

RTPI response to MHCLG consultation on supporting housing delivery and public service infrastructure

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About the RTPI

The Royal Town Planning Institute (RTPI) champions the power of planning in creating prosperous places and vibrant communities. As a learned society, we use our expertise and research to bring evidence and thought leadership to shape planning policies and thinking. As a professional body, we have over 25,000 members across all sectors, and are responsible for setting formal standards for planning practice and education. This is the RTPI's response to the Ministry of Housing, Communities and Local Government consultation on [supporting housing delivery and public service infrastructure](#).

General comments

Permitted Development rights

Access to essential services: We recommend a range of additional prior approval matters are added to the Permitted Development (PD) rights including access to essential services as defined in Covid-19 regulations such as convenience stores, quality design, adequate ventilation and access to green and open spaces.

Size limit: There must be a size limit for the conversion of large retail and light industrial floorplates and it should be set at 250 square metres principally to ensure suitable living environments.

Vesting date: The Government should confirm that the right to change B1 uses is limited to premises which were in B1 use on the date this consultation was launched (3 December 2020).

Fees: We cautiously welcome the consultation proposal for a new fee for PD right applications, set at the current prior approval fee of £96 per dwelling as some recognition of how resource intensive the work is. However, that figure would not meet the resource demands on the LPA and we recommend instead a fee of £231 per dwelling would be more appropriate.

Public service infrastructure and permitted development rights

We support the notion that extensions only to hospitals and other premises, which provide health services to the public (free at the point of use), should be made easier – but during the response to the Covid-19 pandemic only. We do not see any need to extend this proposal to any other land use or for it to be made permanent.

Size of the buildings to which the right might apply

Q1. Do you agree that there should be no size limit on the buildings that could benefit from the new permitted development right to change use from Commercial, Business and Service (Class E) to residential (C3)?

Please give your reasons.

Absolutely not.

There must be a limit for the conversion of large retail and light industrial floorplates. It should be set at 250 square metres principally to ensure suitable living environments. This is also important to safeguard against possible future residential conversion of large warehouses that continue to be built – particularly to support growing demand for online retail. A size limit is particularly important to allow an assessment of the size of the building in relation to the size of outdoor space and curtilage. Large industrial buildings may have open areas for parking and outdoor space; however, large office blocks in town and city centres may have very limited external space for future residents.

Where the right might apply

Q2.1 Do you agree that the right should not apply in areas of outstanding natural beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, and World Heritage Sites?

Please give your reasons.

Yes.

These areas and sites are recognised nationally and internationally. To apply the proposed PD right to such areas risks damaging some of their features and character. However, in responding this way we do not in any way condone the use of the right outside such areas.

In addition, Coastal Change Management Areas (CCMAs) should be included in the list of designated areas exempt from the PD proposals. The NPPF (para 167-169) and Practice Guidance already require planners to limit the scope of new residential development in these areas to prevent ‘locking in’ land uses that cannot be protected over their normal lifetime.

Other areas that should be excluded because they would allow development that is contrary to the NPPF in the functional floodplain (Flood Zone 3b – where ‘more vulnerable’ development ‘should not be permitted’).

Q2.2 Do you agree that the right should apply in conservation areas?

Please give your reasons.

No.

The introduction of the proposed PD rights is inappropriate for these areas.

Permitting an automatic right to change the use jeopardises the character and vitality of a high street. There would potentially be areas of dead frontage, which will have a detrimental impact on the survival of other shops in the same street. In addition many local authorities only have limited coverage of heritage constraints and increased PD rights risk non-designated heritage being lost without due consideration. For example, when last comprehensively assessed, less

than 20% of conservation areas had adopted management plans and only a minority of local authorities have detailed registers of 'local heritage assets/locally listed buildings'.

**Q2.3 Do you agree that, in conservation areas only, the right should allow for prior approval of the impact of the loss of ground floor use to residential?
Please give your reasons.**

Yes

Matters for local consideration through prior approval

**Q3.1 Do you agree that in managing the impact of the proposal, the matters set out in paragraph 21 of the consultation document should be considered in a prior approval?
Please give your reasons.**

Yes.

Our answer to Q3.2 recommends a wide range of additional matters that should be considered. In addition, if CCMA's are not excluded from the PDR, coastal change vulnerability assessments should be required by prior approval in CCMA's.

**Q3.2 Are there any other planning matters that should be considered?
Please specify.**

Yes.

