

Changes to the Use Classes Order and Permitted Development Rights

30 September 2020



Introduction of New Regulations

On 21 July, a series of planning measures were laid before Parliament in the hope to **deliver new homes and revitalise town centres across England.**

The measures include a set of amendments to:

Town and Country Planning (Use Classes Order) 1987:

- to create three new Use Classes.

The Town and Country Planning (General Permitted Development) (England) Order 2015:

- to allow the construction of additional storeys on some buildings
- to allow the demolition and redevelopment of certain buildings for residential purposes

Changes to the Planning “Use Classes Order”



Key Aims of the Regulations

- The two main aims of the changes are:
 - To **help the high street and town centres** to provide more space for new businesses by allowing typical high street uses (such as shops, gyms, nurseries and offices) to change between uses **without planning permission**;
 - To **protect "community assets"** (such as pubs, music venues and cinemas) by taking them out of the "Classes" and making them "sui generis", meaning that planning permission would be needed to change to a different use.



New Use Classes

- With effect from 1 September 2020, the new regulations mean that Use Classes A and D of the existing Order are revoked, providing for **three** new Use Classes:

Class E – ‘Commercial, Business and Service’

Class F1 – ‘Learning and Non-Residential Institutions’

Class F2 – ‘Local Community’

- The changes will also expand the number of uses classed as “Sui Generis”

Class E - 'Commercial, Business and Service'

- The regulations seek to '**amend and simplify**' the system of Use Classes in England by creating a new broad **Class E - 'Commercial, Business and Service'**. This will replace the following Use Classes:
 - Class A1 - Shops;
 - Class A2 - Financial and Professional Services;
 - Class A3 - Restaurants and Cafes;
 - Class B1 - Business.
- The new Class E will also include gyms, health centres, clinics, nurseries and day centres.

Class E - 'Commercial, Business and Service'

*'This new class allows for a mix of uses to reflect changing retail and business models...Bringing these uses together and allowing movement between them will give businesses **greater freedom to adapt to changing circumstances and to respond more quickly to the needs of their communities**'.*

Key Implications:

As a result of the creation of Class E, planning permission will not be required for changes of use within this new Use Class (changes of use within Class E **will not constitute development**, as oppose to permitted development).



Class F1 - 'Learning and Non-Residential Institutions' and Class F2 - 'Local Community'

- A series of more protected 'community uses' have been moved into a new Class F.
 - **Class F1** (e.g. schools, galleries, libraries and places of worship).
 - **Class F2** (e.g. essential isolated shops, community halls and outdoor sports facilities)

The Government states that the new Use Classes are designed “...to ensure that *those uses which are important to local communities can be protected through the planning system.*”

Key Implications:

By taking certain uses out of the Use Classes Order, some changes of use will soon require planning permission and therefore the Council's consideration, which they had not needed to obtain previously.

| Use | Use Class up to 31 August 2020 | Use Class from 1 September 2020 | Use | Use Class up to 31 August 2020 | Use Class from 1 September 2020 |
|--|--------------------------------|---------------------------------|---|--------------------------------|---------------------------------|
| Shop not more than 280sqm mostly selling essential goods, including food and at least 1km from another similar shop | A1 | F.2 | Hotels, boarding and guest houses | C1 | C1 |
| Shop | A1 | E | Residential institutions | C2 | C2 |
| Financial and professional services (not medical) | A2 | E | Secure residential institutions | C2a | C2a |
| Café or restaurant | A3 | E | Dwelling houses | C3 | C3 |
| Pub or drinking establishment | A4 | Sui generis | Use of a dwellinghouse by 3-6 residents as a 'house in multiple occupation' | C4 | C4 |
| Take away | A5 | Sui generis | Clinics, health centres, creches, day nurseries, day centre | D1 | E |
| Office other than a use within Class A2 | B1a | E | Schools, non-residential education and training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts | D1 | F.1 |
| Research and development of products or processes | B1b | E | Cinemas, concert halls, bingo halls and dance halls | D2 | Sui generis |
| For any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area) | B1c | E | Gymnasiums, indoor recreations not involving motorised vehicles or firearms | D2 | E |
| Industrial | B2 | B2 | Hall or meeting place for the principal use of the local community | D2 | F.2 |
| Storage or distribution | B8 | B8 | Indoor or outdoor swimming baths, skating rinks, and outdoor sports or recreations not involving motorised vehicles or firearms | D2 | F.2 |

