB). Bromley has 44 conservation areas and part of the Kent Downs AONB covers the south east of the Borough;
 - a site of special scientific interest (SSSI). There are six SSSIs in Bromley;
 - a listed building or land within its curtilage. There are 410 listed buildings in Bromley;
 - a scheduled monument or land within its curtilage. There are nine scheduled monuments in Bromley;
 - a safety hazard area;
 - a military explosives storage area; or
 - land within three kilometres of the perimeter of an aerodrome. Biggin Hill is defined as an aerodrome for the purposes of the GPDO.
- The old building was constructed after 31 December 1989;
- The footprint of the old building exceeds 1,000 square metres;
- The height of the highest part of the roof of the old building above ground level (not including plant, radio masts and antennae) is greater than 18 metres at any point;
- The old building is occupied or has been vacant for a period of less than 6 months immediately prior to the date of the application for prior approval. The GPDO does not specify evidence requirements to demonstrate vacancy, but this could potentially link to any requirements set out in relevant Development Plan policies;
- The old building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the old building stands and it

is practicable to secure safety or health by works of repair or works for affording temporary support (and for this purpose keeping the old building vacant does not of itself count as action or inaction);

- The demolition is “relevant demolition” which is defined as demolition of a building in a Conservation Area. Given that the PD right is not permitted in Conservation Areas anyway, this additional restriction is not strictly necessary.
- If any of the footprint of the new building falls outside the footprint of the old building;
- If any part of the exterior wall of the new building nearest to a highway is nearer to the highway than the part nearest the highway of the exterior wall nearest the highway of the old building;
- If the height (not including plant, radio masts and antennae) of the new building would at any point exceed the lower of:
 - 7 metres above the height (not including plant) of old building; or
 - 18 metres above ground level;
- If the new building is more than 2 storeys higher than the old building;
- If the new building has more storeys than the old building and the floor to ceiling height of any additional storey in the new building, measured internally, would at any point be greater than the lower of:
 - the floor to ceiling height, measured internally, of any storey in the old building; or
 - 3 metres; or
- If the height of any plant on the roof of the new building as measured from the lowest surface of that roof would be greater than the height of any existing plant as measured from the lowest surface of the existing roof on the principal part of the old building.

3.54 Development is only permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval related to the following potential impacts (where they are relevant):

- transport and highways impacts of the development;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- the design of the new building;
- the external appearance of the new building;
- the provision of adequate natural light in all habitable rooms of each new dwellinghouse in or comprising the new building;
- the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light;

- impacts of noise from any commercial premises (as defined above) on the intended occupiers of the new dwellinghouses.
- the impact on business and new residents of the development's introduction of, or increase in, residential use in the area in which the development is to take place;
- the impact of the development on heritage and archaeology;
- the method of demolition of the old building;
- the plans for landscaping of the development, including the planting and maintenance of shrubs and trees; and
- any air traffic and defence asset impacts of the development, and
- the impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State. None of the protected vistas identified relate to Bromley.

3.55 Class ZA has specific procedural requirements in the GPDO, more extensive than the requirements for Part 20 Class AA to AD. This mainly relates to additional information regarding to demolition, which is not permitted under the other PD rights. The specific requirements set out in paragraphs 3.9 to 3.14 also apply to the Class ZA PD right.

Office to residential demolition discussion

3.56 Class ZA PD rights have the potential to significantly undermine planning policies to promote economic growth and could lead to a diminution of office and light industrial stock. The PD right does include a number of restrictions which could help mitigate the impact to some degree, especially compared to previously introduced office to residential PD rights; the introduction of these rights in 2013 had very limited restrictions and uptake was significant and lead to huge losses of office floorspace.

3.57 The issues discussed in the 'upwards extension discussion' section (paragraphs 3.35 to 3.41) also apply with regard to the Class ZA PD right, including the potential for prior approval to be used to justify a fallback position.

