The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024

Lead department	Department for Levelling Up, Housing and Communities
Summary of proposal	The Order amends a 2021 permitted development right (PDR) for the change of use of commercial, business and service properties to remove the 1,500 square metre limit and three-month vacancy requirement.
Submission type	Impact assessment (IA) – 4 March 2024
Legislation type	Secondary legislation
Implementation date	5 March 2024
Policy stage	Final
RPC reference	RPC-DLUHC-5336(1)
Opinion type	Formal
Date of issue	4 April 2024

RPC opinion

Rating[1]	**RPC opinion**
Fit for purpose	Overall, the Department has provided a proportionate and consistent assessment of direct impacts on business from the two amendments to the 2021 PDR. There are some areas for improvement, mainly around monitoring and evaluation, and assessment of wider impacts.

Business impact target assessment

	Department assessment	**RPC validated.**
Classification	Qualifying regulation provision (OUT)	Qualifying regulation provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	-£18.3 million	-£18.3 million *(2019 prices, 2020 pv)*
Business impact target (BIT) score	-£91.5 million	-£91.5 million
Business net present value	£157.6 million	
Overall net present value	£157.6 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 appropriately classifies and monetises direct impacts on business.
Small and micro business assessment (SaMBA)	**Green**	The IA describes how SMB residential property developers and landlords will benefit from the amendments. The reduction in planning-related time and labour costs could be proportionately more beneficial to SMBs**.** The IA includes a useful discussion of the displacement risk to SMB tenants of Class E buildings.
Rationale and options	**Weak**	The IA would benefit significantly from use of monitoring and evaluation information on the impact of the 2021 PDR and the existing floorspace and three-month vacancy restrictions. The IA would benefit from discussing alternative options, including in relation to the vacancy requirement removal.
Cost-benefit analysis	**Satisfactory**	The IA sets out clearly the evidence and data used for its estimates and provides a good assessment of risk and uncertainty. It would benefit from discussing whether more actual and recent data are available, including from the operation of the PDR since 2021.
Wider impacts	**Weak**	The IA would benefit from developing its assessment of impacts on communities and local authorities. The IA could discuss further potential impacts on local businesses and communities of conversions from retail to residential use.
Monitoring and evaluation plan	**Weak**	The IA would benefit significantly from providing much more information on how the Department plans to monitor and evaluate the impact and effectiveness of the amendments.

Summary of proposal

A new permitted development right (known as Class MA) came into effect in August 2021. This provided for the change of use of premises in the Commercial, Business and Service use class (Class E) to residential. This broad use class includes a range of uses commonly found on the high street, such as shops, restaurants, offices, as well as gyms and light industrial buildings. In 2023 the Government consulted on additional flexibilities to support housing delivery, including removing the 1,500 square metre limit on the cumulative amount of floorspace that can change use, and the requirement that the premises needs to be vacant for a continuous period of at least three months. The Order makes these deregulatory amendments to the PDR.

The IA monetises a net present value figure of £157.6 million (2019 prices; 2020 present value). This consists primarily of an annual benefit to business of £18.5 million, the largest element of which is an increase in land value resulting from reduced planning uncertainty for property developments brought into scope of the PDR by the amendments. There are also smaller benefits in the form of reduced planning fees and labour cost savings from not having to prepare and submit a full planning application. The EANDCB figure of -£18.3 million nets off a small transitional familiarisation cost.

EANDCB

Overall, the Department has provided a proportionate assessment of direct impacts on business, noting that the estimated impacts of the amendments are around a tenth of those estimated for the 2021 PDR.

Direct/indirect impacts

The Department has classified appropriately the business impacts of the amendments. Direct impacts on business are monetised. The main such impact is the increase in the value of land owned by businesses resulting from a reduction in planning uncertainty. This was treated as a direct impact in previous PDR IAs[2] and the department has applied the same calculation method used previously (described on page 18 of the IA). This benefit relates to applications made through the Class MA PDR which would otherwise have been made as planning applications in the counterfactual, but with a lower likelihood of being refused. The IA notes that there may be a supply impact, where completely new applications are incentivised to come forward. This is treated as an indirect impact and is assessed qualitatively in the IA.

See also comments under ‘cost benefit analysis’ below.

[2] RPC opinion references: RPC-CLG-5094(1) ‘The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021, 30 July 2021; 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.

