



RTPI

Royal Town Planning Institute

RTPI response to MHCLG consultation on ‘Planning reform: supporting the high street and increasing the delivery of new homes’.

January 2019

This is the RTPI’s response to the 2019 [Ministry of Housing, Communities & Local Government Consultation](#) on a package of measures which the Government has proposed to provide greater planning certainty to support the high street and ensure delivery of new homes. These include extending permitted development rights, facilitating the disposal of surplus local authority land at less than best consideration, a draft listed building consent order to support the work of the Canal & River Trust, and the compulsory purchase powers of new town development corporations.

The RTPI’s response questions the robustness of the proposed plans, especially relating to the extension of permitted development rights. We argue that it risks poorly designed and located housing, whilst also challenging local planning authorities’ ability to deliver the mixed and efficient land use, and challenging the ability of communities to engage in development. We also consider the financial implications, both in terms of lost developer contributions and additional stress on local authorities who are not able to collect planning fees.

About the RTPI

The RTPI champions the power of planning in creating prosperous places and vibrant communities. As learned society, we use our expertise and research to bring evidence and thought leadership to shape planning policies and thinking. As a professional body, we have over 25,000 members across all sectors, and are responsible for setting formal standards for planning practice and education.

General comments

1. We welcome the chance to respond to this consultation on supporting the high street and delivery of new homes. Both of these are major priorities for the RTPI. However, in most cases we do not think that the proposals in this consultation will not go far enough to deliver flourishing town centres or quality, affordable housing.



2. Through proposing the extension of permitted development rights (PD) Government risks encouraging a piecemeal, short term approach. Recent history has shown PD to deliver poor quality, poorly located housing.
3. Both the proposals to bring upward extensions and demolition of commercial buildings are accompanied by extensive and quite legitimate considerations for prior approval. In this response we suggest several additional standards which would need to be considered, in particular relating to accessibility. Were permitted development to be extended with adequate provisions to stop inappropriate development, prior approval would be no more simple than normal planning permission.
4. Extending PD would result in less developer contributions towards affordable housing and infrastructure. Additionally, the reduction in fees paid to local authorities as a result of extending PD would put further financial pressure on already cash strapped authorities. Current fees for PD not come close to covering the costs involve for the local planning authority. The combined effect would mean that ordinary taxpayers would essentially be subsidising this development.
5. Extending PD would also challenge the democratic oversight of new developments. Local authorities would lose control over land use, and local people would lose their right to engage with new developments. In addition to reducing opportunities for community participation, this would also likely lead to strong resistance from communities.
6. Many LPAs have recently brought in / are bringing into effect Article 4 Directions to remove PD rights for change of use from office to residential. If the proposed new PD right is brought in, those LPAs will need to bring into effect further Article 4 Directions, probably in the same areas, to control this. This is a poor use of LPA resources just to maintain the status quo against the gradual eroding of the plan-led system through PD.
7. The changes appear to be at direct odds with other Government priorities, including the strong emphasis on place-making and quality design in the revised NPPF and support for the Hackitt Independent Review of Building Regulations and Fire Safety. Government should provide evidence of the problem it is trying to tackle with this. It is likely that most local planning authorities would already grant planning permission for such uses – but with better design, infrastructure contributions etc.
8. Finally, these changes are unlikely to make a significant contribution to increasing housing delivery and as such will not address the issues they set out to resolve. As such, they do not merit the damage they would cause.

Part 1: New and amended permitted development rights and changes to use classes

Question 1.1: Do you agree that there should be a new permitted development right to allow shops (A1) financial and professional services (A2), hot food takeaways (A5), betting shops, pay day loan shop and launderettes to change to office use (B1)?