Class E (Commercial, business and service uses),

Class F.1 (Learning and non-residential institutions)

Class F.2 (Local community uses)

Key Issues for Halton

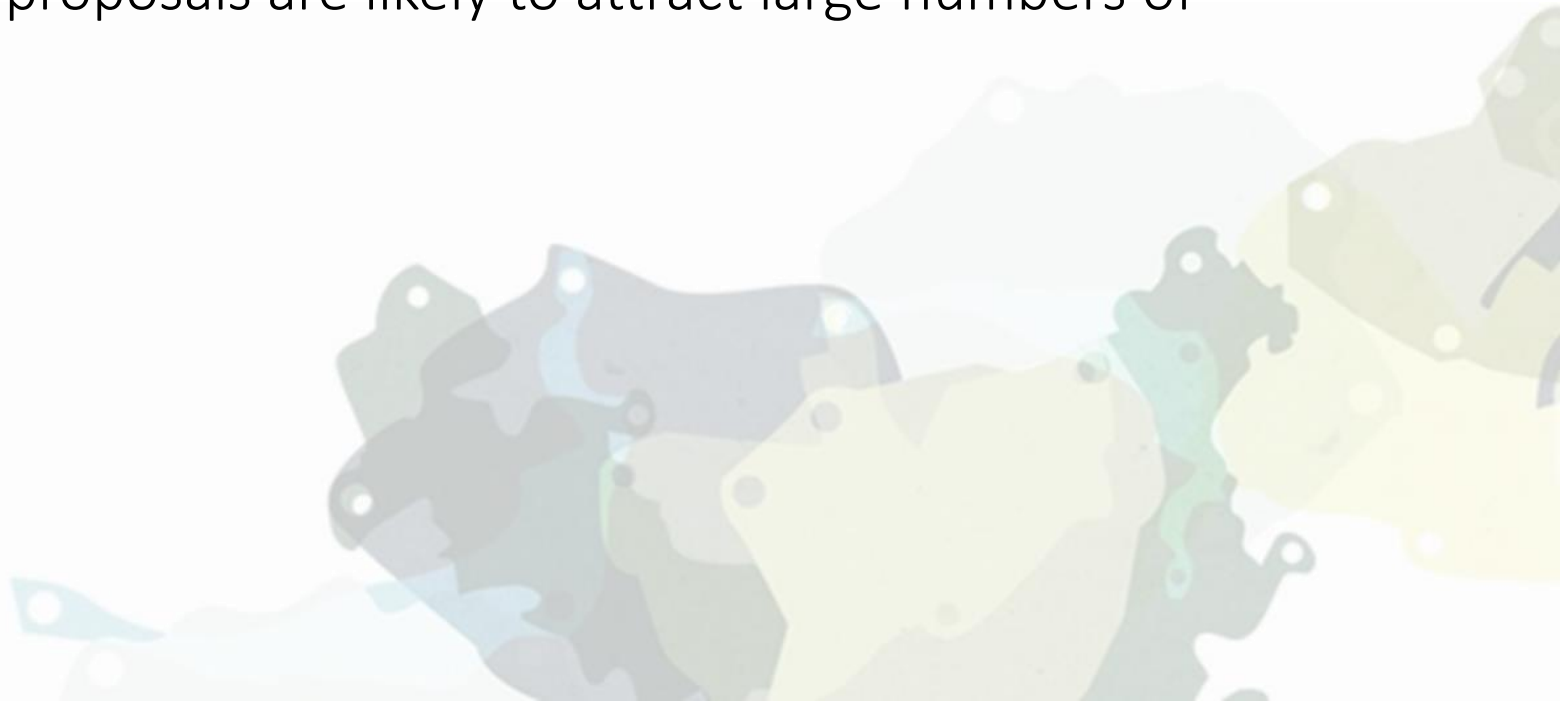
- The relaxation of planning controls is not supported by evidence that the need to obtain planning permission is a significant barrier to business.
 - **The changes were not subject to prior consultation** – earlier consultation having been undertaken about less significant reforms
- Individual shops in the town centre could be left isolated, surrounded by non-retail uses – **the “offer” of our town centres could become diluted.**
 - A significant concern is how this change will affect the Council’s **“town centre first”** planning policies which are designed to protect our town centres and the types of uses allowed.
- There is concern that food retailers could target out of town business parks to convert properties into supermarkets, a change that will *not* require planning permission.

