Opinion: final stage IA
Origin: domestic
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Date of implementation: 1 August 2020

Regulatory Policy Committee

The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

Ministry of Housing, Communities and Local Government

RPC rating: fit for purpose

The impact assessment (IA) is now fit for purpose as a result of the department's response to the RPC initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

The IA assesses the impact of planning reforms as part of the Government's Covid-19 economic renewal package. The measures are intended to support housing delivery and boost density by introducing a new permitted development right (PDR). This right will permit extension upwards on existing purpose-build freestanding blocks of flats to create additional new homes. The IA also assesses the impact of a measure to improve new homes delivered through this, and existing, PDRs by requiring adequate natural light in all habitable rooms.

Building upwards

Currently, a planning application is required to build on top of freestanding blocks of flats. The regulations introduce a new PDR to allow the construction of up to two additional storeys on existing purpose-built freestanding blocks of flats of three storeys or more, up to a maximum height of 30 metres. Prior approval will be required from local planning authorities, and property developers will also be required to submit a construction management plan for consideration. The PDR will not apply in conservation areas and will be restricted to flats built after 1948.

Adequate natural light

Existing PDRs will be amended, under the measures, to require that new homes delivered through these PDRs must have adequate natural light in all habitable rooms. This requirement will also apply to new homes delivered through the new PDR for building upwards. A new prior approval will allow the local planning authority to consider the provision of adequate natural light in all habitable rooms. The department aims to prevent new homes being delivered without adequate natural light in habitable rooms. This measure also aims to ensure that new homes are suitable for people who may need to remain at home or continue to work from home, in response to Covid-19.

The IA states (page 8) that the regulations also include minor and technical amendments to existing PDR legislation.

Impacts of proposal

Building upwards

The IA notes that that, at present (as reflected in the counterfactual), developers can build above existing blocks of flats by making a full planning application. However, the department does not hold, or collect, data on how many upward developments currently occur. To estimate the impact of the potential scope of the measure, the IA uses a ratio approach and have estimated that approximately 81,000 new homes could be built above existing structures (page 9).

Building costs: The implementation of this PDR is estimated to have no new business costs as developers can already build above existing blocks.

Reduction in planning fee: The prior approval fee for development through this PDR will be lower than the amount charged for a full planning application previously required for upward building developments. The proposed prior approval fee of £334 per dwelling for buildings with up to 50 units is considerably lower than the £462 per dwelling fee currently charged for a full planning application. Thus, developers will benefit from aggregate savings on fees of £104,000 per annum. The measure also introduces a fixed fee of £16,525 plus £100 for each dwelling within buildings with more than 50 units. Due to the nature of the developments under this PDR, it is assumed that all sites will involve fewer than 50 new units.

Land value uplift (LVU): Freeholders of buildings that are eligible for development under the PDR will benefit from LVU. The LVU exists even if the freeholder does not act upon the right to build upwards, or builds upwards by only one storey. The department's best estimate for LVU as a result of the PDR is limited to the 8% of suitable development sites where the introduction of a permitted development right increases the certainty of planning application, and amounts to £530 million over ten years in present value terms (table 14, page 15).

Wider impacts: The IA discusses the negative impact that the use of the PDR may have on residents in existing flats and neighbouring properties. Developers will be required to produce a construction management plan. This plan should explain the actions that will be taken to minimise the impact of the building work on neighbours, alongside considering the air traffic implications from a taller building and any impact on protected London vistas. Local authorities may see greater demands on local infrastructure due to increased residents, although these costs may be offset by Community Infrastructure Levy contributions. The department has not monetised these wider impacts.

Covid-19: The IA includes a discussion of the impacts of Covid-19 on the measure. The department acknowledges that a recession induced by Covid-19 could reduce incentives for upward building and the IA states that "…*there is most likely to be a loss of development at the margins, where the viability of site development is closer to the tipping point of becoming unviable*" (page 18).

Adequate natural light

The department presents extremely limited analysis of the impact of the requirement for adequate natural light. This requirement will have an impact on developers primarily who may incur additional costs, such as having to insert more windows into future homes or having to build bigger units when using existing PDRs to develop new homes. The IA does not quantify the impact of this regulatory change on developers, citing a lack of routine data on the number of housing units currently delivered via PDRs without access to natural light in habitable rooms. The department's research into the market suggests that the number of dwellings built under PDRs that would not already meet this requirement is very low. The department has not presented any monetised benefits to business, but it points to the wider benefits to future residents of lighter homes.