9. No. We agree that high streets and town centres are facing challenges, and we will soon be commissioning research on how planning can help tackle these challenges. However, a blanket PD right will mean un-planned changes to ground floor primary shopping frontages which could detrimentally affect those parts of high streets that may still be vibrant. B1 office uses could create ground floor dead frontages. This will not stop the decline of the high street. If anything times of crisis require more and better planning, not less.
10. This change would disadvantage disabled people in seeking work and going about everyday business. Existing shop premises to be converted to B1 might not offer inclusive level access from the street, level access to the entered level of the building, and passenger lifts if the majority of the floor space converted to B1 would otherwise be out of reach. Building Regulations for conversion of existing premises normally requires accessibility to be no worse than before, meaning that entrance door steps do not need to be removed, toilets do not need to be updated for access, and lifts do not need to be put in to the upper floors of larger buildings.
11. It would be better to have a policy approach to this rather than a PD approach. Indeed many Local Plans and Local Planning Authorities (LPAs) already allow flexibility within shopping frontages, particularly secondary frontages.

Question 1.2: Do you agree that there should be a new permitted development right to allow hot food takeaways (A5) to change to residential use (C3)?

12. For similar reasons to those described above we do not agree with this new PD right. Moreover, there is a wealth of evidence that PD to C3 residential creates poor quality living conditions and insufficient space standards.¹
13. Hot food takeaways often cluster together – so new C3 residential could be created with hot food takeaways on either side, with a ground floor frontage. This is not a satisfactory living environment and not in accordance with NPPF's agent of change principle.

¹ See for example a recent winner of the RTPI Awards for Research Excellence, Clifford et al (2018), [Impact of extending development rights to office-to-residential change](#), RICS Research Trust.

**Question 1.3: Are there any specific matters that should be considered for prior approval to change to office use?**

14. As above, we do not believe this PD right should be pursued. However, if introduced, PD should not apply to primary frontages, and LPAs should be able to consider the impact on the high street.
15. Any changes must also consider the specific issue of access for disabled people. This would require that new-build standards should be updated to meet recommendations for access to new buildings contained in current Building Regulations or British Standards. This could be expressed in the Order with reference to the Equality Act 2010 Section 21 requiring design of premises to be physically adjusted to be accessible in anticipation of disabled people being business visitors or clients as well as employees.

Question 1.4: Do you agree that the permitted development right for the temporary change of use of the premises listed in paragraph 1.9 should allow change to a public library, exhibition hall, museum, clinic or health centre?

16. Yes, these would be acceptable in both primary and secondary frontages for the most part. However, such changes of use should be restricted to changes where independent audits of proposed access and use show compliance with the Equality Act 2010 Section 21, which requires the physical design of premises to be physically adjusted to be accessible in anticipation of disabled people being business visitors or clients as well as employees.

Question 1.5: Are there other community uses to which temporary change of use should be allowed?

17. Uses in the wider D1 use class could benefit from this, not just those named in 1.4. Also D2 uses may benefit too such as theatres, cinemas, cultural / arts uses, crèches, community centres, therapy or yoga centres etc.

Question 1.6: Do you agree that the temporary change of use should be extended from 2 years to 3 years?**Question 1.7: Would changes to certain of the A use classes be helpful in supporting high streets?**

18. No. Retailers generally want to be located in close proximity to other retailers and losing core A1 retail could undermine primary shopping areas and lead to a downward spiral of decline.

Question 1.8: If so, which would be the most suitable approach:

- a. that the A1 use class should be simplified to ensure it captures current and future retail models; or,
- b. that the A1, A2 and A3 use classes should be merged to create a single use class?

