

PERMITTED DEVELOPMENT RIGHTS CLASS AA

Paragraph 120 (e) of the NPPF supports opportunities to use the airspace above existing properties and Class AA of the GDPO' (as amended) seeks to allow upwards extensions. Yet securing consent through prior approval applications for such developments has proven far from easy. Our Planning team have been raising the roof on how decision-makers have been interpreting this controversial Permitted Development Right.

What's Class AA?

Glad you asked, simply put Class AA permits the homeowner to extend their home by up to two storeys directly above an existing house subject to meeting certain criteria, limitations and conditions. Those wishing to take advantage of Class AA must seek prior approval from the Local Planning Authority before beginning construction.

But securing consent for upwards extensions in the space above homes has been far from plain sailing. As part of the issues considered at appeal, Inpectors have had to adjudge what constitutes the 'principal part' of a dwelling for the purposes of Class AA as well as whether developers are required to submit a construction management report as part of their prior approval application (they do not). However, the most common issue we found that decision-makers have been grappling with is how best to reconcile this permitted development right with the

planning systems' aspirations of high-quality design.

The ambiguity surrounding what can be considered during the assessment of the external appearance of the dwellinghouse (that's, condition A.A.2 (3) (a) (ii)) has perplexed those seeking prior approval for upwards extensions. Just over two years after Class AA was introduced, there have been a significant number of planning appeals and a High Court decision bringing clarity to the issue. Planning Inspectors have had differing interpretations on how broadly the assessment of 'external appearance' can be applied.

The Cab Housing Ltd & Ors vs Secretary of State [2022] EWHC 208 (Admin) High Court Judgement published earlier this year confirmed that the street scene can be an important aspect informing the external appearance of a dwelling house and can form part of the decision maker's assessment. However, the degree to which it influences the external appearance is also contextually specific— clearly, a dwelling that breaks rank in a mid-terrace situation will have a greater impact on the street scene than say, a detached building with a generously spaced plot and a varied urban form.

Therefore, the judgement as to whether an additional storey will cause harm to the external appearance of the host dwelling

will be specific to each case and is a matter of exercising professional planning judgement.

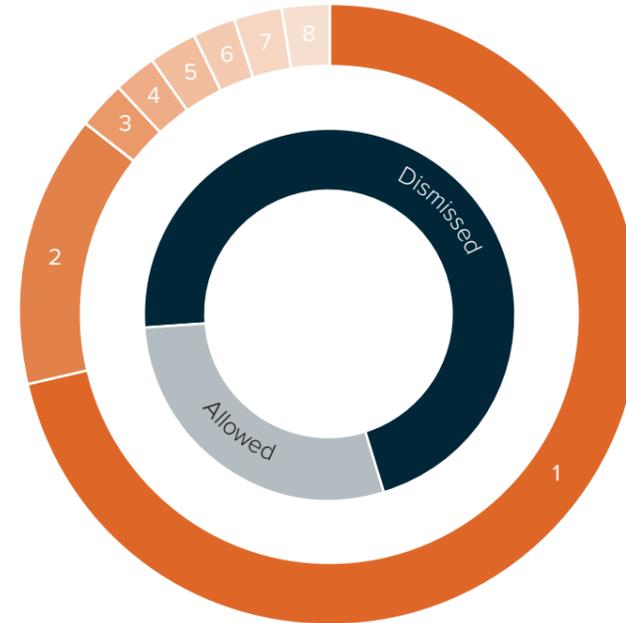
Design Still Matters

So, contextually responsive design still matters, what does that mean for you and your lofty aspirations to extend your property? Well, it is important to note that simply satisfying the prescribed parameters set out in the GDPO will not be enough to secure consent. Critically, consideration of the impact of the development on the amenity of neighbouring properties and the prevailing character in the surrounding locality must be factored in.

Demonstrating an understanding of the local context of your intended development and designing appropriately is essential. Having a professional team on board who can advise on design and an appropriate planning strategy can save time and cost in the planning process.

Inspectors' decisions and the ruling in the Cab Housing High Court Judgement has wider implications for how broadly the assessment of external appearance can be applied in other parts of the GDPO. If you are looking to maximise Permitted Development Rights as part of your project then please get in touch.