Quality of submission

Background

As mentioned, this opinion is based on a revised IA. There were a number of significant concerns about the analysis in the original IA, including insufficient discussion and quantification of:

- the impacts on the buy-to-let industry, rents, the ability to let property during construction and investments;
- the reasons for planning applications that would have been blocked in the counterfactual and the wider impact on current properties that are not being extended up, the loss of land value to other building from the development which would not go ahead, loss of light, privacy and being out of character with the neighbourhood;
- Covid-19 impacts where there may be structural changes in the housing market from new ways of working;
- the value of neighbouring properties that may be depressed;
- the impact on the supply of affordable housing;
- the impact on mobile phone masts and, therefore, on telecom providers; and
- alternative policy options.

Analysis

The department estimates an equivalent annual net direct benefit to business (EANDCB) of £51.2 million. The department has provided additional information to address some of the above concerns and the IA could be strengthened in several important areas (described below). The IA is fit for purpose based upon:

- the LVU being an accepted Green Book-compliant technique and the RPC having previously validated an EANDCB figure for an 'office to residential' measure, which used a similar approach[1]. Although the estimated impact is highly uncertain, the department has made good use of the limited existing data and set out the steps in the calculation clearly;

- the assessment of the impact of the adequate natural light requirement is limited and qualitative but this situation seems likely to affect few dwellings and, therefore, appears unlikely to have a significant impact on the EANDCB;

- the department does not appear to have monetised the "*additional requirements and prior approval considerations*" referred to on page 7 of the IA, such as a construction management plan. However, it may be that some of these costs would be incurred in the counterfactual, and the omission of such costs does not seem likely to have a significant impact on the EANDCB; and

- the IA sets out in qualitative terms the areas of cost impact.

However, further consideration should be given to strengthening the assessment significantly in the following important areas:

1. Lack of alternative policy options

The department presented only one policy option for both measures and provided a somewhat limited description of the rationale. The IA provided no detail on any other options considered, except to briefly set out the three proposals from a 2018 consultation (page 6). Beyond this, the IA does not reference the response to the consultation or acknowledge the concerns raised over the potential impact on existing occupiers and neighbouring properties. To improve the IA, the department could provide a narrative on why the other two proposals from the consultation were discarded in favour of the chosen policy option.

2. Poorly-specified counterfactual

[1] RPC15-CLG-3032(2)

The RPC notes that the counterfactual for building upwards is that "developers are able to build above existing blocks using a planning application" (page 16), but the department states that it does not hold any data on how many such developments occur annually. The department mentions engagement with the housebuilding industry on this point; it could provide greater detail on these discussions in lieu of quantitative data. The department recognises, however, that, under the counterfactual, developers also incur familiarisation costs of reading planning guidance, thus those costs are not included in the EANDCB.

Further, the IA relies on evidence that, in the counterfactual, the "introduction of a permitted development right increases the certainty of planning application approval on suitable sites from approx. 86% to 94%, a gain of 8%", which implies a limited net impact on the number of developments.

The IA suggests that developers build few homes that have inadequate levels of natural light under existing PDRs, and so this regulatory change has little impact on developers in practice. The department could improve the IA by giving an indication of the estimated number of such homes.

Overall, the RPC found the counterfactual difficult to derive from multiple parts of the IA and the quality of the submission would be improved significantly with greater clarity.

3. Lack of quantification

The RPC is disappointed about the lack of quantification of cost impacts. While recognising that the IA sets out a range of cost impacts in qualitative terms and identifies the parties impacted, the effort to monetise the benefits impacts is not replicated for costs. We note that the data available in the housing market is widespread. The lack of quantification significantly reduces the overall quality of the assessment.

4. Lack of evidence to support analysis

The department notes it has insufficient quantitative evidence for both measures and relies heavily on outcomes of existing PDRs to calculate the best estimate for subsequently realised upward developments and the expected LVU for freeholders of suitable properties. Further consideration should be given to a more in-depth explanation of how the department estimated the number of dwellings that will benefit from the LVU, with reference to consultation with industry stakeholders. The department should also provide further justifications to support their assumption of why applying the eight per cent probability of rejection from the office-to-residential IA is appropriate for this measure and discuss to what extent the probability analysis could change if most development sites do not gain the assumed ten units (page 15).