**Question 1.9: Do you think there is a role for a permitted development right to provide additional self-contained homes by extending certain premises upwards?**

19. No. PD should be for simple or minor changes, not major changes like this. We have no objection in principle to buildings being extended upwards, but think these measures will only make a very limited contribution to increasing housing supply, which needs to be weighed up against the long term impact that introducing permitted development will have in terms of quality of design and amenity for people around the sites.
20. The Government previously passed over this option in its 2017 response to the 2016 consultation on [Upward Extensions in London](#), stating that “it was recognised that the complex prior approval that would be required to protect neighbours and the character and amenity of an area would result in a permitted development right that is no less onerous than a planning application”. The response states that the Government’s intention was to “take forward the policy option through the National Planning Policy Framework to support the delivery of additional homes by building up” rather than the PD option.
21. It is not clear how this proposal would align with the objectives of the Building Better, Building Beautiful Commission. This PD right would remove control over new developments, which could lead to poorly designed new dwellings.
22. If it has not already, it will be important for the Government to take legal advice regarding potential issues regarding the common law right to light. Even some developments with planning permission have been ruled inappropriate due to right to light issues – this may be more likely for PD since it will not have the same scrutiny.
23. The change would have a major impact on existing occupiers and neighbours without the ‘normal’ democratic say through a planning application. This would almost certainly lead to enforcement complaints and difficulty arbitrating whether the development is PD or not.
24. Additional potential impacts and issues include:
 - a. Fire regulations issues
 - b. Building regulations issues
 - c. Land assembly issues i.e. some buildings may be on a long lease hold, others freehold etc.
 - d. Practical issues with regard to construction, particularly above high street shops which have void roof spaces with cross beams
 - e. Drainage concerns
 - f. Residential amenity and open space concerns
 - g. Utilities concerns with regard to access, capacity etc.
 - h. Concerns with regard to impact on historical buildings and streetscape



Question 1.10: Do you think there is a role for local design codes to improve outcomes from the application of the proposed right?

25. Design codes can have a very positive role in a plan-led system, but are not a substitute for requiring planning permission. However, regardless of these proposals we think that design codes could play an increasingly important role in delivering popular and high quality development. In particular they provide an important opportunity for community to guide local development.

Question 1.11: Which is the more suitable approach to a new permitted development right:

a. that it allows premises to extend up to the roofline of the highest building in a terrace;
or

b. that it allows building up to the prevailing roof height in the locality?

26. The roofline of the highest building in a terrace would be more suitable. However, this may be difficult to determine, where there are 'rogue' buildings within a terrace. There may also be uncertainty where the corner terrace is significantly higher than the rest of the street. Or on long streets, where good urban design has seen stepping down from higher to lower levels, and the proposals in question may be far away from the highest building and surrounded by far lower levels.

Question 1.12: Do you agree that there should be an overall limit of no more than 5 storeys above ground level once extended?

27. Yes, however even this will be inappropriate in terms of character and context in some areas.

Question 1.13: How do you think a permitted development right should address the impact where the ground is not level?

28. Level access must be ensured from the principal street - that is the street which buses use, and where taxis and private vehicles can set down older and disabled people at a kerb. Also, not from a back street, or side alley where disabled people, children and older and other vulnerable people will be placed at particular risk. For access to be inclusive, where there is a change in ground level across the site there should be a platform lift - or an accessibly sloped ramp - transition to the main common area corridor, and to any dwellings at that level, and to any lifts to upper floors.

Question 1.14: Do you agree that, separately, there should be a right for additional storeys on purpose built free standing blocks of flats? If so, how many storeys should be allowed?

29. No, this is likely to be inappropriate in terms of character and context in some areas. In particular PD should not apply to recently-approved blocks of flats where appropriate design and public consultation has been undertaken. However, having a cut-off date would make it



complicated and not provide certainty and clarity in the planning process. It would be better to manage these developments through planning permission rather than PD.

30. This proposal needs to be considered alongside the recommendations of the Hackitt Independent Review of Building Regulations and Fire Safety.

Question 1.15: Do you agree that the premises in paragraph 1.21 of the consultation document would be suitable to include in a permitted development right to extend upwards to create additional new homes?

31. No.

Question 1.16: Are there other types of premises, such as those in paragraph 1.22 of the consultation document that would be suitable to include in a permitted development right to extend upwards to create additional new homes?

