Government response to the Levelling Up, Housing and Communities Select Committee report on permitted development rights

CP 848

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Any enquiries regarding this publication should be sent to us at

Department for Levelling Up, Housing and Communities
Fry Building, 2 Marsham Street
London SW1P 4DF
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Introduction

The Government welcomes the report of the Levelling Up, Housing and Communities Committee on its inquiry on permitted development rights. We would like to thank the Committee and all of those who took the time to provide evidence.

We are modernising the planning system for the 21st century and putting in place the foundations to deliver on our ambitious Levelling Up agenda to ensure all parts of the country share equally in our nation's success. The government is committed to building the right homes in the right places with the right infrastructure, ensuring the environment is protected and giving local people a greater say on where and where not to place new development. Through the Government's landmark Levelling Up and Regeneration Bill, and other measures delivered through secondary legislation and national policy, we will modernise our complex planning system, put local people in charge and champion beautiful design.

We believe that permitted development rights can continue to play an important role in a reformed planning system: reducing planning bureaucracy for householders, businesses, and local planning authorities; supporting statutory bodies, including local authorities, in the discharge of their duties; helping to deliver housing and supporting our high streets. Individual rights allow our schools and hospitals to expand, our farmers to diversify, and householders to expand their homes to accommodate growing families. Importantly such rights have delivered over 94,000 homes in the seven years to March 2022. As further demonstration of the value of such rights, we have recently consulted on new and amended permitted development rights to support growth, tourism and the British Energy Security Strategy.

We have considered the Committees recommendations and provided a government response. The structure of this paper corresponds to the recommendations in the committee's report (text in bold).

Government response to recommendations

We recommend the Government pause any further extensions of permitted development rights for change of use to residential, including the new class MA right, which is due to take effect on 1 August, and conduct a review of their role within the wider planning system. As part of that review, it should set out its long-term vision for permitted development for change of use to residential and explain how it plans to retain the benefits of these PDRs whilst not also sacrificing the ability of local planning authorities to control the quality of development. In setting out its long-term vision, the Government should set out how the PDR regime fits with the wider reforms to the planning system and what plans it has, if any, to further extend permitted development rights. (Paragraph 25)

We believe that permitted development rights can continue to play an important role in the planning system alongside our wider planning changes. They can be an important delivery tool for housing, renewable energy and supporting High Streets. More broadly, permitted development rights help to support local authorities, statutory undertakers, and other bodies in the discharge of certain of their duties and reduce bureaucratic burdens by removing the need for planning applications in more cases. This reduces the burden on local planning authorities which in turn allows resources to be focused on other applications such as for larger housing developments or strategic planning matters.

Permitted development rights have increasingly played a significant role in supporting our housing ambitions. Such rights make the best use of existing buildings, supporting brownfield development, and reducing pressures to build on greenfield sites. They also benefit SME builders who make a valuable contribution to housing delivery. The rights provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through the prior approval process.

We have responded positively to the concerns that, while the majority of homes that are being delivered are of good quality, a few have been unacceptably small or without windows. The Government has therefore introduced new quality requirements bringing forward legislation to require that all new homes delivered under permitted development rights meet the nationally described space standards and provide for adequate natural light in all habitable rooms. All homes are also required to meet building regulations, including in respect of fire safety, regardless of the route to planning permission.

The permitted development right for the change of use from Commercial, Business and Service to residential use (Class MA) is helping to support housing delivery, diversify our high streets and support the wider economy. We accept that this permitted development right has potential to deliver significant change and that this caused concern among Committee members. It is our view however that the structural changes in our town centres required effective action to bring about change. Take-up of the right to date, with over 1,160 applications in the period from October 2021 to December 2022, demonstrates the level of interest in the flexibility the right provides. The number of homes delivered under permitted development rights for the change of use increased from 9,990 in 2020/21 to 10,303 in 2021/22.