The following list of additional matters should be included in the prior approval process:

- a) **Access to essential services:** Impact on the provision of essential services as defined in Covid-19 legislation.
 - a. There is a risk of undermining the sustainability of town centres and high streets with the loss of essential local services such as convenience stores, pharmacies, solicitors or post offices where it is more financially lucrative to convert to residential use. This would impact most acutely on local poorer populations who can least afford to travel, and the elderly. Losing a mix of businesses in these locations risks further reducing local employment and increasing the need for longer travel to work times.
- b) **Amenities:** Access to amenities such as parks for outdoor fitness and exercise. Our Plan the World We Need campaign highlighted the importance of this for mental and physical wellbeing during the Covid-19 pandemic and beyond¹
- c) **Ventilation:** Adequate opportunities to provide fresh air through ventilation
- d) **Quality design:** Design quality of the environment being created and whether it is appropriate for living.

¹ RTPI (2020) [Plan the World We Need](#)

Applications for prior approval and fees

Q4.1 Do you agree that the proposed new permitted development right to change use from Commercial, Business and Service (Class E) to residential should attract a fee per dwellinghouse?

Please give your reasons.

Yes.

We welcome the move towards “per-dwelling” fees for prior notification as a positive step in cost recovery for LPAs.

Q4.2 If you agree there should be a fee per dwellinghouse, should this be set at £96 per dwellinghouse?

Please give your reasons.

We welcome the consultation proposal for a new fee for PD right applications, set at the current prior approval fee of £96 per dwelling as some recognition of how resource intensive the work is. Processing these applications is currently hugely loss making for local authorities with many checks still required. However, the current fee for applying for detailed or full planning permission for a new house or a conversion in England is £462 (as at 8 January 2021). The proposed fee at £96 per dwelling house is around 20% of the income received by an LPA for full permission and therefore inadequate.

Instead, we recommend a fee of £231 per dwelling would be more appropriate (50% of the fee for a full application). The cap of 50 dwellings is also too low; we recommend that a cap proportionate to the cap system that is applied to full planning applications would be more appropriate.

Q5. Do you have any other comments on the proposed right for the change of use from Commercial, Business and Service use class to residential?

Please specify.

Yes.

We make the following additional comments:

Vesting date: In addition to requiring a size limit of 250sq m for this PD right, the Government should confirm that the right to change B1 uses is limited to premises which were in B1 use when this consultation was launched (3 December 2020). Change of use from B8 warehousing to B1 is easy at present. These warehouses are located in suitable locations for logistics but unsustainable locations for housing and will do little to support transport decarbonisation, for example if people have to travel from out of town locations to reach amenities. This week we published research that says that a significant shift away from car dependence is essential to achieving net zero transport emissions².

² RTPI (2021) [Net Zero Transport: the role of spatial planning and place-based solutions](#)

PD rights: We have previously set out our concerns that PD risks poorly designed housing, whilst also challenging local planning authorities' ability to deliver the mixed and efficient land use, and challenging the ability of communities to engage in development³. Furthermore, developments delivered through PD rights are often located in unsuitable locations such as industrial estates on the periphery of towns and cities, which lack convenient access to safe, affordable and reliable public and active transport networks. This is unsatisfactory for residents and families who do not have access to a car, and otherwise has the potential to lock in carbon-intensive patterns of car use.

We recognises that Government has started to address some of the seriously undesirable outcomes of PD such as by requiring all new homes delivered through PD to provide adequate natural light and to meet the Nationally Described Space Standard. However, much remains concerning about the increased use of PD rights, our answer to Q3.2 sets out the minimum additional prior approval matters that should be considered, if these proposals go ahead.

Removing the right to refuse permission in principle for the loss of shops, which perform essential retail services in areas such as villages and outlying housing estates, removes a valuable leverage which could otherwise be used to pursue innovative solutions such as encouraging families to move into such premises at low rent in return for running the shop.

The local plan-led system: Identifying areas of employment will become harder due to being unable to guarantee that identified buildings will not be converted into housing in the future. It will also be more difficult for LPAs to masterplan with particularly negative impacts on business and employment areas in contradiction to the need the LPA has to plan for and protect jobs. Furthermore, the implications for the Future High Street (FHS) Fund from these proposals are unclear. It is particularly uncertain are how recent recipients of an FHS Fund award should respond to these proposals, which appear to run counter to the schemes that those bids were based on.