Key Opportunities for Halton

- The main aims of the reforms to give businesses greater freedom to change to a broader range of uses is considered to **align with the Council's agenda to support the regeneration of our town centres.**
- Stores will have **greater flexibility to adapt their space** for delivery centres and pick up and collect facilities, which are all increasingly becoming part of the current retailing model.
- Changes of use to (or from) public houses and hot food takeaways require planning permission with the result that local pubs can be protected
- The new Use Class F2 (Local community) **recognises the importance of small, local shops** in meeting the day to day shopping needs of local communities through greater planning controls.

Next Steps

- It is understood that a consolidated version of the new Use Classes Order regulations will be introduced next year.
- Officers are not aware that the changes ensure that controls are in place for changes of use close to sites covered by *The Control of Major Accident Hazard Regulations (COMAH)*, where proposals are likely to attract large numbers of people (e.g. a supermarket)



Changes to Permitted Development Rights



Proposed Changes to Permitted Development Rights

Back in March 2020, the Planning for the Future policy paper was published and it was announced that in Summer 2020 the Government would introduce further permitted development rights for building upwards.



The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020 comes into effect on 31st August 2020.

It sets out new classes of Permitted Development Rights into Schedule 2 of the GPDO which allow for extending upwards by up to two storeys to certain buildings.



The forthcoming changes are intended to provide support to housing delivery and economic recovery.

Enlargement of a dwellinghouse by construction of additional storey

- Part 1 of Schedule 2 of the General Permitted Development Order, introduces a new permitted development right (**Class AA**).
- This allows for the **enlargement of a dwellinghouse** by the construction of additional storeys on top of the highest existing storey of a dwelling house.

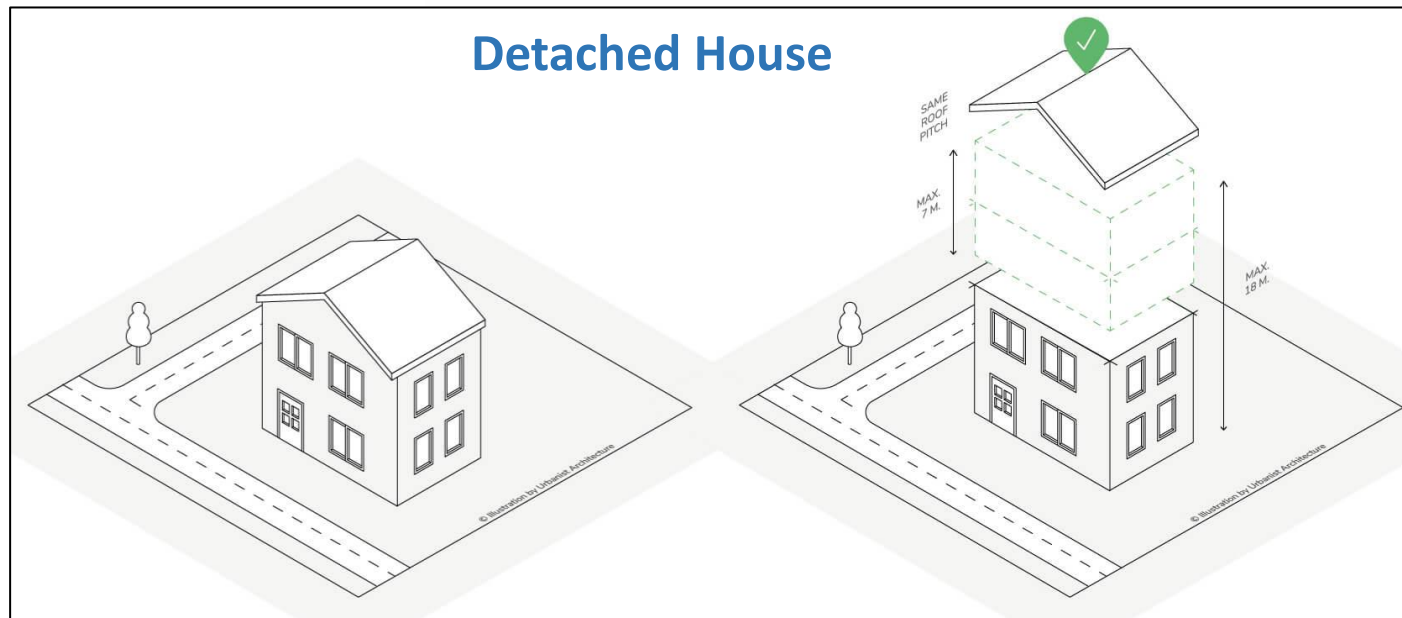


Image source: Urbanist Architecture (2020)