We continue to keep permitted development rights under review, including to look at where new or amended rights could support key government agendas. The Committee will know that we have recently consulted on new and amended permitted development rights. This includes: changes to existing permitted development rights that allow for the installation of solar equipment to meet the commitment in the British Energy Security Strategy; changes to the existing permitted development right allowing for the temporary use of buildings or land for film-making purposes; amend the existing permitted development right which allows local authorities to undertake certain development to allow bodies to undertake the work on behalf of the local authority; and a new permitted development right to support temporary recreational campsites.

Any new permitted development rights, or amendments to existing rights, would, as usual, be subject to careful consideration including the matters for prior approval and how they can support our wider reform agenda. Good design and placemaking that reflects community preferences is a key objective for the planning system. Through the Levelling Up and Regeneration Bill, we will require every local planning authority to produce an authority wide local design code.

As we have already recommended, the Government should review the role of permitted development rights in the planning system. As part of that review, it should consider how to amend the prior approval process to both simplify it and give local authorities the tools they need to shape their communities in line with Local Plans. In addition, the Government should calculate the cost to local authorities of processing prior approval applications and increase the fees accordingly. (Paragraph 35)

Longstanding planning law provides that permitted development rights can be subject to local consideration of particular planning matters, known as prior approval. This enables local authorities to consider important planning matters that may give rise to adverse impacts and proposed mitigations. The individual rights have differing matters for prior approval reflecting the scope of that right and therefore the Government will give consideration to appropriate prior approvals as part of framing any new permitted development rights. For example, it is important that those rights that provide for the change of use to residential consider the risks to future residents in relation to flooding. In considering the particular matters for prior approval, the law enables consideration of key planning matters whilst not replicating the full range of matters arising from a planning application.

Local planning authorities may make an Article 4 direction to remove the right where appropriate, and in line with national policy. Development that would otherwise be permitted under the right then requires a planning application that will be determined in accordance with the local plan or other material considerations.

We recognise many local authorities have capacity and capability challenges. It is vital that we have well-resourced, efficient and effective planning departments. We have therefore recently consulted on fee increases, including for prior approval, to ensure the planning system is better resourced. In addition, we are working with representatives from local government, the private sector and the professional bodies to develop a suite of targeted interventions to support the development of critical skills and to build capacity across local planning authorities.

The Government should clarify why it considers it necessary to amend paragraph 53 of the National Planning Policy Framework, and set out how the new wording addresses the

issues it is seeking to resolve. In addition, we recommend that the Government monitor whether the changes to paragraph 53 give councils the power they need to protect high streets and town centres from permitted development rights for change of use to residential. If the evidence suggests they do not, the Government should amend the wording again to give councils greater freedom to restrict the use of PDRs in certain areas. We also recommend that the Government allow councils to apply Article 4 directions more quickly without having to pay compensation to developers. (Paragraph 44)

The Commercial, Business and Service use class (E) has, since 1 September 2020, supported the diversification of our high streets, enabling premises to move to wider range of commercial and leisure uses without the need for a planning application. Building on this, the permitted development right for the change of use from the Commercial, Business and Service use class to residential use is, from 1 August 2021, helping support housing delivery, the regeneration of our high streets and town centres and the wider economy. New residents of the homes delivered by the right will bring life to such areas, supporting local business such as restaurants and shops and any new and emerging uses.

By ensuring a higher threshold for making Article 4 directions relating to change of use to residential, we are supporting high streets by maximising the potential for vacant or underused buildings to be converted to an alternative use. The amendment to paragraph 53 of the National Planning Policy Framework in July 2021 is ensuring that all Article 4 directions are evidence-based and carefully targeted, achieving the right balance between providing local authorities with the means to protect valued local facilities and maintaining flexibilities under permitted development rights, so that we continue to add to our housing supply.