Community engagement and democratic oversight: Local criteria, experience and knowledge support the reflection of community character and preferences. The proposals to extend PD rights continue to undermine the democratic oversight of new developments. It remains the case, as with previous expansions of PD rights that local authorities would lose control over land use, and communities would be prevented from engaging adequately with proposals for new developments.

External works: It is not clear how any external works to proposed converted buildings, such as large department stores would be managed through the planning process. The following specific matters related to external work are not addressed in this consultation:

- a) Changes to windows (e.g. size, shape and other changes) which may adversely affect neighbouring residential properties
- b) The mechanical and electrical systems required to facilitate the change of use to housing
- c) The potential change to the curtilage of the building to be converted with car parking for housing residents. Conversions of large buildings within small curtilages could create major parking and public safety issues locally.

³ RTPI (2019) [RTPI response to MHCLG consultation on 'Planning reform: supporting the high street and increasing the delivery of new homes'](#)

Developer contributions: We note the consultation confirms that following the Planning for the Future White Paper, the Government are considering “*whether the proposed Infrastructure Levy would also apply to permitted development rights*”. We simply reemphasise our concerns regarding why PD rights continue to not require developer contributions through Section 106 planning obligations for affordable housing, schools, open space provision and other social infrastructure.

Coordination of infrastructure: We have recommended the Government review the impact of the recent extension of PD rights and reform of the Use Class Order on the ability of local authorities and infrastructure providers to manage cumulative impacts on utility network capacity and deliver coordinated upgrades⁴.

National Flood and coastal Risk Management Strategy: The consultation does not provide estimates of the number of properties it anticipates being created through these PD rights but is likely to result in an increase in development in the floodplain as commercial properties are converted into flats. This will place more people and their property in areas at risk – undermining the sequential approach. With the Government currently reviewing its flood and coastal change planning policies, we recommend not introducing these new PD rights until its impact has been estimated on the National Flood and coastal Risk Management Strategy.

Article 4 directions

Many authorities have already ‘made’ or ‘confirmed’ (after a 1-year grace period) Article 4 Directions for office to residential, light industrial to residential. We recommend that Government allow these to be extended and continue as a transitional provision in these new PD rights.

Public Sector Equality Duty Assessment and impact assessment

Q6.1 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

Yes. Please see our answer to Q5.

We are concerned about a range of possible unintended consequences from this proposal (see our answer to Q5).

Should residential conversions take place on a large scale affecting a high street, we are concerned at the potential loss of active frontages and the benefits they provide through informal surveillance and enhancements to the vitality and safety of an area. We further question the possible negative impacts on physical activity with gyms, swimming pools and sports and leisure facilities included within Class E and therefore at risk of being lost to residential conversion under the right.

We note the commitment to prepare a public Sector Equality Duty Assessment and an impact assessment prior to any secondary legislation being laid. This is an essential step to allow the necessary rigorous analysis to be undertaken on how the proposals in this consultation would affect those with a protected characteristic.

⁴ RTPI & GLA (2020) [Planning for critical infrastructure in London - Speeding up development and creating better places](#)

Q6.2 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons.

Some cultural backgrounds live in multi-generational housing with large families and their housing needs may be placed at a disadvantage. This could be in terms of the size of accommodation available to their extended family due to the likely size of accommodation made available through the PD right proposals.

Providing further flexibilities for public service infrastructure through permitted development rights

Q7.1 Do you agree that the right for schools, colleges and universities, and hospitals be amended to allow for development which is not greater than 25% of the footprint, or up to 250 square metres of the current buildings on the site at the time the legislation is brought into force, whichever is the greater?

Please give your reasons.

We support the notion that extensions only to hospitals and other premises, which provide health services to the public (free at the point of use) during the COVID crisis, should be made easier during the response to the Covid-19 pandemic only. We do not see any need for this proposal to be extended to any other land use or for it to be made permanent.

Q7.2 Do you agree that the right be amended to allow the height limit to be raised from 5 metres to 6?

Please give your reasons.

No.

We suggest individual LPAs should have discretion to decide on this based on local circumstances.

Q7.3 Is there any evidence to support an increase above 6 metres?

Please specify.

We have not seen any evidence.

Q7.4 Do you agree that prisons should benefit from the same right to expand or add additional buildings?

Please give your reasons.

No.

Q8. Do you have any other comments about the permitted development rights for schools, colleges, universities, hospitals and prisons?

Please specify.

No.

Q9.1 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

Yes.