Class AA Appeal Decision Analysis



Main Issues

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| (1) AA.2(3)(a)(ii) External Appearance | (4) AA.1 (h) Internal Ceiling Height |
| (2) AA.1 (i) Principal Part | (5) Article 3(4) Restrictive Condition |
| (3) AA.4 (2) Did not meet definition of 'additional storey' | (6) Impact on Metropolitan Open Land |
| | (7) AA.1. (c) Built Prior to 1948 |
| | (8) AA.3 (2) Insufficient Material |

*Analysis of 42 relevant Appeals in 2021/22

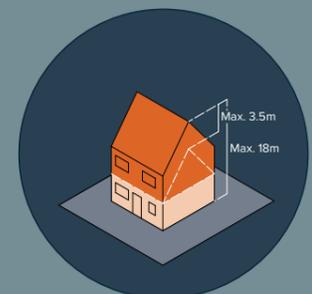
1. Class AA was introduced into Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) conferring new permitted development rights for enlarging homPes through constructing additional storeys in the air space above existing dwellings.

High Court Judgment: Cab Housing Ltd & Ors v Secretary of State [2022]

In Cab Housing Ltd & Ors v Secretary of State for Levelling Up, Housing and Communities & Ors [2022] EWHC 208 (Admin) the judges summarised their findings as:

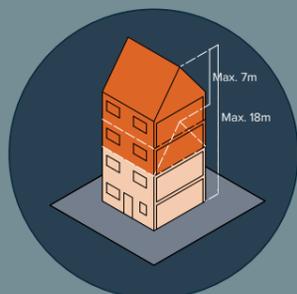
- i) Where an application is made for prior approval under Class AA of Part 1 of Schedule 2 to the GPDO 2015, the scale of the development proposed can be controlled within the ambit of paragraph AA.2(3)(a);
- ii) In paragraph AA.2(3)(a)(i) of Part 1, 'impact on amenity' is not limited to overlooking, privacy or loss of light. It means what it says;
- iii) The phrase 'adjoining premises' in that paragraph includes neighbouring premises and is not limited to premises contiguous with the subject property;
- iv) In paragraph AA.2(3)(a)(ii) of Part 1, the 'external appearance' of the dwelling house is not limited to its principal elevation and any side elevation fronting a highway, or to the design and architectural features of those elevations;
- v) Instead, the prior approval controls for Class AA of Part 1 include the 'external appearance' of the dwelling house;
- vi) The control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality.

Upwards Extensions (Class AA)



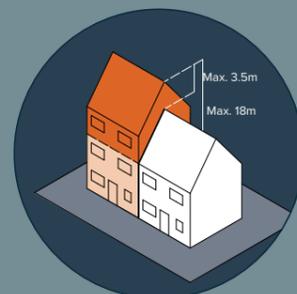
AA.1 (e), (f,i)

It is possible to construct up to one additional storey where the existing house consists of one storey.



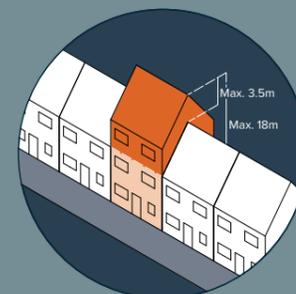
AA.1 (e), (f,ii)

It is possible to construct up to two additional storeys where the existing house consists of two or more storeys.



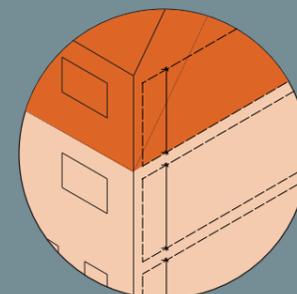
AA.1 (e), (g,i)

For a semi-detached house, the height of the highest part of its roof cannot exceed more than 3.5 metres above the height of the highest part of the roof of the building with which it shares a party wall.



AA.1 (e), (g,ii)

For a terraced house, the height of the highest part of its roof cannot exceed more than 3.5 metres above the height of the highest part of the roof of the building with which it shares a party wall



AA.1 (h)

The floor to ceiling height of any additional storey, measured internally, cannot exceed:

- (i) 3 metres; or
- (ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing building.



AA.1 (i)

The development is not permissible if any additional storey is constructed other than on the principal part of the dwellinghouse.



AA.1 (j)

The development is not permissible if it includes the provision of visible support structures on or attached to the exterior of the dwellinghouse upon completion of the development.



AA.1 (k)

The development is not permissible if engineering operations other than works within the curtilage of the dwellinghouse to strengthen its existing walls or existing foundations are carried out.

This is intended as an initial reference guide only. Reference must be made to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for limitations (e.g. maximum heights), restrictions, conditions and details of any requirements for any application for determination as to whether the prior approval of the local planning authority will be required (which may include the prior approval of building operations). There have been numerous amendments to these Orders and reference to consolidated versions is recommended.