Local planning authorities may make an immediate or non-immediate Article 4 direction. Primary legislation sets out that where planning permission granted by a development order is withdrawn, and permission is refused or granted subject to conditions, compensation may be payable to developers who have incurred wasted expenditure, loss, or damage as a result of a permitted development right being withdrawn. This may be mitigated by giving 12 months notice. This is not a legal requirement, rather it is common practice to help mitigate against any potential liability to the local planning authorities for the payment of compensation to affected developers. This recognises the impact of the withdrawal of the permitted development right on the property rights of owners.

As we have already recommended, the Government should review the role of permitted development rights within the planning system. As part of that review, we recommend it consider amending the use class regime to prevent out-of-town commercial and business premises from being converted to retail without having first gone through the sequential test and to prevent the loss of medical centres through change of use within the new use class E. (Paragraph 50)

We want our town centres and high streets to be thriving, vibrant hubs where people live, shop, use services, and spend their leisure time. The National Planning Policy Framework makes clear that planning policies should support the vitality and viability of town centres, allowing them to grow and diversify. The broad Commercial, Business and Service use class was introduced in September 2020 to support these aims, providing greater flexibility to move between a wider range of high streets uses such as shops, banks, restaurants, gyms, creches, and offices, and

to provide for a mix of such uses, without the need for a planning application. Alongside this, we are delivering long-term structural support through a range of interventions, including investment from the £3.6 billion Towns Fund which will support local areas in England to renew and reshape town centres and high streets in a way that improves experience, creates jobs, and ensures future sustainability. The Future High Streets Fund will improve transport access, make use of vacant shops, buy, and bring land forward to support new housing, workspaces, and public realm, and help adapt high streets in response to changes in technology. The £4.8 billion Levelling Up Fund will invest in infrastructure that improves everyday life across the UK, including regenerating town centres and high streets, upgrading local transport, and investing in cultural and heritage assets. In addition, measures brought forward through the Levelling Up and Regeneration Bill will reinvigorate high streets by making changes to pavement licences permanent and allowing local authorities to tackle the problem of persistently vacant property on high streets and in town centres and empower places to tackle decline by bringing vacant units back into use, through high street rental auctions.

The Use Classes Order is a deregulatory tool: grouping together uses into classes and providing that movement between such uses is not development. In order to provide maximum flexibility in support of high streets and town centres, and in common with other use classes, the Commercial, Business and Service use class is not limited in respect of size or location etc, and premises can move freely between uses within that class. The National Planning Policy Framework requires local planning authorities to apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. However, movement within the Commercial, Business and Service use class does not require an application for planning permission and therefore there is no opportunity to apply a sequential test. To do so would add planning process where currently there is none, and reduce the flexibility currently afforded on the high street. The recent consultation on reforms to national planning policy noted that we propose, as part of a broader update, to review the approach to town centre and out-of-centre development in the light of the use class changes.

The right provides for protection in respect of health centres and children nurseries, through local consideration of prior approval of the impact of loss on the provision of such local services. Communities will benefit from the delivery of new homes that meet nationally described space standards, and from their local centres being able to diversify and avoid the empty buildings that can add to blight.

The Government should either extend the vacancy period or devise a test that can be applied to properties to make sure they are not still viable as class E premises. It should consider the most appropriate vacancy period or test as part of the review of PDRs for change of use to residential. We also recommend the Government amend the prior approval process for the class MA right so that councils, in deciding whether to approve development, can consider the impact of a loss of ground-floor commercial, business and service use on the sustainability of a town centre or high street. (Paragraph 63)

The 2020 *Supporting housing delivery and public service infrastructure*[1] consultation document set the proposed right in the broader context of changes to the high street: changing consumer behaviour, including the move to online shopping and structural changes that has led to a decline in retail units in town centres in England. The resulting Class MA permitted development right supports thriving high streets where people live, shop, and spend their leisure time and prevents

1 https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure

premises being left empty. Whether a premises chooses to seek to change use is influenced by a number of factors, including the owners view of the long-term viability of the business and rental returns. To prevent gaming, the building must have been in Commercial, Business and Service use class for two years before benefiting from the right.