32. No, there is a risk that this would result in piecemeal and fragmented development that could lead to fewer homes than comprehensive redevelopment through planning permission. PD may not lead to the most efficient use of land as required through the NPPF. The most efficient use of land is best assessed through a planning application

Question 1.17: Do you agree that a permitted development right should allow the local authority to consider the extent of the works proposed?

33. Yes. We welcome the acknowledgement that fees for prior approval should be appropriate to range and complexity of issues that should be considered. Current fees for prior approval of residential PD do not come close to this. However the range and complexity of issues that would need to be considered would make a normal planning permission the most effective tool.

Question 1.18: Do you agree that in managing the impact of the proposal, the matters set out in paragraphs 1.25 -1.27 of the consultation document should be considered in a prior approval?

34. To manage the impact of a proposal, LPAs should be able to consider all the things normally sought in a planning application. As recognised in the Government's response to the previous 2016 consultation on Upward Extension in London, it would be essential to consider such a wide range of issues in prior approval that this change would "result in a permitted development right that is no less onerous than a planning application". Thus a normal planning application would be more appropriate.

Question 1.19: Are there any other planning matters that should be considered?

35. There is a wealth of evidence that PD to C3 residential creates poor quality living conditions which do not conform to space standards.



36. Were this to be implemented there would need to be clarity about the requirement for certain key standards. The standards required might for example, be those recommended in the BS 9266:2013 Code of Practice.

Question 1.20: Should a permitted development right also allow for the upward extension of a dwelling for the enlargement of an existing home?

37. No, this would not meet the objective of delivering new homes and might disincentivise delivering new homes through the proposed PD approach.

The permitted development right to install public call boxes, and associated advertisement consent

Question 1.21: Do you agree that the permitted development right for public call boxes (telephone kiosks) should be removed?

38. Yes the system is being abused and call boxes can add unnecessary clutter to streets which may have a detrimental impact on accessibility.

Question 1.22: Do you agree that deemed consent which allows an advertisement to be placed on a single side of a telephone kiosk should be removed?

39. Yes. We are aware of positive uses of this consent to aid with decluttering and the replacement of telephone kiosks with wifi hubs, for example those delivered by InLink in partnership with BT. However, this consent is also being abused by some. Additionally, issues of lighting glare have come to the fore in recent years for disabled people including those with impaired sight and neuro-sensitivity conditions. These are now dealt with in a new British Standard for the accessible design of built external environments, BS 8300-1:2018, which is available to Local Planning Authorities to use as a basis when considering such issues.

Increasing the height threshold for the permitted development right for electric vehicle charging points in areas used for off-street parking

Question 1.23: Do you agree the proposed increased height limit for an electrical vehicle charging point upstand in an off-street parking space that is not within the curtilage of a dwellinghouse?

40. We support measures aimed at facilitating the adoption of electric vehicles (EVs), and the change supports a move towards rapid charging points. However 2.3 metres high is quite tall and the implications of this must be considered. If the proposed extension is enacted, it should be subject to a (limited) temporary period so that the impact can be assessed. The Government should also consider introducing a restriction to avoid their dual use for commercial purposes – for example advertising. Otherwise this PD right could be taken advantage of in the same way PD for call boxes has been.

**Question 1.24: Do you agree that the existing time-limited permitted development right for change of use from storage or distribution to residential is made permanent?**

41. No, there is a wealth of evidence that PD to C3 residential creates poor quality living conditions and below space standards. This PD right can result in poor quality housing with structural issues, a lack of amenity space, asbestos concerns and more. It delivers poorly-located housing.
42. LPAs have a requirement in the NPPF to positively plan for all uses, including storage and distribution. These buildings can also be useful for last-mile logistics, for which there is a strong and growing demand. PD rights allow the unplanned loss of such uses which reduces availability and affordability of such space for business use, local jobs and economic growth. If planning permission required, LPAs can seek mixed-use employment and residential developments, but through PD, it is likely to all be lost to residential.