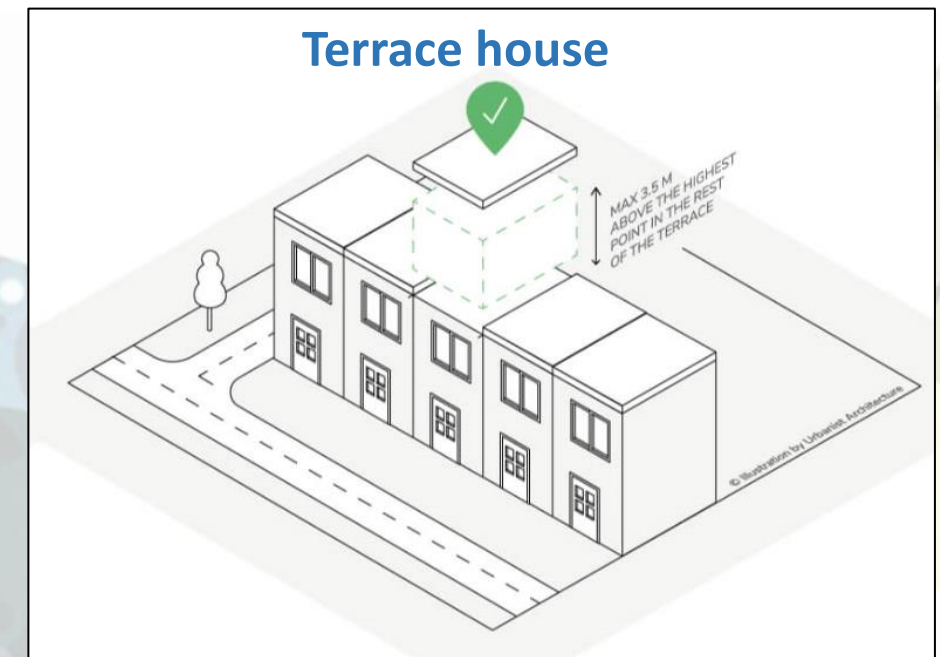


Image source: Urbanist Architecture (2020)

- There are certain restrictions to the new right (Class AA). For instance, development is not permitted if:



THE DWELLINGHOUSE WAS
CONSTRUCTED BEFORE 1ST
JULY 1948 AND AFTER 28TH
OCTOBER 2018.



THE OVERALL HEIGHT OF THE
NEWLY EXTENDED HOUSE
WOULD EXCEED MORE THAN
18M.



THE DWELLINGHOUSE WAS
SITUATED ON ARTICLE 2(3)
LAND OR A SITE OF SPECIAL
SCIENTIFIC INTEREST.

- There is a **requirement for Prior Approval** from the Council under the new permitted development right. Factors to consider are:

The impacts on the amenity of adjoining premises

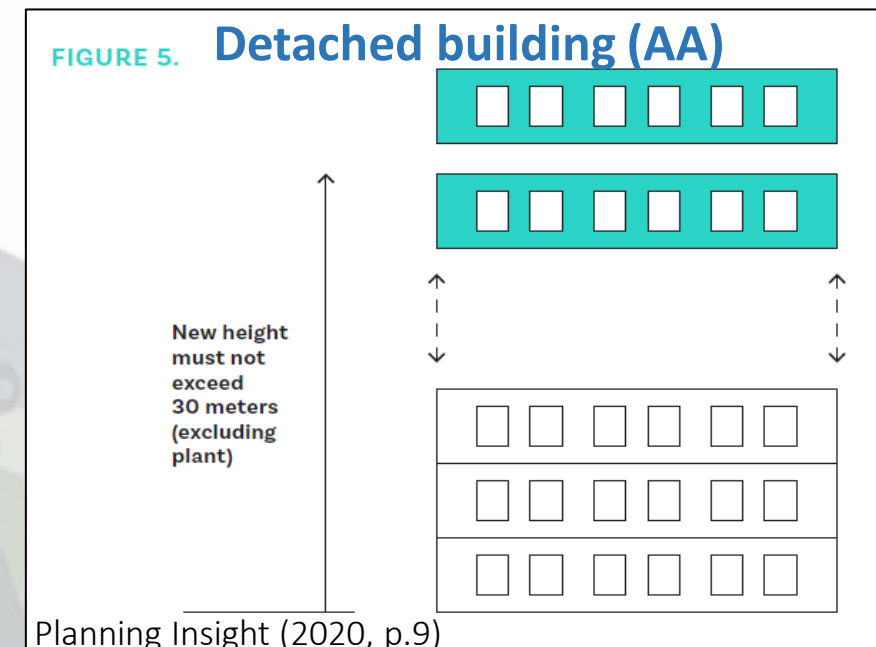
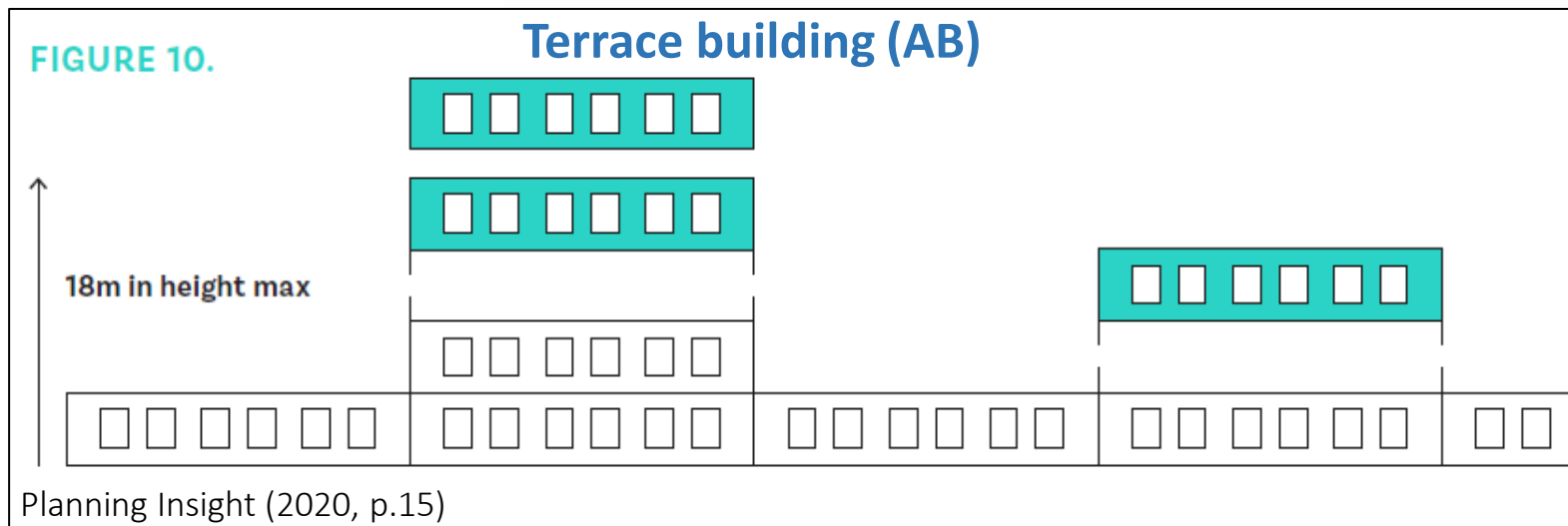
The external appearance

The impacts a taller building may have to air traffic and defence assets

The impact the development could have on a protected view.

The creation of new dwellings on top of existing commercial or mixed uses

- Under Part 20 of Schedule 2 of the Order, the new permitted development rights **Class AA and AB** will allow the construction of up to two additional storeys above detached and terrace buildings in commercial or mixed use to form self-contained flats.
- The new permitted development rights applies to **specific commercial uses**, for instance Class A1, A2, A3 and B1, or in **mixed use** within these uses and mixed use combined with a residential use (Class C3).



