

# CHANGES TO PERMITTED DEVELOPMENT: PAPER 2: PERMITTED DEVELOPMENT RIGHTS FOR HOUSEHOLDERS

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A planning white paper 'daughter' consultation response  
from the Royal Town Planning Institute (RTPI)

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**RTPI**

mediation of space · making of place

**RTPI**, 41 Botolph Lane, London EC3R 8DL, Reg Charity No 262865  
Contact: Rynd Smith, LLB, MA, FRSA, MRTPI, MPIA, Director Policy and Communications  
Email: [rynd.smith@rtpi.org.uk](mailto:rynd.smith@rtpi.org.uk)  
Web: [www.rtpi.org.uk](http://www.rtpi.org.uk)

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# 1. Introduction

This 'daughter document' represents part of the RTPI planning white paper response, addressing the government's proposals on householder permitted development.

It forms part of a suite of responses to the planning white paper which are listed below:

- Planning for a Sustainable Future: a High Level Response;
- Planning for Major Infrastructure: Making the New System Work;
- Improving the Appeal Process;
- Planning Fees;
- Planning Performance Agreements;

Copies of all the white paper responses can be downloaded from:

- <http://www.rtpi.org.uk/item/606>

## 2. Overall Policy and Practice Approach

Consultation papers issued around the planning white paper have set out proposals for extending permitted development rights to:

- domestic microgeneration (consultation paper 1)
- householder developments (consultation paper 2)

Consultation paper 1 was issued for consultation before the formal issue of the white paper and hence had an earlier closing date for responses. The RTPi has issued a response which can be found at: <http://www.rtpi.org.uk/download/2134/Response-to-microgeneration-consultation1.pdf>

The white paper also contains proposals to streamline the system by:

- simplifying the GDPO;
- allowing minor amendments to be made to planning permissions;
- taking steps to unify consent regimes;
- providing new TPO rules;
- streamlining information requirements for all applications; and
- reducing Secretary of State involvement in casework.

Consultation paper 2 published alongside the white paper contains proposals to rationalise the need for planning permission for minor developments. These proposals are important because:

- Many people encounter the planning system only when they or their neighbours make minor alterations to their homes. Their experience on these occasions colours their view of the planning system overall.
- Householder developments affect peoples' homes and typically their most valuable asset. They can therefore be extremely sensitive and raise very strong emotions.
- The existing 'volume-based' system for determining whether or not planning permission is required is extremely complicated - even experienced planners can have trouble understanding it.
- In recent years, the number of minor applications by householders have risen far faster than the number of applications overall. Planning authority resources are scarce and need to be carefully used.

Consultation Paper 2: Permitted Development Rights for Householders proposes new permitted development limits for householder developments which based on the potential impact of the development outside the host property. It suggests that if a proposal is likely to have an impact beyond the property it should require a planning application. Otherwise a planning application should not be required.

In effect, therefore, the Consultation paper sets out what the Government considers to be the thresholds beyond which householder developments have a public impact that is sufficient to require the Local Planning Authority to decide its acceptability.

The intention is to reduce the number of householder applications while protecting the interests of neighbours, community and the environment.

On this basis new permitted development rights are proposed for the following:

- Extensions - limits for which are set by metric measurements in place of the existing volume-based limits
- Roof extensions and alterations - these are to become permitted only if set back from the ridge, gable, eaves and/or party wall of the house
- Curtilage developments - height limits near boundaries are proposed, as are limits for raised terraces and raised decking
- Hard surfaces - the case for restricting the right to pave front gardens eg for car parking is not supported
- Other minor changes - relating to oil storage containers and the like

A consultation on basements is proposed at a later date.