3.58 It is noted that the changes to the UCO (discussed below) could also affect office supply, given that former B1 uses are now within Use Class E and in most cases will be free to move to any other use within Class E. However, the impact of this potential change is not analogous to the potential impact of the PD right in terms of impacts; both would involve the loss of office/light industrial space but the PD right would lead to full loss of commercial use whereas change within Class E would at least ensure that a commercial function is maintained. The introduction of residential use through Class ZA could also cause adverse impacts due to residential and commercial uses being in close proximity. This can be considered to a degree through prior approval and relevant policies such as those relating to agent of change could be material to the prior approval assessment, but ultimately the PD right does heighten the risk of adverse impacts and does not offer the same protection against these issues as the full suite of policies in the Development Plan, applied to a planning application.

3.59 As noted in the discussion of the upwards extension PD rights in paragraphs 3.42 to 3.47, Article 4 Directions can be put in place to remove PD rights in certain areas, but they will require strong justification. Officers consider that there may be scope to introduce Article 4 Directions to remove Class ZA rights, particularly in important office and employment areas. Further work will be done

to investigate this with the intention of reporting to the November meeting of Development Control Committee.

Changes to the Use Classes Order

3.60 Extensive changes to the UCO were introduced on 1 September 2020. These changes follow a consultation on proposed changes to the UCO in October 2018⁴, although this consultation specifically related to a potential merging of Use Classes A1, A2 and A3 only.

3.61 Three new uses classes have been introduced:

- Class E (Commercial, business and service), which allows uses for the following purposes:
 - (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public;
 - (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises;
 - (c) for the provision of the following kinds of services principally to visiting members of the public; (i) financial services, (ii) professional services (other than health or medical services), or (iii) any other services which it is appropriate to provide in a commercial, business or service locality;
 - (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public;
 - (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner;
 - (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public;
 - (g) for (i) an office to carry out any operational or administrative functions, (ii) the research and development of products or processes, or (iii) any industrial process; being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- Class F.1 (Learning and non-residential institutions), which allows uses (not including residential use) for the following purposes:
 - (a) for the provision of education;
 - (b) for the display of works of art (otherwise than for sale or hire);
 - (c) as a museum;
 - (d) as a public library or public reading room;
 - (e) as a public hall or exhibition hall;

⁴ MHCLG, Planning Reform: Supporting the high street and increasing the delivery of new homes, available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752222/Planning_reform_-_supporting_the_high_street_and_increasing_the_delivery_of_new_homes.pdf

- (f) for, or in connection with, public worship or religious instruction;
- (g) as a law court.
- Class F.2 (Local community), which allows uses for the following purposes:
 - (a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where (i) the shop's premises cover an area not more than 280 metres square, and (ii) there is no other such facility within 1000 metre radius of the shop's location;
 - (b) a hall or meeting place for the principal use of the local community;
 - (c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms;
 - (d) an indoor or outdoor swimming pool or skating rink.

3.62 These changes replace and subsume several previous use classes, with classes A1, A2, A3, A4, A5, B1, D1, and D2 now deleted. Table 1 below shows these changes (green highlight denotes a change):

Table 1: UCO changes

Former Use Class		New Use Class
A1 (shops)		E (use for the display or retail sale of goods, other than hot food, principally to visiting members of the public, with the exception of shops which meet criteria of Class F.2)
		F.2 (a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where the shop's premises cover an area not more than 280sqm, and there is no other such facility within 1000 metre radius of the shop's location)
A2 (financial and professional services)		E
A3 (restaurants and cafes)		E
A4 (drinking establishments, including those with expanded food provision)		Sui Generis
A5		Sui Generis
B1 (business)	a (offices)	E
	b (research and development)	
	c (light industrial)	
B2 (general industrial)		B2
B8 (storage or distribution)		B8
C1 (hotels)		C1
C2 (residential institutions)		C2
C2A (secure residential institutions)		C2A
C3 (dwellinghouses)		C3
C4 (houses in multiple occupation)		C4
D1 (non-residential institutions)		E (provision of medical or health services, principally to visiting members of the public, creches, day nurseries, day centre)
		F.1 (non-residential education, display of works of art (otherwise than for sale or hire), museums,

	public libraries or reading rooms, public halls, exhibition halls, places of worship, law courts)
D2 (assembly and leisure)	E (indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public) F.2 (an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms, an indoor or outdoor swimming pool or skating rink. Sui Generis (live music venue, cinema, concert hall, bingo hall and dance hall)
Sui Generis	Sui Generis (no uses removed; additional uses previously under other Use Classes have been added, as noted above).