New dwellinghouses on terrace and detached buildings in use

- Under Part 20 of the General Permitted Development Order, the **new Classes AC and AD** allows the building of new dwelling houses on existing terrace and detached buildings in use as a dwelling house.
- The **maximum height** of the highest part of the roof of the extended building must not either:
 - Exceed 18 m for terrace buildings (Class AC); or
 - Exceed 18m for detached buildings (Class AD)

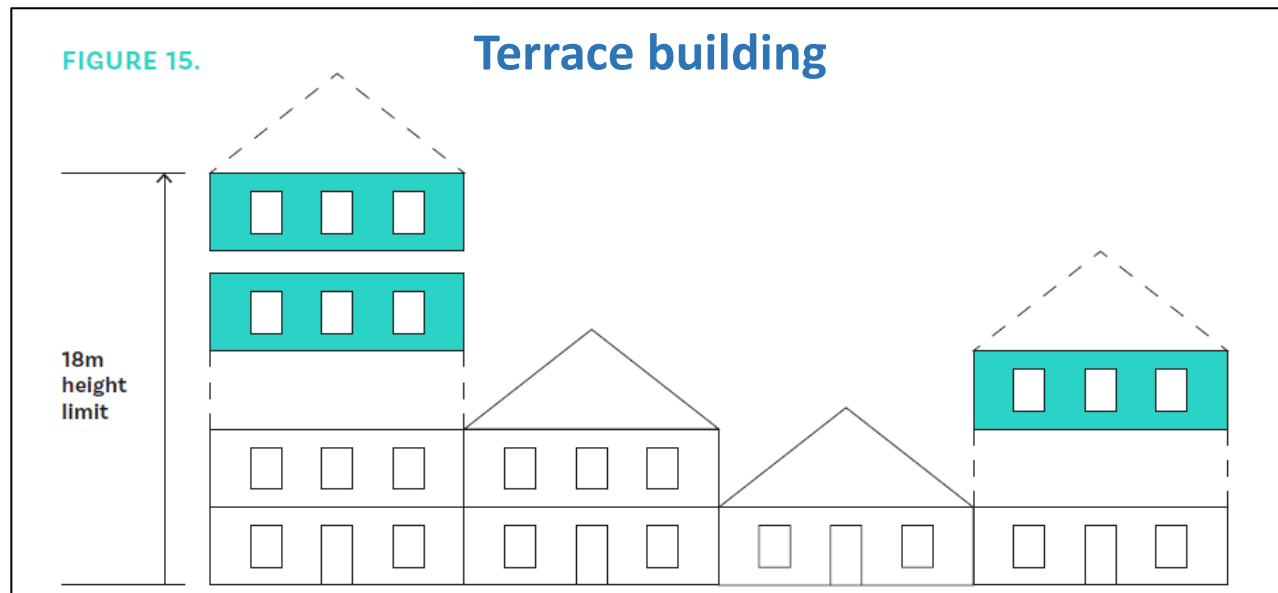


Image source: Planning Insight (2020, p.21)