We support the notion that extensions only to hospitals and other premises, which provide health services to the public (free at the point of use) during the Covid-19 pandemic, should be made easier during the response to the Covid-19 pandemic only and have the following comments:

- a) We recommend that the wider likely implications of PD rights should be assessed, e.g. the impacts on traffic, transport and congestion. The consultation is not clear whether the rights include any obligations to mitigate these impacts, and how these would be determined.
- b) The faster delivery of employment opportunities for the local economy created by PD rights extensions, as opposed to an entire new build solution could support local economies during the current economic challenges. However, longer-term encouraging the continued use of buildings that are not fit for purpose should be properly assessed. An unintended consequence could be to undermine the case for the necessary investment in a wholesale replacement of the facility.
- c) We do not support the proposed PD right for school expansions, which may not be the best solution to deliver extra school spaces. Where the need for extra spaces is due to residential development, this may be a quick way of meeting planning obligations. However, it could actually undermine the ability to secure in the longer term the necessary land and funding required for a new school rather than perhaps a series of expedient, but perhaps not optimal extensions.
- d) Changes to education providers are often arranged to allow delivery during periods of reduced activity (e.g. summer holidays). Therefore, the flexibility this PD right change offers for schools could prove unnecessary.

Q9.2 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons.

Q10.1 Do you think that the proposed amendment to allow prisons to benefit from the right could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

Q10.2 Do you think that the proposed amendment in respect of prisons could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons

What public service developments should be in scope?

Q11 Do you agree that the new public service application process, as set out in paragraphs 43 and 44 of the consultation document, should only apply to major development (which are not EIA developments)? Please give your reasons.

LPA's will require additional staffing and other resources to meet the proposed timescales for public sector development.

Q12 Do you agree the modified process should apply to hospitals, schools and further education colleges, and prisons, young offenders' institutions, and other criminal justice accommodation?

If not, please give your reasons as well as any suggested alternatives.

We support the notion that extensions only to hospitals and other premises, which provide health services to the public (free at the point of use) during the COVID crisis, should be made easier during the response to the Covid-19 pandemic only.

Faster decision-making

Q13 Do you agree the determination period for applications falling within the scope of the modified process should be reduced to 10 weeks?

Please give your reasons.

No.

It is not explained how this would work in practice and we question whether practically it would mean the LPA writing to itself or another public agency to request a time extension at ten weeks instead of thirteen, if required. It is further unclear what the detailed evidence is behind the consultation statement at paragraph 42 regarding recent experience of LPA's taking longer than the 13 weeks to determine applications other than reports from the Ministry of Justice.

Without additional financial support, this proposed change may introduce further pressure upon LPAs. The consultation suggests "*this prioritisation could have resource implications for key statutory consultees*" and that the resourcing of statutory consultees will form part of the

planning for the future white paper proposals. Specific resourcing for LPAs must form a key pillar of any reform package.

Consultation

Q14. Do you agree the minimum consultation/publicity period should be reduced to 14 days?

Please give your reasons.

No.

The size of the potential public sector schemes could be substantial and have a major effect and impact on local communities. A period of 10 working days is insufficient for the local community, particularly those residents living immediately adjacent to a major proposal, to present their concerns and questions.

Those especially at risk of missing out include local residents who may be ill, in hospital or away from home e.g. on holiday when the consultation is undertaken. Public engagement in planning decisions is essential, recent research showed the majority of the public want to have their say in decisions affecting their area⁵. During Covid-19, although the use of virtual consultations has increased, consultation periods in such instances have often been extended not shortened. This has allowed the public and stakeholders a greater opportunity to adjust to virtual only materials and then respond.

Notifications to the Secretary of State

Q15 Do you agree the Secretary of State should be notified when a valid planning application is first submitted to a local planning authority and when the authority it anticipates making a decision?

Please give your reasons.

Yes.

The principle of such a change appears sensible. However, if introduced in addition to the other changes proposed such as shorter determination periods it further increases the demand upon LPAs. It should further be noted that local authorities do already post planning notifications publicly online.

For a large scheme, there may be many consultees, both statutory and non-statutory whose comments need to be received before the LPA can make a planning decision. We recommend that the Secretary of State be notified of the potential decision date at least seven days in advance of the Planning Committee at which the decision would be made.

Should this change be introduced it may be beneficial to centrally pool the information into a public database that could be used by all as a live record of applications for such infrastructure.

