



LAW ANSWERED

SAMPLE CHAPTER FROM OUR PROPERTY LAW & PRACTICE ELECTIVE GUIDE

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PLANNING PERMISSION

GENERAL RULE

Planning permission is required for **all developments of land**, subject to the provisions of the **TCPA**.

WHAT IS A DEVELOPMENT?

"*Development*" is defined in s.55 TCPA as:

*"carrying out of **building**, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land" (s.55(1)).*

The definition of **building works** is in **s.55(1A)** and relates to:

- demolition;
- rebuilding;
- structural alterations/additions; or
- other operations normally carried on by someone in business as a builder.

Exceptions include:

- anything done to the **interior** of a building, or which does not materially affect the exterior (**s.55(2)(a)**); or
- the use of any buildings or land within the curtilage that are **incidental to the enjoyment of its use as a dwelling (s.55(2)(d))** (e.g., this may allow you to convert a garage to a room but you may need planning permission in conservation areas or where permitted development rights have been withdrawn – *see below*).

PERMITTED DEVELOPMENT

There are circumstances in which no formal application for planning permission is needed before conducting the work. Some building works are designated "*permitted developments*" under **The Town and Country Planning (General Permitted Development) Order 1995** and **The Town and Country Planning (General Permitted Development) (England) Order 2015** ("**GPDO**"), these works do not require a planning permission application to be made. Changes to this regime were introduced by **The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (no.2) Order 2021**. A few changes which had been permitted ceased to fall within the scope of permitted developments from **31 July 2021**, but a year's period of grace was granted, so that until **31 July 2022** proposals which were previously permitted developments become **Protected Developments** and are allowed during that extra period. Some additional rights for development were included. Examples of permitted developments are:

- The right to add additional storeys to an existing home and loft conversions generally.
- Installation of solar panels.
- Small extensions of less than 50% of the existing house curtilage.

- The installation of garden decking.
- Installation alteration or replacement of a chimney, flue or soil and vent pipe.
- Small additional buildings for a purpose “*incidental to the enjoyment of the house*”.
- Temporary film-making or temporary recreational campsites.

The local planning authority can make a direction under **Article 4 GPDO** (known as an “*Article 4 direction*”) in relation to a particular site or development. This has the effect of disapplying any permitted development rights, meaning that planning permission will be required.

DEMOLITION

Generally planning permission is required for the **demolition of an entire building (s. 55(1A) TCPA)**, unless the demolition is:

- Of a building with volume under 50m³;
- Demolition of a wall / fence / means of enclosure; or
- Where the work is **urgent (Class A Part 31 Sch. 2 GPDO)**.

Planning permission is always required for demolition of part of a building (**s. 55(1A) TCPA**); but demolition of walls and fences falls within permitted development right (**Class B Part 31 Sch. 2 GPDO**) (*see above*).

More significant changes have been made to permitted development rights for **commercial property** under **Town and Country Planning (use Classes) (Amendment) (England) Regulations 2020** and the **Town and Country Planning (General Permitted Development) (England) (Amendment) (no.3) Order 2020**. Prior to these changes **minor operations** such as erecting a fence or painting a building were permitted, (**Sch. 2 Part 2 GPDO**), but the changes were designed to allow much more development of residential homes and they allowed redesignation of use in a number of situations.

NOTE: it is possible to apply to the Local Authority planning department for a **Lawful Development Certificate**. This will confirm that any works undertaken for which planning permission was not obtained were permitted developments. You may need to request such a certificate as part of a conveyancing transaction.

MATERIAL CHANGE OF USE

Planning permission **is required** when there is a “*material change of use*” of the property.

Change of use is where the use of property changes from one class to another (listed in **Sch. 2 Part 3 GPDO**), e.g. from B1 to B3 (for an explanation of what types of use each class covers refer to the **Town and Country Planning (Use Classes) Order 1987 (“UCO”)**), consider also the possibility of commercial change of use; most business uses have now been placed into **Class E Commercial Business and Service**.