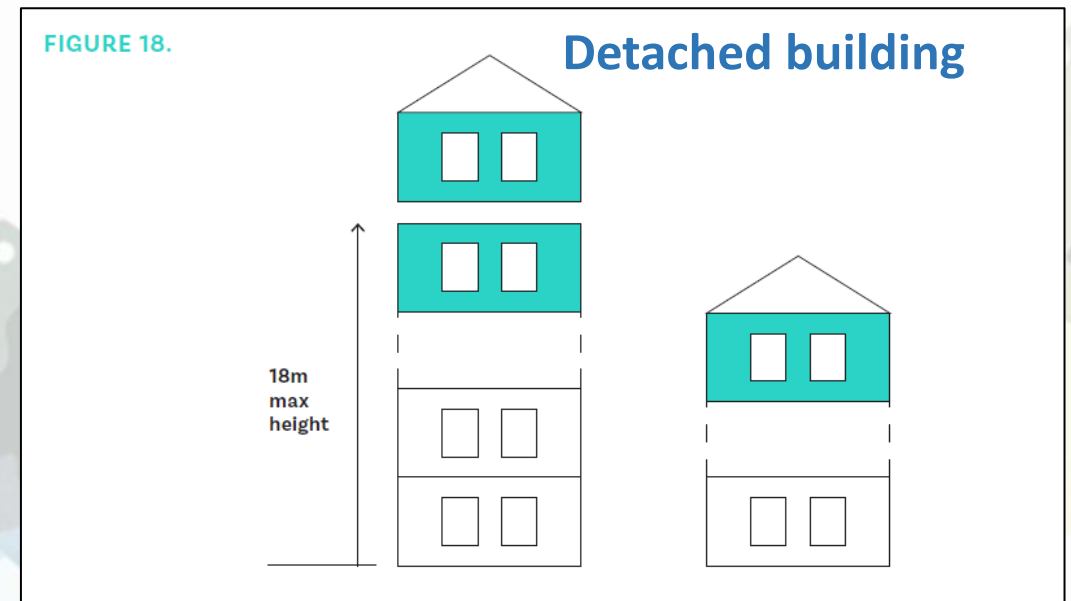


Image source: Planning Insight (2020, p.26)

- A requirement under each of the new permitted development rights (Classes AA, AB, AC and AD) is **for Prior Approval from Local Planning Authority**. Several of the factors to consider are:

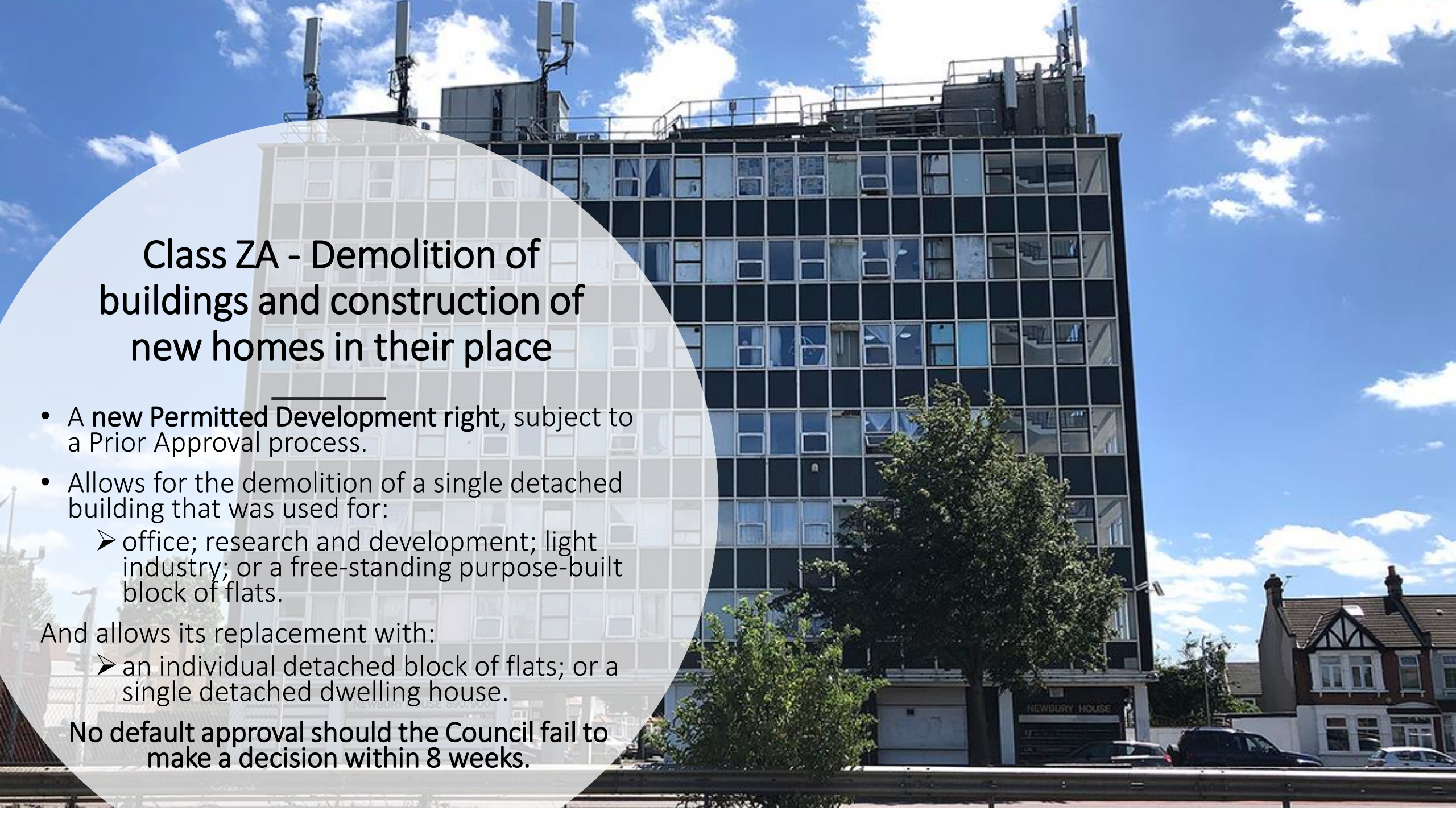
Impact on the amenity of neighbouring properties.