Question 1.25: Do you agree that the time-limited permitted development right for larger extensions to dwellinghouses is made permanent?

43. This sounds reasonable however we encourage the Government to consider evidence of the impact to date before making a decision.

Question 1.26: Do you agree that a fee should be charged for a prior approval application for a larger extension to a dwellinghouse?

44. Yes, since the fees for prior approval do not cover the actual work required, the development is essentially subsidised by all Council tax payers.

Supporting housing delivery by allowing for the demolition of commercial buildings and redevelopment as residential**Question 1.27: Do you support a permitted development right for the high quality redevelopment of commercial sites, including demolition and replacement build as residential, which retained the existing developer contributions?**

45. No – we strongly oppose this proposal. Permitted development should be for simple / minor changes, not new developments of this scale. LPAs have a requirement in the NPPF to positively plan for all uses, including commercial. PD rights allow the unplanned loss of such uses which reduces availability and affordability of such space for business use, local jobs and economic growth. “Replacement build as residential” misses opportunities for replacement for mixed uses which can be very important for place-making, general good design and local economy.
46. Demolition and rebuild should be subject to the full and proper scrutiny of a planning application and democratic decision making (usually through Planning Committees) – PD would undermine the confidence in LPAs and in the planning system more generally and cause confusion over what system applies.
47. This proposal needs to be considered alongside the recommendations of the Hackitt Independent Review of Building Regulations and Fire Safety.



Question 1.28: What considerations would be important in framing any future right for the demolition of commercial buildings and their redevelopment as residential to ensure that it brings the most sites forward for redevelopment?

48. As above, we strongly oppose this proposal for extending permitted development. Developments such as these must include contributions to infrastructure and affordable housing. They must also conform to space standards. And it is important to consider their design. All of these are best dealt with through a planning application.

Question 1.29: Do you have any comments on the impact of any of the measures?

49. In addition to the above, we see the following potential impacts and issues with the proposals relating to (i) ***Allow greater change of use to support high streets to adapt and diversify***
- a. Changes creating confusion for applicants and an according risk of the need for enforcement action.
 - b. The changes demonstrate a lack of joint thinking with Clinical Commissioning Groups. The proposed changes are against the direction of travel towards health hubs.
 - c. The mortgage market is generally not favourable to flats/houses above shops, this change therefore will have limited impact on the target audience, the younger demographic/young professionals.
 - d. No definition of the high street or town centre is included and therefore these changes could have a much wider adverse impact than intended.
 - e. The changes miss the mark with regard to the secondary office market. There is already a good supply of secondary office space, not only this but this market is structurally changing with a shift towards serviced office space on a rolling month subscription basis and rentable conference rooms. There is a general demand for Grade A office space, the proposed P.D rights do not create supply for these type of office space.
 - f. If these changes are implemented a test should be introduced to ensure that the change of use would genuinely benefit the vitality of the high street, a variation on the sequential tests suggested.

Question 1.30: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equality Act 2010?

50. Part 1 of the consultation has not considered, as it should, the discriminatory impact on disabled people throughout England of not requiring anticipatory adjustment of building designs and plans as required under the Equality Act 2010 Section 21. There is no automatic uplift to the accessibility of buildings extended or converted to create new homes under current building regulations. The proposals will therefore have a disproportionate impact on disabled people throughout England.



51. Paragraphs 3.96 and 3.98 of the research document published in 2017 as the Hackitt Inquiry Interim Report (Cm 9551) explain that - in common with fire safety and structural safety building regulation requirements - disabled access cannot be applied to alterations to an existing building except to the extent that the alteration makes the situation no worse than standards in force when the building was first built. The research document calls this the "non-worsening provision".
52. Sections 20 and 21 of the Equality Act do not exempt existing property from the duty to remove barriers like shop doorsteps. On the contrary, the Act requires new occupiers of premises or owners altering them, to remove such barriers. Hence the reason for new Development or Use Classes Orders changes themselves to specify that Equality Act anticipatory physical adjustments should be met, before vertical extensions or changes of use are exempt from the need for planning permission to be sought.