- 3.63 Moving within a use class does not constitute development and does not need planning permission; for example, a shop can now change to an office as both uses fall within Class E. This has significant potential to undermine the policies and objectives of the Local Plan, especially in commercial areas where particular types of uses are prioritised, such as Town Centres. That said, changes in retail trends and behaviours in recent years have changed the role of some Town Centres from largely retail-based areas to more mixed areas with specific focus on culture and leisure. The UCO will give these areas flexibility to react to these changes, although it is a blunt tool and has no regard for potential adverse impacts, particularly in those predominantly retail areas which continue to perform strongly.
- 3.64 All Sui Generis uses will require planning permission to change to other uses (with the exception of PD rights which apply to specific Sui Generis uses). Planning policies will therefore continue to apply to such applications.
- 3.65 Most shops in the Borough are likely to fall into Use Class E. Use Class F.2 would apply if the shop's premises cover an area not more than 280 metres square, and there is no other such facility within 1000 metre radius of the shop's location. It is unlikely that many, if any, shops in the Borough would meet these criteria, although this would be a case-by-case judgement based on evidence available at the point of any future determination.
- 3.66 Transitional provisions have been put in place to retain the effect of PD rights based on the former Use Classes (prior to 1 September 2020). A building or use will continue to be subject to any PD rights that it was entitled to on or before 31 August 2020. These transitional provisions will remain in place until 31 July 2021 when new, revised PD rights will be introduced. These provisions also apply to relevant Article 4 Directions. It is unclear what the impact of any future amendments to the GPDO will mean for existing Article 4 Directions, specifically whether they will continue to apply or whether there will be a process of reconfirming them to align with the new UCO.
- 3.67 It is possible to apply a condition to new development to remove the ability to move within a Use Class without planning permission. Such a condition may be justified on future applications, particularly where it will help to ensure the Local Plan policies can be delivered, e.g. new Use Class E development in designated office areas could be conditioned so they can only be used as an office, in line with Local Plan policy priorities. Suitability of such a condition would depend on meeting the relevant tests set out in the NPPF. Such conditions cannot be applied retrospectively.

Proposed reforms to permitted development rights to support the deployment of 5G and extend mobile coverage

3.68 Between August and November 2019, the Ministry of Housing, Communities and Local Government, and the Department for Digital, Culture, Media & Sport published a joint consultation⁵ on proposed in-principle reforms to permitted development rights to support the deployment of 5G and extend mobile coverage.

3.69 The consultation sought views on the principle of amending or creating new PD rights to grant planning permission for the following four proposals, and in particular, the circumstances in which it would be appropriate to:

- a. enable deployment of radio housing equipment on land without requiring prior approval, excluding on sites of special scientific interest, to support 5G deployment. This proposal includes the removal of a requirement for prior approval in conservation areas;
- b. strengthen existing masts to enable sites to be upgraded for 5G and for mast sharing without prior approval;
- c. enable the deployment of building-based masts nearer to highways to support deployment of 5G and extend mobile coverage, subject to prior approval; and
- d. enable higher masts to deliver better mobile coverage and mast sharing, subject to prior approval.

3.70 The Government have now published their response to the consultation⁶. This notes their intention to proceed with the consultation proposals, subject to a further technical consultation on the detail of the proposals, including the appropriate environmental protections and other safeguards mentioned above.

3.71 There is concern that these proposals could have significant impacts on conservation areas and other areas. The removal of the ability to consider impacts through prior approval means that there is no scope to assess the specific impact of each application. It is noted that a further technical consultation is proposed which may propose some safeguards, but given that the Government response is supportive of the removal of restrictions in principle, it is unlikely that this forthcoming consultation will offer any options to retain the current stronger level of protection.

