The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

Lead department	Ministry of Housing, Communities and Local Government
Summary of proposal	A new national permitted development right (PDR) for the change of use from the commercial, business and service use class to residential use, and amended PDRs in relation to schools, hospitals, universities etc, ports and statues.
Submission type	Impact assessment (IA) – 7 July 2021
Legislation type	Secondary legislation
Implementation date	21 April 2021
Policy stage	Final
RPC reference	RPC-CLG-5094(1)
Opinion type	Formal
Date of issue	30 July 2021

RPC opinion

Rating[1]	**RPC opinion**
Fit for purpose	The department has provided a clear, well-structured and proportionate assessment. The EANDCB figure is based upon a range of data sources and uses an established methodology. The SaMBA is proportionate and well-balanced. The IA would benefit from further discussion of potential impacts on local businesses and communities.

Business impact target assessment

	Department assessment	**RPC validated**
Classification	Qualifying regulation provision	Qualifying regulation provision
Equivalent annual net direct cost to business (EANDCB)	-£138.6 million	-£138.6 million *(2019 prices, 2020 pv)*
Business impact target (BIT) score	-£693.0 million	-£693.0 million
Business net present value	£1,192.9 million	
Overall net present value	£1,203.6 million	

[1] The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the Better Regulation Framework. The RPC rating is fit for purpose or not fit for purpose.

RPC summary

Category	Quality	RPC comments
EANDCB	Green	The IA makes good use of a range of data sources to monetise key impacts on business, using established methodologies used in previous IAs. The IA is generally very clear and transparent about uncertainty but would benefit from additional explanation in places, for example how it arrived at some assumptions in the counterfactual.
Small and micro business assessment (SaMBA)	Green	The IA explains that the measures are generally beneficial to business and it would not, therefore, be appropriate to exempt small and micro businesses. The IA provides a good discussion of potential indirect impacts on small businesses, both positive and negative.
Rationale and options	**Weak**	The IA would benefit significantly from explaining what other options were explored at consultation and the basis for their rejection.
Cost-benefit analysis	**Good**	The department sets out clearly the evidence and data used for its estimates and makes good use of information from the existing office to residential PDR. The IA would benefit from further explanation in places, in particular around use of some data sources, assumptions and its calculations.
Wider impacts	**Weak**	The IA would benefit from developing its assessment of wider impacts, particularly in respect of trade and impacts on communities and local authorities. The IA would benefit from further discussion of potential impacts on local businesses and communities, particularly of conversions from retail to residential use.
Monitoring and evaluation plan	**Weak**	The IA would benefit significantly from providing some information at this stage of how the department might monitor and evaluate the impact and effectiveness of the measures.

Summary of proposal

The Government consulted in December 2020 and laid legislation on 31 March 2021 covering the following:

i) A new national permitted development right (PDR) for the change of use from the commercial, business and service use class to residential use.

ii) Amendments to existing rights to support schools, colleges, universities and hospitals, and for the first time, prisons.

iii) Amendments to an existing right to support ports, including Freeports.

iv) Amendments to an existing right to provide protection for statues, memorials and monuments.

v) The introduction of prior approval fees for i), extensions to universities included in ii) and to extend dwelling houses upwards to create additional living space.

Applications under the new or amended rights may be made from 1 August 2021.

By far the largest monetised impact comes from the first measure listed above. Businesses (owners of commercial buildings) are estimated to benefit from a net land value uplift under this right of £1.6 billion (over ten years in present value terms). This is partly offset by a loss of land value uplift from new floor space and vacancy requirements applying to the existing office to residential PDR (£378 million), making a net land value uplift of around £1.3bn. Businesses (developers) will benefit from reduced planning fees by no longer being required to submit a full planning application in more cases (£25 million). The (societal) net present value figure is slightly higher than the business net present value figure as some schools, hospitals and prisons also benefit from reduced planning fees. The IA notes, however, a number of non-monetised impacts, such as impacts on local communities.

EANDCB

The IA makes good use of a range of data sources, particularly in estimating the net land value uplift of £1.3bn. The reduction in planning uncertainty is expected to increase the value of land owned by businesses and the department has applied the same method to calculate this as in two recent 'building upward' IAs.[2] This is treated, as in the previous IAs, as a direct benefit to business and accounts for the large majority of the -£138.6 million EANDCB figure. There are a number of steps in calculating this figure; these are outlined below, followed by comments.