Planning permission is not needed where the purpose of property remains in the **same class** as it was originally (**s. 55(2)(f) TCPA** and **Art. 3(1) UCO**), e.g. B1 to B2.

EXCEPTIONS TO THE REQUIREMENT FOR PLANNING PERMISSION (Part 3 Sch. 2 GPDO)

Certain changes of use between classes may be made without the need for planning permission, e.g., moving from selling food and drink to providing financial and professional services (**Class C Part 3 Sch. 2 GPDO**). Refer to the detailed schedule for a full list of exceptions. The new **Class E** provides much greater flexibility in the office and retail sectors and provides for part use of buildings for any use within the same class.

NOTE: the **GPDO** exceptions do **not** apply to properties in **Conservation Areas** or **Areas of Outstanding Natural Beauty** (*see section below*).

BIODIVERSITY NET GAIN

Habitats for wildlife must now be left in a better state after development than they were before. An ecologist must measure the biodiversity of an area of habitat pre-development and a 10% improvement must be achieved by the end of the development period. From April 2024 this has applied to the developer of small sites as well as major developments and from November 2025 it is expected to apply to nationally significant infrastructure projects. You may want to check whether this alteration remains in place following the election of the Labour government in July 2024.

NOTE: there is a statutory biodiversity credit scheme which can be used if solutions to improvement cannot be found. The cheapest available credit costs £24,000.

ANSWERING A PROBLEM QUESTION REGARDING PLANNING MATTERS

1:	Have all the relevant planning permission documents been seen and checked prior to exchange? Have detailed questions been raised in the pre-contract enquiries?
2:	<p>Is there any evidence of previous planning irregularities?</p> <ul style="list-style-type: none"> • Check LLC1 and CON29. • Are there developments to the property which might have needed planning permission? • Were any conditions imposed on developments and have they been complied with? <p>In the event of concerns a special condition can be imposed in the contract to compel the vendor to deal with irregularities.</p>
3:	<p>Is the buyer planning to do building work which might need planning permission? Are permitted development rights in place? Will the GPDO exempt the need for an application?</p> <p><i>See notes overleaf.</i></p>

3:

NOTE: it is possible to make an outline application for planning permission – the applicant is not required to have any interest in the land. This must be converted into a full planning permission before work commences. Planning permission generally lasts for three years from grant.

NOTE: an applicant for planning permission does not need to have any title to the land in question. The grant of planning permission does not give rights to the grantee in respect of land that they do not own, and it does not override existing covenants.

BREACH AND ENFORCEMENT OF PLANNING LEGISLATION

Steps available to the Local Authority?

- 1) **Enforcement Notice:** an order to restore land or secure compliance with any conditions or limitations of planning permission. Imposes a continuing obligation to comply. Criminal sanctions apply in the event of breach.
- 2) **Stop Notice:** where an Enforcement Notice has been served, a Stop Notice may be served to stop all activities that are in breach. A Stop Notice cannot prohibit the use of a property as a dwelling.
- 3) **Planning Contravention Notice:** served to flush out information about potential breaches before an Enforcement Notice is served.

Check whether time limits have expired:

- 1) No planning permission for **building works**? Action must be brought within **ten years** of the works being substantially completed (**s. 171B(1) TCPA**).
- 2) No planning permission for material **change of use**? Action must be brought within **ten years** of change of use (**ss. 171B(2) & (3) TCPA**).
- 3) Breach of **condition** attached to planning permission? Action must be brought within **ten years** from the date of breach (**s. 171B(3) TCPA**).
- 4) **Concealed** breaches? No applicable time limit.

LISTED BUILDINGS

DEFINITION

- Buildings classified as having “*historical or architectural merit*” are subject to an additional layer of planning controls.
- Listed Building Consent is needed for exterior **and** interior works if they affect the building’s character.
- Affecting character is subjective, so assume **all** changes need Listed Building Consent.
- The exact level of Listed Building Consent depends upon the grade of listing of each building.
- Listed Building Consent is needed **in addition to** any planning permission.