4. POLICY IMPLICATIONS

4.1 The upwards extensions and office to residential PD rights have the potential to significantly undermine policies in the Development Plan, most notably policies which look to protect employment space, local character and amenity.

4.2 Unlike a standard planning application, prior approval applications are not assessed against Development Plan policy under section 38(6) of the Planning and Compulsory Purchase Act 2004. However, the Development Plan (the Bromley Local Plan and the London Plan) may be a relevant material consideration where it is relevant to a particular prior approval category; for example, Local Plan policies which aim to prevent adverse impacts on the local road network may be relevant when assessing the transport and highways impacts of the development. The GPDO

⁵ Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827162/Proposed_reforms_to_permitted_development_rights_to_support_the_deployment_of_5G_consultation.pdf

⁶ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902836/Government_Response_Mobile_Planning_Consultation.pdf

notes that the local planning authority must, when determining an application take into account any representations made to them as a result of any consultation; and have regard to the NPPF, so far as relevant to the subject matter of the prior approval.

- 4.3 An Article 4 Direction can be put in place to remove PD rights, as noted in the report. Any decision to put in place a Direction will be subject to a separate decision.
- 4.4 The changes to the UCO could also significantly undermine policies in the Development Plan, especially policies relating to retail, offices and social infrastructure uses. The UCO now allows much more flexibility to change between various uses without planning permission.

5. FINANCIAL IMPLICATIONS

- 5.1 As noted in the report, prior approval applications do require a fee. Updated fees regulations put in place a similar level fee but not equal to fees for planning applications. The level of resources needed to assess prior approval applications are likely to be similar to a full planning application.
- 5.2 Changes to the UCO will likely lead to a small reduction in planning applications, which will commensurately affect planning fees.

6. LEGAL IMPLICATIONS

- 6.1 The Town and Country Planning (General Permitted Development) Order 2015 (as amended) sets out the statutory requirements of upwards extension and office to residential demolition PD rights, which are discussed in this report.
- 6.2 There will be specific considerations for individual prior approval applications, as they come forward in future, for example which Development Plan policies would apply to the determination and what evidence might be needed to enable proper assessment.
- 6.3 An Article 4 Direction can be put in place to remove PD rights, as noted in the report. The statutory requirements for putting in place an Article 4 Direction are set out in Town and Country Planning (General Permitted Development) Order 2015 (as amended). Compensation liability can be removed from Article 4 Directions relating to any of the new PD rights by giving one years notice of a Direction coming into effect.
- 6.4 The Town and Country Planning (Use Classes) Order 1987 (as amended) sets out the statutory requirements relating to planning use classes. Confirmation of which Use Class applies to specific developments will be a case-by-case judgement.
- 6.5 A Judicial Review has been brought against the new PD rights and Use Class Order changes⁷. The grounds of the challenge relate to the lack of environmental assessment of the proposed legislation, failure to meet the Public Sector Equality Duty and failure to take into account material considerations and representations made in response to previous consultations. The Claimant seeks a suspension of the new legislation, pending completion of various assessments of its impacts, and a Parliamentary debate regarding the new legislation. The case will be heard at a Court hearing for 1.5 days between 8 and 15 October.

⁷ Rights : Community : Action pre-action protocol letter 21 August 2020, available here:
https://rightscommunityaction.co.uk/wp-content/uploads/2020/08/2020_08_21-Rights-Community-Action-Pre-action-Protocol-Letter-PD-Reform.pdf

Non-Applicable Sections:	N/A
Background Documents: (Access via Contact Officer)	<p>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 - https://www.legislation.gov.uk/uksi/2020/755/contents/made</p> <p>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 - https://www.legislation.gov.uk/uksi/2020/756/contents/made</p> <p>The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 - https://www.legislation.gov.uk/uksi/2020/757/contents/made</p> <p>Development Control Committee report, 14 July 2020, Upwards Extension Permitted Development Rights</p>