The consultation paper also raises issues relating to:

- Local Development Orders
- Compensation for costs payable where permitted development rights are removed
- Removal of the need for the Secretary of State's Approval to approve an 'Article 4' Direction
- A separate 'Householder Permitted Development Order'
- The Planning White Paper anticipates further work will be done in the coming months to extend the impact approach described in this consultation to other types of development.
- Streamlining where applications are still required
- Streamlining planning application processes by:
  - simplifying the GDPO;
  - allowing minor amendments to be made to planning permissions;
  - taking steps to unify consent regimes;
- New TPO rules
  - streamlined information requirements for all applications; and
  - reduced Secretary of State involvement in casework.
- Improving the appeal process

### **Is this what the RTPI asked for...**

The RTPI position adopted from January 2007 in the run up to white paper publication was:

*The RTPI supports the proposition that planning resources should be targeted to planning business in proportion to the significance and need for that business to address the requirements of society, the economy and the environment. We need better plans and better outcomes. We need to be able to deliver and we need delivery to be expeditious, efficient and to quality.*

In this context, it concerns us to observe significant rises in small scale development proposals requiring planning permission, in circumstances where many such proposals have limited or no adverse impacts in public interest terms. Serving such applications draws much needed planning human and financial resources away from the tasks that really need to be done.

For these reasons, the RTPI broadly supports proposals to simplify permitted development for householders on an 'impact based' principle. It looks to the White Paper to set the foundation stones for changes to householder development consents and in respect of permitted development for renewable energy development.

The white paper broadly delivers against this position, but work will be necessary to ensure that the detailed proposals in Consultation Paper 2 also deliver. One key area for action will be to ensure that the proposals remain simple and customer focussed: easy for the public to understand, logical and consistent and easy for planners to explain to the public.

Interestingly, the white paper has not formally supported the much flagged proposal for 'Neighbour Agreements', whereby neighbours would be able to agree and in circumstances make payments to secure agreement that a proposal did not need planning permission. That being said, the government is continuing to seek comments on this point.

The RTPI has maintained consistent opposition to any proposal that would enable the purchase of planning permission, or an agreement that would have the effect of enabling a proposal to proceed without planning permission.

*'The RTPI opposes the suggestion in the Barker Review that there should be any form of 'side payment' or other agreement between neighbours over a proposed development which would result in the application being removed from the planning system, whether or not money is exchanged. If the impact of a development is such that permission is required then it should be a matter requiring consultation to identify the best balance of public benefit. If it does not have any wider impact, then it should fall into a class of permitted development. 'Side payments' are considered particularly pernicious in that they generate in the public mind a view that payments between parties can secure the removal of a matter from necessary public scrutiny and can secure agreement to development impacts that on any objective measure would be viewed as unacceptable. Such an approach would do untold harm to the public benefit perceived to be provided by planning and to its reputation for probity.'*

It will be important therefore for the government's resolution of outstanding issues from the white paper to lay this proposal to rest.

### 3. The Impact Approach

#### Question 1 – Do you agree with the principle of an impact approach for permitted development?

Broadly yes. Inevitably, in any reframing of permitted development, there will be ‘winners and losers’. However, to make the proposals work on a technical and definitional level, it will be important to ensure that the conditions that govern the application of permitted development are made as clear and simple as possible. To provide an example, the defined extension lengths will be confusing and may lead to interpretational difficulties and additional work by planners on quite a lot of properties.

Generally the current rules tend to mean that there are few two-storey extensions of any significant size or bulk. Care will be required to ensure that a serious potential impact, loss of sunlight, is minimised when additional extensions are constructed at height. The currently “one-size-fits-all” approach to permitted development will lead to many neighbours being detrimentally affected by the siting of two-storey extensions to interrupt sunlight to windows or gardens, because of the orientation of their houses. One possible solution to this dilemma would be to associate permitted development with performance requirements that must be met, for example, ensuring that overshadowing or the loss of sunlight is limited in quantitative terms. The widespread use of computer aided design techniques makes such approaches readily deliverable in a way that was not the case only a few years ago.

This again raises the question of integration with the building regulations. To the degree that performance based requirements may need technical assessment and sign off, this could occur at the building stage<sup>1</sup>.

There is an essential next step in development that cannot be excluded. The ideas set out in the white paper must be formed into a pre-draft set of permitted development, in regulatory form. These must be read by practitioners to ensure that they are easy to use and that their interpretation is consistent, before they are then formalised as a draft order. It may be that there are elements of the impact approach that then require to be moderated in the face of pragmatic issues about ease and efficiency of use or consistency of interpretation.

Similarly, new permitted development must be communicated to the public in ways that the public understand.