⁵ RTPI & Grayling Engage (2020) [The Future of Engagement](#)

Other matters

**Q16 Do you agree that the policy in paragraph 94 of the NPPF should be extended to require local planning authorities to engage proactively to resolve key planning issues of other public service infrastructure projects before applications are submitted?
Please give your reasons.**

This will depend on the capacity of the LPA at that time including the knowledge and experience of the Planning case officer for the development.

**Q17.1 Do you have any comments on the other matters set out in this consultation document, including post-permission matters, guidance and planning fees?
Please specify.**

No.

**Q17.2 Do you have any other suggestions on how these priority public service infrastructure projects should be prioritised within the planning system?
Please specify.**

We agree with the principle of prioritising public service infrastructure projects within the planning system. However, it is unclear whether formalising this is necessary. The consultation presents no evidence to suggest that planning applications for such development are being unnecessarily delayed by LPAs.

Post planning permission matters would also need to be prioritised to keep the time taken to complete them to a minimum.

Public Sector Equality Duty

**Q18 Do you think that the proposed amendments to the planning applications process for public service infrastructure projects could give rise to any impacts on people who share a protected characteristic?
If so, please give your reasons.**

We note the commitment to prepare a Public Sector Equality Duty Assessment prior to any secondary legislation being laid. This is an essential step to allow the necessary rigorous analysis to be undertaken on how the proposals in this consultation would impact on those with a protected characteristic.

3. Consolidation and simplification of existing permitted development rights

Q19.1 Do you agree with the broad approach to be applied to the review and update of existing permitted development rights in respect of categories 1,2 and 3 outlined in paragraph 76 of the consultation document?

Please give your reasons.

This appears to be a sensible approach.

We support the intention to produce a more “accessible set of rights”. A major review of PD rights is in principle to be supported, but we have concerns about the many references to flexibility, which may not provide the clarity of some of the existing provisions of rights.

We suggest this could be an ideal opportunity to introduce a new use class for short-term lets in England. This could make it easier to enforce and develop policies similar to provisions recently introduced in Scotland⁶. The Institute has recently cautiously welcomed Scottish government proposals to regulate short-term lets such as AirBnB⁷.

Q19.2 Are there any additional issues that we should consider?

Please specify.

No.

Q20 Do you agree that uses, such as betting shops and pay day loan shops, that are currently able to change use to a use now within the Commercial, Business and Service use class should be able to change use to any use within that class?

Please give your reasons.

Yes.

We support the proposal for uses to be flexible to change from the sui generis uses of betting/ payday loan shops to this use class but we oppose any flexibility towards these uses. We welcome measures that provide local authorities with stronger powers to regulate the amount of betting shops and pay day loan shops in their areas. We support the view that it is unfortunate that “*the liberalisation of the regulation of gambling has led to an increased presence of gambling services on the high street.*”⁸ The changes of use proposed will potentially improve local outcomes.

⁶ Scottish Government (2020) [Regulating short-term lets](#)

⁷ RTPI (2021) [RTPI Scotland cautiously welcomes short-term let proposals](#)

⁸ House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry Report of Session 2019–21 (2020) [Gambling Harm—Time for Action](#)

Q21 Do you agree the broad approach to be applied in respect of category 4 outlined in paragraph 76 of the consultation document?

Please give your reasons.

Q22 Do you have any other comments about the consolidation and simplification of existing permitted development rights?

Please specify.

It appears sensible to review and update the existing PD rights to reflect recent changes.

We note the commitment to prepare a public Sector Equality Duty Assessment and an impact assessment prior to any secondary legislation being laid. This is an essential step to allow the necessary rigorous analysis to be undertaken on how the proposals in this consultation would impact on those with a protected characteristic.

The following prior approval matters and conditions should be applied to all PD rights that create new dwellings:

- PD rights that create residential dwellings should be excluded from Coastal Change Management Areas.
- PD rights that permit extensions to buildings or create residential dwellings are excluded within areas of functional floodplain.
- The higher standard of water efficiency should apply to all permitted development rights that create new homes where the local authority's local plan includes a policy requiring it.
- Future flood zone 2 and 3 (as defined in Strategic Flood Risk Assessments) and areas of flood zone 1 at risk of other sources of flooding (such as surface water or groundwater flooding) should be a trigger for consideration of flood risk as a prior approval matter (in line with NPPF footnote 50).
- Wastewater infrastructure capacity should be a prior approval matter where permitted development creates new homes and there is likely to be an increase in foul water discharge or where non mains drainage is proposed.