Where high streets are in conservation areas, an additional prior approval applies allowing for local consideration of the impact of the change of use of the ground floor on the character or sustainability of that conservation area. To go beyond this would make the process more onerous for applicants in respect of the requirements to be met and the information to be provided, and for local planning authorities in the demands placed on them to determine the application for prior approval.

As already recommended, the Government should pause any further extensions of permitted development, including the new class MA right, which is due to take effect on 1 August, and conduct a review of all PDRs for change of use to residential. As part of this review, it should consider how to extend prior approval without also adding to the burden on local authorities. In particular, we recommend that local authorities be able to prevent the siting of homes in inappropriate locations, such as business and industrial parks. Among other amendments to prior approval, the Government should consider the following:

- **requiring the installation of windows (rather than just skylights) as part of the requirement for adequate natural light;**
- **requiring the provision of outdoor private or communal amenity space; and**
- **enabling local authorities to require that overall the housing delivered through PDRs contributes a mix of housing types that fits with their own assessment of housing need in their area. (Paragraph 81)**

Our wider objectives are to make the planning system work better for communities, delivering more homes through sustainable development, building pride in place and supporting levelling up. Good design and placemaking, delivering more homes in the right places with the necessary infrastructure, should be at the heart of a modern planning system. Our approach to permitted development rights will continue to support our broad strategy.

For example, we have already taken steps to allow for local consideration in respect of location within the Class MA right through prior approval. To ensure the quality of future homes delivered, all new homes must, as a minimum, meet the Nationally Described Space Standards and provide adequate natural light in all habitable rooms. Local planning authorities are well versed in making such planning judgments. We continue to keep permitted development rights under review.

We continue to support making effective use of existing buildings through the change of use. While the constraints of the site may place limitations, as it would with a planning application, such changes of use are important in reducing the need to build on greenfield sites, limit carbon emissions and the avoid the blight that empty buildings can bring. To go further and introduce a requirement for access to outdoor space would add burdens to development delivered under permitted development rights which go beyond development delivered under a planning application as local planning authorities have, and continue to, grant planning permission for flats that do not have outdoor space where they meet local need.

Permitted developments rights create new homes and support housing delivery, providing additional homes for sale or rent, some of which may not otherwise come through the planning system. While the rights make an important contribution to housing delivery, they none-the-less have contributed a total of 6% of the national total of net additional housing since April 2015. It is vital therefore that, as required by the National Planning Policy Framework, local planning authorities continue to plan for the volume and balance of housing types to meet local need, and to set this out in their local plan. Permitted developments rights do not currently allow for such local planning policies to be considered. The market will influence the type and mix of homes delivered under permitted development rights. The requirement that new homes meet the nationally described space standards may also bring a shift in the balance of the mix of homes delivered in the future. Adding a requirement to the right to allow the local planning authority to consider whether the mix of housing types meets local need, would add to the complexity of the rights both for applicants and local planning authorities, however, as with all permitted development rights, we continue to keep the position under review.

We are committed to embedding good design in the planning system. Through the Bill we are requiring every local planning authority to produce a design code for its area, based on effective community engagement and reflecting local character and design preferences. Design Codes will become integral to the new planning system.

Whatever the Government's long-term plans for permitted development and the Infrastructure Levy, we recommend it legislate as soon as possible to ensure that permitted development contributes towards the cost of providing the infrastructure and affordable housing needed to offset any negative impact on the local community. (Paragraph 91)

The Levelling Up and Regeneration Bill sets out the framework for the new Infrastructure Levy. The non-negotiable and locally set Infrastructure Levy will give greater say to local councils on what their infrastructure priorities are and transparency to local people about how funds will be spent and what infrastructure will be delivered. The detailed design of the Levy will be delivered through regulations and introduced through a 'test and learn' approach, rolling out nationally over a number of years in order to design the most effective system possible. We are currently consulting on the detail of the Levy. The consultation seeks views on whether the Levy could apply to certain types of development brought forward under a permitted development right, and if so, how this might be applied.

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