WHAT NEEDS LISTED BUILDING CONSENT?	<ul style="list-style-type: none"> • Total demolition of listed building. • Partial demolition (unless it does not affect its character (<i>Shimizu UK Limited</i>) – although this exemption is unlikely to apply). • Development (unless the particular type of development benefits from a narrow GPDO exception – again, such an exemption is unlikely to apply).
SANCTIONS AND TIME LIMITS	<ul style="list-style-type: none"> • No time limits for enforcement. • Criminal sanctions against the perpetrator are possible and subsequent owners may be required to carry out rectification works.

CONSERVATION AREAS

DEFINITION	<i>An area of notable environmental or historical interest or importance which is protected by law against undesirable changes.</i>
EFFECT	<ul style="list-style-type: none"> • Any work or change of use needs planning permission – the GPDO exceptions do not apply. • This includes trees – some trees in a Conservation Area are protected and cannot be felled or lopped. • NOTE: before 2013 "<i>Conservation Area Consent</i>" was needed for demolitions – now only planning permission is necessary.
DEMOLITION OF LISTED BUILDINGS IN CONSERVATION AREAS:	<ul style="list-style-type: none"> • Total demolition: <ul style="list-style-type: none"> ○ If the developer can show that they have complied with Class A (Part 31 Sch. 2 GPDO) then they will be deemed to have planning permission. Otherwise planning permission is needed. ○ Listed Building Consent is also needed. • Partial demolition – as for total demolition.
SANCTIONS AND TIME LIMITS:	<ul style="list-style-type: none"> • No time limits for enforcement. • Criminal sanctions against the perpetrator are possible and subsequent owners may be required to carry out rectification works.

BUILDING REGULATIONS

DEFINITION	<ul style="list-style-type: none"> • Governed by Building Regulations 2010 and Building (Approved Inspectors etc.) Regulations 2010 (the "Building Regulations"). • All building works must comply with the Building Regulations: these are separate and in addition to Planning Permission/Listed Building Consent. They apply in all circumstances, even if the GPDO exempts the need for planning permission – so always consider them.
DEVELOPERS MUST:	<ul style="list-style-type: none"> • Inform the local authority, with full plans or serve notice before commencement of work; • Once approval has been obtained, complete within three years of Building Regulations approval; • Receive certificate of compliance after inspection; and • Pay a fee for obtaining approval and the certificate.

NOTE: new regulations have recently been introduced. **Part O** deals with overheating of a building and requires consideration of how to mitigate heating energy use. **Part S** imposes requirements to install electric car charging points.

SANCTIONS AND TIME LIMITS	<ul style="list-style-type: none"> • An enforcement notice by the Local Authority under s.36 Building Act 1984 ("BA") must be served within 12 months of the completion of the work constituting an infringement. • A prosecution under s.35 BA may be brought by the Local Authority in the Magistrates Court within two years of the completion of the work and an unlimited fine can be levied. • However, the Local Authority, the Attorney General or any other person can apply to court for an injunction at any time for the removal or alteration of any work which was in breach of the BA – which effectively means that there is no time limit for enforcement. If an injunction is granted in circumstances where the Local Authority had passed plans for the works, then a compensation order can be made against it.
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PROFESSIONAL CONDUCT POINT

Cottingham v Attey Bower and Jones: A solicitor must **take all reasonable/practical steps to obtain copies of any Building Regulations approval**, otherwise they can be held negligent.

NOTE: it is possible (and common practice) to obtain insurance to protect against problems arising from lack of Building Regulations approval.

If **Building Regulations** are found to have been breached, a solicitor should get an **undertaking from the Seller to obtain a Regularisation Certificate before completion**. This shows that, whilst **Building Regulations** approval was not granted in advance, the works have been carried out or rectified in a manner that makes them now compliant with the **Building Regulations**.