Impact of the external appearance of the building

Transport and highway impacts of the development.

The provision of adequate natural light in all habitable rooms of new dwellings.

Flood risks and contamination risks in relation to the building.



Class ZA - Demolition of buildings and construction of new homes in their place

- A new Permitted Development right, subject to a Prior Approval process.
- Allows for the demolition of a single detached building that was used for:
 - office; research and development; light industry; or a free-standing purpose-built block of flats.

And allows its replacement with:

- an individual detached block of flats; or a single detached dwelling house.

No default approval should the Council fail to make a decision within 8 weeks.

Development Not Permitted

Class ZA PD rights **do not apply** to buildings:-

- constructed **after 31 December 1989**;
- vacant for less than 6 months;
- with a footprint of more than 1000sqm;
- nationally listed; or
- within a conservation area.

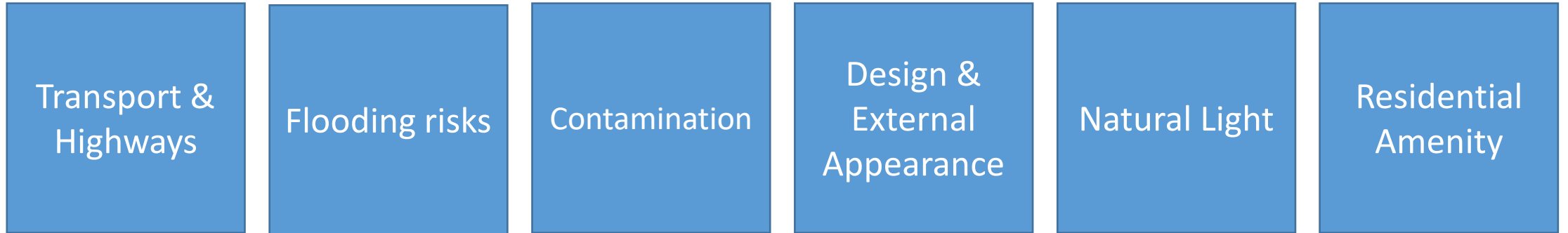


The Replacement Building...

- Shall not be larger than the footprint of the building it replaces.
- Can be up to seven metres higher (than the original) to accommodate up to two additional residential storeys.
- Shall not exceed 18m in height.



Prior Approval – Matters for Consideration



- Councils are required to have regard to national planning guidance (the National Planning Policy Framework) **only**, and not to local planning policies.
- Any development permitted under Class ZA is subject to agreement of a Construction Management Plan.

Key Implications for Halton

- A large proportion of Halton's housing stock will be eligible to use the new PD rights to extend upwards.
- Greatest interest (in extending homes upwards) will likely be in the most affluent areas of the Country, in London and the south east, where the property values are high enough to make these extensions viable.
- The extension above vacant business buildings for residential purposes may be an attractive way of repurposing office buildings in light of COVID-19 and the shift to greater home working.



Key Implications for Halton

- The Council will have **limited control over the appearance and impacts of the proposed extensions.**
- Matters for consideration within the Prior Approval process **do not include** issues such as:
 - access to social facilities, shops and play space;
 - openness of the green belt;
 - air pollution or the carbon profile of new housing units (with potential implications for the Declaration of a Climate Emergency).
- Environmental campaign group 'Rights:Community:Action' along with law firm Leigh Day have launched a legal challenge to the government's extension of PD rights.
- Extensions creating additional residential accommodation through these PD rights are not subject to Section 106 agreements.
- In the event that such changes are considered locally to result in significantly negative consequences, the Council has the option of restricting the Permitted Development Right in parts of the borough by introducing additional planning controls (an "Article 4 direction"), meaning that the changes require planning permission.

Opportunity for Questions?