Part 2: The disposal of surplus local authority land (best consideration)

Question 2.1: Do you think that the threshold for the existing general consent for the disposal of land held for purposes other than planning or housing at undervalue (under section 123 of the Local Government Act 1972) should:

- a. remain at the current level?
- b. be increased?
- c. **be removed completely?**

53. We think the threshold should be removed completely. Removing the threshold for the existing general consent would be consistent with the general power of competence for local authorities in the Localism Act 2011. It would also support regeneration. Other measures exist to account for potential misuses of powers by local authorities.

Question 2.2: If you consider it should be increased, do you think the new threshold should be:

- a. £5 million or less?
- b. **£10 million or less?**
- c. other threshold? (please state level)

Question 2.3: Do you agree that the Secretary of State should issue a new general consent under section 233 of the Town and Country Planning Act 1990 for the disposal of land held for planning purposes?

54. Yes. The Secretary of State should issue a new general consent under section 233 of the Town and Country Planning Act 1990 because it would improve efficiency, reduce complexity and prevent the need for local authorities to complete internal land transfers.



Question 2.4: If yes, do you think any new general consent should apply to:

- a. disposals at an undervalue of £2 million or less?
- b. disposals at an undervalue of £5 million or less?
- c. **disposals at an undervalue of £10 million or less?**
- d. disposals at some other undervalue threshold? (please state level)
- e. all disposals regardless of the undervalue?

Question 2.5: Do you agree that the economic, social or environmental well-being criteria which apply to the existing general consent should also apply to any new general consent for the disposal of land held for planning purposes?

55. Yes, this makes sense for consistency, and without this criteria there is potential for 'political stiff arming' within the system.

Question 2.6: Do you have any additional comments about the current system governing disposals of land at an undervalue by local authorities, and our proposals to amend it?

Question 2.7: Do you consider that the current £10m threshold contained in the general consent governing disposals by the Greater London Authority remains appropriate?

56. The threshold in London should be increased to at least £20 million to take account of the higher land value in London compared with the rest of the country. Any increases in the threshold (both in the GLA and elsewhere) need to be considered in the context of state aid regulations particularly due to Brexit.

Question 2.8: If you consider the current threshold is no longer appropriate, or that the limit should be removed completely, please specify what you think the alternative should be and give reasons.

Public sector equality duty

Question 2.9: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equality Act 2010?

Part 3: Draft listed building consent order to support the work of the Canal & River Trust

Question 3.1: Do you agree that the types of work set out in paragraph 3.8 should be granted a general listed building consent?

57. Yes. This [example](#) is already in place in the London Borough of Brent.²

² https://www.brent.gov.uk/media/16406888/signedllbco_princess_road.pdf



Question 3.2: Do you agree that the safeguards mentioned included in the order are appropriate?

Question 3.3: Do you consider that any additional safeguards are required?

58. LPAs affected should be consulted on the methodology.

Question 3.4: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equality Act 2010?

Part 4: Draft guidance on the CPO powers of new town development corporations

Question 4.1: Do you have any comments on the draft text at Annex D of the consultation document?

59. In general we support the changes. New Towns are an important part of tackling the housing crisis. The changes will provide a useful tool and will promote land value capture for community benefit rather than a landowner benefit. However they need reinforcing in both local and national planning policy to ensure their robustness, and the real impact of these changes may be restricted by the lack of a regional planning tier.

60. When confirming a CPO (Q8), the Secretary of State should take into account proposals for the incorporation or relocation of existing users. Regarding Q9, and the Secretary of State's consideration of alternative proposals, there are of course likely to be conflicts. However, the possibility of synergies should be considered.

Public sector equality duty

Question 4.2: Do you have any views about the implications of the proposed guidance on people with protected characteristics as defined in the Equality Act 2010?