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<sup>1</sup> An example of a performance based permitted development code for residential development, associated with building control for implementation can be found in the Victorian ResCode provisions: see clauses 54 to 56 (Particular Provisions) of the Victoria Planning Provisions <http://www.dse.vic.gov.au/planningschemes/VPPs/>

## 4. Protection for Designated Areas

Question 2 – Do you agree with a restriction on development facing onto and visible from a highway in designated areas?

Yes, but there must be a robust and clear definition of the highway for this purpose.

Question 3 – Should the restriction apply in the same way to all types of designated area?

Yes. Significant confusion would be likely to arise from different patterns of rights in different designated areas. Furthermore, typically designated areas overlap: for example, an established built area within a national park is likely also to be substantially designated as a conservation area. To have different overlaps of rights would be very confusing. The RTPI supports the view that on balance the rights within designated areas should be limited, on a precautionary basis, as the alternative, implying the need for significant numbers of Article 4 Directions, can also be confusing and lack transparency.

There is a view in some parts of the RTPI membership that the openness of the Green Belt requires consideration for protection on the same basis as other 'designated areas'.

## 5. Compensation

Question 4 – Do you agree that, subject to safeguards to protect householders from abortive costs, that the existing right to compensation for 12 months after any change to the GPDO is made is reviewed?

Yes.

## 6. Removal of Permitted Development Rights

**Question 5 – Do you consider that local planning authorities should be able to make an article 4 direction without the need for the Secretary of State’s approval at any stage?**

Yes, but RTPI internal consultations made clear a widely shared professional view that Article 4 Directions should not be widely used. Furthermore, where Article 4 Directions are used, steps should be taken to ensure that they are widely known of and understood. Alternative mechanisms proposed that would make the existence of a power limiting permitted development much clearer to residents and applicants from the outset include the recording of Article 4 Directions in development plan documents. Such an approach would have the benefit of providing Directions with a clear strategic basis, answering the question as to why a restriction of permitted development rights is justified in policy terms.

**Question 6 – Do you consider that, subject to safeguards to protect householders from abortive costs, the existing right to compensation as a result of the making of an article 4 direction should be reviewed?**

Yes.

**Question 7 – Should there be a requirement for planning authorities to review article 4 directions at least every five years?**

Yes.

**Question 8 – Would there be benefit in making certain types of permitted development subject to a prior approval mechanism?**

On balance, members considered that the potential confusions inherent in the operation of prior approval in those subject matters to which it does apply suggest that there would be considerable scope for misinterpretation and misunderstanding if it were to be widely used in residential matters.

## **7. Recommendations on Types of Householder Permitted Development**

**Question 10 – Would there be benefit in having a separate development order containing just permitted development rights for householders?**

Yes, on the basis that it was written or glossed in a parallel document in plain English and supported by illustrations, diagrams and case studies, making clear to all users what the intention of various forms of permitted development is.

**Question 11 – Do you have any comments on the proposed definitions?**

More thought should be given to the height of a proposal: there is a definition in the current GPDO, but it is not well known or used. The impact of height of an extension or outbuilding on sloping ground is a significant cause of stress to neighbours, or impact on environment.

## 8. Extensions and Alterations

Question 12 – Do you agree with the proposed limits for extensions?

Question 13 – Do you agree with the proposed limits for roof extensions?

Question 14 – Do you agree with the proposed limits for roof alterations?

Paragraph 56 is incorrect: the maximum extension to a larger house is 115 cu metres.

In practitioners' experience, many of the difficulties around rear-facing extensions and highways have arisen from the poor appearance of the extension in principle, combined with the possibility as seen by a neighbour of bringing it under control by virtue of the fact that there is a road at the back. These problems are compounded by the question of whether the road or path is a "highway" in the meaning of the GPDO.

While the proposals are sensible, they are not uncomplicated and so attempts to simplify would be welcomed.

The RTPI broadly supports the proposed limits for roof alterations. It notes that the basis for the proposed reduction in the extent of roof permitted development has been established by examining community responses to the existing permitted development for roof alterations, as manifest through planning and appeal decisions and ombudsman references.

It appears clear that the scale and impact of existing roof permitted development is viewed as excessive by many communities. It appears clear that when planning permission is required and factors such as bulk, the public interest in the street scene, overlooking and overshadowing are considered, permission is not granted for proposals that equate to what can be achieved under current permitted development.