<u>Land value uplift calculation</u>

Class E (excluding offices) buildings

The department estimates around 216,000 class E (excluding offices) buildings in scope of the new PDR in 2021, using Ordnance Survey's *AddressBase Premium* data and (to adjust for the three-month vacancy requirement) *Sqwyre* data on the average length of occupancy. The IA then uses data on take-up from the office to residential PDR introduced in 2016 to estimate a likely take-up (i.e. applications for prior approval) of around one per cent in the first year. This is then adjusted (using findings from a University College London study) for the proportion of prior approvals that are never implemented, to arrive at an estimate of around 1,400 schemes in the first year. This is assumed to decline over time to give a figure over the full ten years of just over 9,000. Using data on floor area and mean size per unit, the IA arrives at an average number of units per scheme of 5.5, giving an estimate of around 7,600 units implemented in 2022. Again, this is assumed to decline over time to give a figure over the full ten years of just over 46,000. It is assumed that 50 per cent of these units are additional, i.e. would not have been implemented in the counterfactual. This gives an additional 23,080 units over ten years. A land value uplift (LVU) of £71,225 per dwelling is used, calculated from data supplied from the Valuation Office Agency. The aggregate LVU for Class E (excluding offices) building is £1,644 million.

Office buildings

For office buildings, the IA uses latest data for prior approvals under the existing office to residential PDR and adjusts for the new three-month vacancy and 1,500sqm floor space requirements. The IA arrives at a central estimate of 839 office projects being implemented each year. The same data sources as for non-office buildings suggests an average number of units per scheme of 8.8, resulting in an estimated 7,382 units coming forward in the policy option in each year. The average number of units per scheme is lower than that achieved so far under the existing right, estimated at 10.1, because of the new floor space requirement. The IA adjusts this for generic space standards that came at April 2021, giving an estimated average number of units per scheme of 9.4 in the counterfactual. Multiplied by the total estimated prior approvals implemented results in an estimated 7,971 units being delivered each year in the counterfactual, i.e. an estimated net loss of estimated loss of office to residential of 589 (7,382-7,971) units each year (5,300 over the ten year appraisal period). Applying the unit LVU above gives an estimated loss of LVU of 378 million. This is treated as a disbenefit in the calculations, making a net aggregate gain in LVU of £1,267 million over the ten-year period.

<u>Other monetised benefits and costs</u>

Applicants will make fee and time savings from not having to submit a full planning application. Based upon a fee savings per dwelling of £362, savings in the first year are estimated at £4.32 million and around £25 million over the ten-year period in present value terms. Time savings are calculated using the approach for the recent *Reform of the Use Classes Order*[3] IA and are estimated at £7.2 million over ten

[2] RPC opinion references: RPC-CLG-4481(1) ‘The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020, 26 June 2020 and RPC-CLG-5006(1) ‘Permitted development rights to build new homes on existing buildings’, 28 October 2020.

[3] RPC opinion reference: RPC-CLG-5044(1) ‘Reform of the Use Classes Order’, 15 February 2021.

years. The increased time for offices that go through full planning application rather than PDR (£0.5 million) is treated as a disbenefit in the IA; whereas increases in planning application fees for offices are presented directly as a cost (£11.5 million).

<u>Comments</u>

Counterfactual/baseline

For non-office buildings, the IA acknowledges particular difficulty in estimating the number of units that would be delivered in the counterfactual. The assumptions are based upon these commercial building types often facing difficulty in getting permission on a planning application to convert to residential. Low and high values are used to assess the sensitivity of the analysis to this uncertainty. The IA states that the approach is consistent with MHCLG appraisal guidance. Overall, the approach appears to be reasonable. However, the IA would benefit from some additional explanation in places, such as clarifying what is meant by "*sense checked internally"* (page 27).

The IA takes the latest year for office to residential prior approvals and assumes this remains constant in the counterfactual. The IA would benefit from justifying this assumption further and/or testing its sensitivity, given the small decline in prior approvals shown in table 2 (page 14).

Non-monetised impacts

While the IA's estimates take account of new vacancy requirements and floor size limits, the IA would benefit from discussing further the potential impact of "…*more matters for prior approval*", which include consideration of the impact on residents from the change of use in an area important for industrial, storage or distribution (page 11).

See also comments under 'modelling and assumptions', particularly adjustment for the three-month vacancy requirement.

SaMBA

The IA provides a SaMBA against each measure, with the most detailed being that for the first (and by far largest-impact) measure listed. The IA explains that the measures are generally beneficial to business and it would not, therefore, be appropriate to exempt small and micro businesses. Moreover, it explains that the experience of the existing office to residential right is that it attracted new developers to the market, who are more likely to be small. The SaMBA provides a good description of possible indirect impacts, including potential negative impacts on small businesses that might be displaced form class E buildings, although this is expected to be mitigated by the vacancy requirement. The SaMBA would, however, benefit from discussing further the potential for small businesses, such as independent shops and cafes, to be displaced and the impact this could have on small businesses and local residents.