Similarly, the IA could also provide further explanation of the £60,000 LVU per dwelling figure and why it is appropriate, given that these estimates appear to assume a counterfactual of no upward building (page 15). To improve the LVU analysis, the IA could describe how the value relates to a potential discounted stream of rental revenues provided by the enhanced asset. The IA would benefit more broadly from greater detail on the LVU, as per the technical annex in the office-to-residential IA, and greater cross-comparison between the two IAs.

The department acknowledges that there are no similar rights that can be used as a proxy to anticipate how many new homes would be created under the building upward PDR, as all existing PDRs that create new homes relate to changes of use of existing buildings (page 21). The IA could, however, include greater detail of discussions with industry stakeholders about the current levels of building upwards and the estimated number of dwellings that could benefit from the PDR. This information would help to identify and infer the differences between the likely impact of this measure against the known impacts of existing PDRs.

The department states that it has insufficient quantitative evidence of the costs to businesses due to the requirement for adequate natural light in new homes. The department mentions that it had undertaken research, which suggested it had consulted stakeholders in the sector (page 16). The IA could include greater detail about the conclusions of these discussions.

The IA states that developers will be required to submit a construction management plan for consideration by the local planning authority. It was unclear whether the construction management plan existed in the counterfactual or was an additional requirement. The department could improve the IA by clarifying the impact on businesses of producing construction management plans.

The department uses 2016 prices and 2017 base year. The department should use the latest guidance on base years - 2019 prices and 2020 base year[2].

5. Small and micro business assessment (SaMBA)

The SaMBA is split into two sections to address the different measures.

The SaMBA for the building upward measure is modelled on the outcomes of existing PDRs. Citing lack of quantitative data, the department assumes that the number of small businesses that might enter the market because of this PDR is analogous to the quantity seen from previous PDRs. However, the SaMBA can still

[2] Regulatory impact assessment (RIA) template

be significantly improved. The department should aim to provide a breakdown of the existing market structure and, if it is unable to provide an exact number of small and micro businesses that would be affected, the IA should provide a range. The department may obtain this information by speaking to relevant stakeholder groups. The department should also provide a range of costs and benefits that will be borne by small and micro businesses.

The RPC would ordinarily expect the department to analyse the impact of the proposed measure on micro businesses, separately from small businesses, and to consider whether they should be exempt from the measure, or benefit from mitigations. However, as the PDR is a deregulatory measure, is expected to have an impact on a relatively small number of businesses and seems likely to benefit SMBs, the RPC considers the assessment here to be proportionate.

6. Rationale for the proposals

The economic rationale provided was limited to stimulating the economy as part of the Covid-19 economic renewal package. The department forecast 8,000 new homes would be built in England over 10 years because of this PDR (page 9). However, the IA also highlights doubts about demand resulting from Covid-19, which casts some doubt over the overall rationale. The IA would benefit from greater explanation of the rationale for the chosen policy by referencing the consultation responses.

7. Adequate natural light in all habitable rooms

The RPC was disappointed by the lack of analysis concerning the second proposal to ensure adequate natural light. The IA would benefit from a further description of options considered, together with qualified and quantified cost and benefit impacts.

8. Monitoring and evaluation plan

The department commits to monitoring this measure but does not provide detail of a plan for monitoring and evaluation. The IA would benefit from setting out clearly the department’s monitoring and evaluation approach.

Departmental assessment

Classification	Qualifying regulatory provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	-£51.2 million (2016 prices, 2017 base year)
Business net present value	£440.5 million
Societal net present value	£440.5 million

RPC assessment

Classification	Under the framework rules for the 2017-2019 parliament: qualifying regulatory provision (OUT) To be determined once the framework rules for the current parliament are set
EANDCB	-£51.2 million (2016 prices, 2017 base year) – subject to validation once the framework rules for the current parliament are set
Small and micro business assessment	Sufficient

Regulatory Policy Committee

Two committee members did not participate in the scrutiny of this case to avoid a potential conflict of interest.