It therefore appears prudent that an approach to make permitted development conform more closely to the levels of impact viewed broadly as acceptable by communities should be taken.

There is room for debate around the margins of the proposed rights and the degree to which they retain scope for practical, useable internal roof space. For example, it may be that the setback from the ridge could be reduced, generating potential for useable height space in more dwellings. However, the balance of the proposals as consulted upon is broadly correct and, minor revisions aside, should be preserved.

Issues were raised by some practitioners around alterations such as the use of solar panels in designated areas. The provisions for designated areas were felt to be unclear. Are solar panels acceptable on principal elevations if recessed? Or can they be attached to non-principal roof planes in Conservation Areas and AONBs?

Such effects were seen by some members as unacceptable: solar panels are too reflective and angular, and the view over the traditional roofscape of a Cotswold or Peak District village, for example, could be ruined. It is not clear that this is an issue that should be left to remediation by Article 4 Direction, for reasons set out above.

## 9. Curtilage Developments and Hard Surfaces

### Question 15 – Do you agree with the proposed limits for curtilage developments?

Broadly no.

The concerns of members centred on the need for a clear definition and understanding of a single storey structure.

The present limitation on large outbuildings in conservation areas should be retained.

In respect of large outbuildings: currently these can only be constructed as permitted development when more than 5 metres from the house. They are already governed by rules about height, and proximity to the boundary.

### Question 16 – Do you agree that there should be no national restriction on hard surfaces?

The RTPI does not agree with this proposal. The key test for any class of permitted development should be around the principle of impact, in terms of high level planning objectives. Amongst the highest of these is the injunction to achieve sustainable development (PPS1) and to mitigate the effects of climate change (Proposed PPS Climate Change). Also significant is policy around the limitation of flood risk (PPS25).

In terms of both sustainability and climate change, key risks that our settlements are exposed to are the risks of flood damage, the exacerbation of flood damage due to human effects on catchments and arguable increases in the frequency, duration and scale of flooding due to climate change induced increases in severe rainfall events. We must also seek to sustain the water quality and ecological carrying capacity of our catchments.

The unrestricted development of urban hard surfaces associated with private dwellings has the potential to significantly adversely affect the performance of catchments in flood. Hard surfaces prevent the transfer of rainfall to groundwater, instead directing it to drains, overland flows and water courses, from where it adds to flood waters and runs off. The combined effect is to reduce water flows from ground water sources in dry periods, adversely affecting the ecological characteristics of catchments (an issue in terms of our European Water Framework Directive obligations) and to significantly increase water flows and hence flood risks in wet periods. Other consequences include the diversion of more surface pollutants to water courses during floods, reducing water quality due to pollution and turbidity and increasing erosion and damage due to larger flood events.

There are relatively simple physical mechanisms now available whereby a dwelling can have a hard surface, but which have the effect of returning the collected water back to groundwater on site, with no adverse effects and little cost to the consumer. Such measures have the effect of offsetting the adverse effects of hard surfaces, whilst still enabling consumers to enjoy the hardstanding, paved and decked areas demanded by contemporary lifestyles.

In contrast, the cost of exacerbated flood risk and associated damage to property, injury and death and the ecological decline of waterways are very substantial costs, which we must do more to manage.

A relatively minor step could include a decision to manage the performance of new hard surfaces, possibly through the building regulations, to ensure that appropriate diversions of rainfall to groundwater on site were achieved. Alternatively, a requirement for planning permission for hard surfaces over a certain site coverage could be retained. Finally, a better link could be made between the planning and building systems, with a provision establishing that a hard surface proposed to be constructed in compliance with a relevant part of the building regulations was permitted development, but a variation from the requirements of that part required planning permission, as a means to ensure appropriate environmental performance.

## 10. Conclusions and Recommendations

The RTPI supports the principles underlying the proposed reforms. However...

### *Recommendations*

- All proposed changes should be produced in a draft regulatory form and subjected to rigorous road-testing before finalisation.
- Definitions should be clarified.
- Attention should be given to the desirability communicating the basis for and operation of the new system to the public in a 'plain English' and illustrated version.
- Further attention is needed to the appropriateness of the proposed changes in designated areas and possibly Green Belt.