Rationale and options

The IA provides a clear rationale for each measure. For each measure (other than the one relating to statues etc) the IA provides only two options: do nothing and the preferred (now implemented) option. Although not a framework requirement at the final stage, the IA would benefit significantly from explaining what other options were explored through consultation and the basis for their rejection. This could also cover why non-regulatory options are not viable or suitable and possible sub-options, such as different height or floor size limits. The IA would also benefit from discussing the likely effectiveness of some constraints on development under the proposal, such as the three-month vacancy requirement, and whether other constraints have been considered to maintain some protections, such as a possible exemption from PDR if a certain threshold of existing local retail capacity is converted.

Cost-benefit analysis

Evidence and data

The department sets out clearly the evidence and data used for its estimates. In particular, the IA makes good use of information from the existing office to residential PDR. It is particularly welcome that the present IA compares outturn data to the assumptions used in the 2016 IA (this shows that the number of new homes delivered was slightly above the range assumed in the IA). The IA is transparent around where there are little data and relatively high uncertainty but there are some areas where the IA would benefit from further explanation, described below.

The IA uses unit cost data from the 2009 report *Benchmarking the costs to applicants of submitting a planning application.* This report appears to remain the most authoritative data source but the IA would benefit from explicitly explaining why this is the case.

The IA would benefit from: providing further information on the derivation of the LVU per dwelling (and how it compares to LVUs used in previous IAs) and from setting out in more detail the calculations for the aggregate figures (LVU and planning application fees).

Methodology and assumptions

See also comments above under 'EANDCB'.

The IA would benefit from discussing further potential impacts on local businesses and residents, in particular from a potential loss of retail services (see 'wider impacts' below).

For office buildings, the IA sets out in detail the steps involved in calculating its central estimate of 839 office projects being implemented each year under the policy option (pages 15-17). However, the IA would benefit significantly from further justifying the nature of its adjustment for the three-month vacancy requirement. In particular, it could explain how existing prior approvals that were in previously fully occupied buildings could still come forward as PDRs and whether this could involve additional costs (such as bringing forward the vacation of the building). Although the IA uses a lower percentage as a sensitivity, it would benefit significantly from explaining why it would not be reasonable to assume that none of the previously fully occupied buildings (i.e. 40 per cent of the total, based upon the Greater London Authority study showing this proportion of approvals being for occupied buildings) would now not come forward as PDRs. The IA would benefit from providing further details on "*this assumption has been sense tested internally due to the lack of data*" (page 15).

In relation to schools, colleges, universities, hospitals and prisons, the IA assumes that planning applications vary in line with Gross Domestic Product (GDP). Although planning application volumes have historically been correlated with GDP, the IA would benefit from justifying whether this holds for what are mostly public sector organisations.

Wider impacts

The IA includes a discussion of wider impacts against each measure and includes a brief assessment of trade impacts (page 48). However, the IA would benefit significantly from much further assessment of wider impacts, including developing the assessment of impacts on local communities and authorities. For example, the IA could expand on the following areas of impact:

- Local amenities.
- Local authorities' ability to plan/manage development in their area (noting also that sites will also not be required to provide a contribution to affordable housing).
- Congestion.
- Potential displacement of businesses and increase in office rents.

In particular, the IA would benefit from discussing further the impacts of a potential excessive loss of retail capacity, resulting from removal of protections for provision of retail services, and the negative impact this could have impact on existing residents and their land value.

On protection of statues etc, the assessment of non-monetised benefits and impacts on communities would be strengthened by incorporating survey data on public attitudes to statues being pulled down.

The trade assessment could consider impacts in relation to ports and freeports. The IA could also consider whether the changes in respect of universities may have a small impact on competition for both local and international students, as well as building of new facilities that may promote research & development and innovation. The assessment could benefit from some assessment of whether the building of new homes might impact on individuals with protected characteristics.

The IA provides a useful discussion of the potential longer-term impacts of Covid-19 and related restrictions (mainly at page 27). For example, this considers whether the take-up of the PDR could be lower than anticipated as a consequence of a shift in demand away from properties in urban spaces (where a portion of vacant Class E properties within scope of the measure may be located). The IA would benefit from describing how this would be monitored (see comments below).

Monitoring and evaluation plan

The IA includes a brief section, which concludes that it would be more appropriate to wait to finalise a monitoring and evaluation strategy until the department's full planning reforms are known. This would not, however, seem to preclude providing some information at this stage of how the department might monitor and evaluate the impact and effectiveness of the measures, such as what type of information will be collected.

Other comments

The IA notes that its estimates are subject to space standards and natural light requirements in the counterfactual (page 18). The RPC understands that the nationally described space standards, which came in at April 2021, apply to any new home delivered under existing national permitted development rights. Assuming the measure is above the *de minimis* threshold, the RPC looks forward to seeing an IA assessing the impact of this measure for business impact target accounting purposes.

Regulatory Policy Committee

For further information, please contact regulatoryenquiries@rpc.gov.uk. Follow us on Twitter @RPC_Gov_UK, LinkedIn or consult our website www.gov.uk/rpc.