SaMBA

The IA describes how the Order will be beneficial to SMB residential property developers and to SMBs that own their properties. The reduction in planning-related time and labour costs could be proportionately more beneficial to SMBs. The IA provides a useful discussion of potential negative impacts on SMB tenants of Class E buildings, who could be displaced by the removal of the three-month vacancy requirement as landlords seek to unlock the higher value associated with residential land. The IA estimates the number of tenants that could be affected to be very small but would benefit from explaining further how the estimates were arrived at. The IA could usefully discuss the impact of the removal of the floorspace limit on competition and whether it might favour larger developers.

Medium-sized business considerations

The IA would benefit from addressing impacts on medium-sized businesses, including explicitly why they should not be exempt, in line with government guidance.

Rationale and options

The IA's consideration of the rationale for intervention would benefit significantly from presenting monitoring and evaluation information on the impact of the original 2021 PDR and the associated floor space and three-month vacancy restrictions. The IA presents little information evaluating the success of the measure over the first 2-3 years (including against expectations in the original IA), or the extent of the restrictive impact of the floor space and vacancy requirements. The IA would benefit from reviewing the extent to which these restrictions may have been holding back developments and the value of the vacancy restriction in providing protection against business eviction and associated potential community detriment.

On options, the IA usefully include a monetised assessment of an alternative option of doubling the existing floorspace limit. The IA would benefit from discussing potential alternatives in relation to the vacancy requirement removal, for example a reduction to one or two months from the existing three. The IA would also benefit from discussing whether other restrictions have been considered to maintain some local protections, such as a possible exemption from PDR if a certain threshold of existing local retail capacity is converted. The IA would also benefit from discussing the option of also liberalising the return of properties converted to residential back to commercial, business and service uses, given that this could mitigate some of the risks identified to businesses (including small businesses) since they could then compete for properties on a more level playing field with residential uses.

Cost-benefit analysis

Evidence and data

The Department sets out clearly the evidence and data used for its estimates. The IA would benefit from discussing whether more actual (as opposed to assumptions in previous IAs) and recent data are available in places (for example, page 13 uses data from a 2016 IA).

Risks and assumptions

The IA provides a good and clear discussion of the steps taken in calculating costs and benefits, setting out transparently the uncertainties and where data are particularly limited. The latter applies mainly in relation to non-office properties and specifically additionality (the extent to which the PDR reduces the likelihood of the scheme being refused). On the latter, the IA resorts to generic DLUHC appraisal guidance but it would be useful for the Department to set out how it aims to get evidence in this area to inform better any future relevant IAs.

The IA provides good tables (pages 28-30) setting out assumptions, risks and how risks are being mitigated. This would benefit from including something on the risks of businesses being evicted following the removal of the vacancy requirement.

The IA describes clearly the rationale for the adjustments made to the assumptions derived from data, in order to avoid bias in the estimates. The IA would benefit from further discussion of the significance of not being able to allow for larger properties currently being able to partially convert up to 1,500sqm of their floor area under the existing Class MA rules (page 10).

Wider societal impacts

The IA would benefit from discussing further the potential impacts on local businesses and residents, in particular from a potential loss of shops, cafes and other retail capacity (see ‘wider impacts’ below).

Wider impacts

The IA includes a discussion of wider impacts under non-monetised costs and benefits. This includes discussion of potential impacts on local communities and authorities. The IA usefully notes some mitigation of potential negative community impacts, such as some small, isolated shops selling essential goods being outside the scope of the PDR. However, noting the IA’s reporting of concerns raised during consultation, the discussion of this area could be strengthened. This could discuss further the impact on local communities of a potential reduction in shops, restaurants, cafes and other facilities and risks to local authorities of being able to manage the high street or town centre less effectively. The IA could also discuss proportionately, competition and innovation impacts.

Monitoring and evaluation plan

The IA includes only a very brief section on M&E plans; this could be strengthened significantly. This could set out how the extent of achievement of the policy objectives will be assessed, including how data will be used and key metrics, and how risks/unintended consequences will be monitored. The IA reports the number of applications for Class MA prior approval in 2022-23 but makes no comparison against the estimates in the 2021 IA (the outturn appears to be significantly lower than anticipated in the IA). The M&E plan should set out how the impact of the amendments will be measured and how comparisons might be made to the estimates in the IA.

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.

Stephen Gifford, the committee member, did not participate in the scrutiny of this case to avoid a potential conflict of interest.