

HCLG SELECT COMMITTEE: INQUIRY ON PERMITTED DEVELOPMENT RIGHTS EVIDENCE FROM THE LONDON FORUM OF AMENITY AND CIVIC SOCIETIES

The London Forum of Amenity and Civic Societies (London Forum) is an umbrella group for 120 societies across Greater London. We brief our members about and comment on Government consultations on planning, environment and transport issues and those of the Mayor of London, especially the London Plan. We inform our members through seminars and our newsletter London Forum *Insights*. Views of our community group members are sought for input to Government and GLA consultations.

London Forum's views on the increasing use of permitted development rights

We have commented on a succession of Government initiatives with regard to permitted development rights (PDRs), starting with offices to housing in 2013, to impose top-down national "planning consents" (PDRs) with little or no regard to their impact in London. In the case of that initiative, however, the Government did respond positively to the case put by the then Mayor of London (Boris Johnson) to protect most of the Central Activities Zone and to the case put by Kensington and Chelsea.

However, only small areas in other London Boroughs were approved by the Government with Article 4 Directions, such as Camden, Islington and Richmond-upon-Thames. Overall, 50% of all 350+ English local authorities applied for exemptions, but only 5% were successful, mainly in London and the South East.

London Forum lobbied for more protection for **light industrial uses and launderettes** being turned into housing through Early Day Motions. Unlike the offices to residential Article 4 Directions, applications for directions in these cases did not attract much attention from MHCLG and were approved.

More recently, London Forum was a co-signatory to an open letter to the Secretary of State in February 2021, which was signed by 26 trade associations, community groups and professional bodies, in which we expressed our strong reservations about the proposals (now having been brought into effect) for allowing all Class E uses to be converted to housing.

However, the recent proposals to change the NPPF, as part of the consultation on National Planning Framework and National Model Design Code, specifically new paragraph 53 as below, explicitly seeks to limit the use of Article 4 Directions.

53. The use of Article 4 directions to remove national permitted development rights should:

- where they relate to change of use to residential, be limited to situations where this is essential to avoid wholly unacceptable adverse impacts
- [or as an alternative to the above – where they relate to change of use to residential, be limited to situations where this is necessary in order to protect an interest of national significance]
- where they do not relate to change of use to residential, be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)
- in all cases apply to the smallest geographical area possible.

These changes have been proposed deliberately to prevent the use of any Article 4 Directions which would frustrate the Government's intentions for promoting change of use of all E Use Class uses to housing. This would make the prospect of renewal of existing exemptions very unlikely. Although the Government has given a further year before these office to housing exemptions expire, this could result in significant changes, especially to smaller offices which will have a major adverse impact on small firms across London.

Impact of PDRs on offices

According to a survey by Planning Magazine (27 April 2021), the largest number of approved schemes in 2020 were in London – ten out of the top 20 local authorities in England were London Boroughs.

Our fear is that there will be considerable pressure for conversions in those areas which have been exempted until now – the London Central Activities Zone and those boroughs fortunate enough to have Article 4 Directions.

We are concerned particularly what could happen to those boroughs outside Central London whose local economy critically depends on providing accommodation for small firms. If they are squeezed out, the supply of such office space would be significantly reduced, with no prospect of being replaced elsewhere in the borough.

Impact of PDRs on town centres, especially local centres

We are concerned about the likely impact of the latest proposals on town centres and in particular on local centres in boroughs where housing values are high. We consider there is a severe risk to the survival of local neighbourhood centres and shopping parades which in turn could significantly reduce access to residents' day-to-day needs within easy walking distance.

That would be worsened as permitted development allows conversion to homes of properties that are used now to deliver social infrastructure and services such as banks, other financial institutions, Post Offices, lawyers, architects, accountants, financial advisers, creches, day nurseries, day centres, GP surgeries, some health centres and indoor sports facilities.

Such removal of vital local facilities would reduce vibrancy, attractiveness, footfall and profitability in town and district centres and lead to their decline, just as local authorities need to plan for recovery from the effects of pandemic lockdowns.

Random and uncontrolled conversion of retail and commercial frontages to residential would harm the appearance, vitality and viability of high streets and district centres.

Reducing the critical mass of local services and forcing people to travel elsewhere for their day-to-day needs will undermine the aim for maintaining sustainable, walkable communities.

The recommendations of the High Streets Task Force and related High Streets funds should be applied as required under local authority control but will not be effective if changes are determined by land owners. Councils, their communities and business partners are best placed to decide what makes a successful town centre.

Impact of PDRs on shops to housing

Other PDRs, such shops to housing, have had lower take-up, in part due issues poor space standards, lack of natural light, but also because of the poor quality of the product, where shopfronts have been bricked up. The latest proposals for changing all E Use Class to housing mean that even more ground-floor "shopfronts" would be at risk and more damage would be done to the townscape.

However, for those frontages that are in conservation areas there is an additional prior approval criterion to consider the impact on the character and sustainability of the conservation area. A similar criterion for maintaining the character and appearance of the frontages in town centres and local centres should be adopted to deal with design issues.

The Government's report, 'Research into the quality standard of homes delivered through change of use permitted development rights' (2020), concluded that permitted development rights create "worse quality residential environments".

Since the first permitted developments were introduced, laundrettes and shops have not made satisfactory dwellings, with issues related to daylight and ventilation for single-aspect housing. Their incompatible frontages and waste bins stored on pavements are harmful and such changes should be under local authority control, not allowed with limited assessments.

The appearance of such conversions harms the attractiveness of shopping parades and leads to further degradation to the public realm and decline in footfall.

Out-of-centre conversions

Permitted development to convert buildings in industrial estates and out-of-town retail and business parks to residential use could result in residents being far from shops and other social infrastructure and services and without public transport to reach them.

That would result in considerable use of cars by those who could afford them, with more pollution and road congestion, and serious social deprivation for people without cars.

Impact on conservation areas

Conservation areas (CAs) were to be protected according the 'Planning for the Future' and they should not be included in any way in these proposed permissions, as their historic assets and significance should be retained with all changes controlled as in CA Management Plans.

Conflict with Government National Planning Policy

The PDR for Class E conversions and Class MA pose severe policy conflicts with NPPF policies for:

- supporting town centres – focusing main town centre uses there
- supporting local communities – promoting and safeguarding existing local services
- reducing dependence on cars – locating trip-generating uses in accessible locations

within the following NPPF chapters:-

- 2 - 'Achieving sustainable development' by economic and social objectives;
- 3 - 'Plan-making', which promotes a genuinely plan-led planning system;
- 6 - 'Building a strong and competitive economy';
- 7 - 'Ensuring the vitality of town centres';
- 8 - 'Promoting healthy and safe communities';
- 9 - 'Promoting sustainable transport' - limiting the need to travel (§103); and
- 12 - 'Achieving well-designed places'

Other types of PDRs

Building upwards

The Government has also extended permitted development rights for extending existing buildings, especially to increase the number of housing units. The proposals for “building upwards” have introduced more decision-making stages, not fewer.

There is a chart produced by lawyers at Town Legal at <https://tinyurl.com/yef3b8ru> which shows how extensive are the considerations to be applied which add to the work of local authorities and begs the question of ‘Why not handle all these ‘permissions’ by planning applications on which Local Plan policies could be applied?’

Many of the additional storeys on private housing could harm the appearance of a locality yet not deliver more homes, as they could simply increase the size of an existing home.

Replacement of an existing building

Class ZA permitted development allows for the demolition of either a single purpose-built detached block of flats or a single detached building within B1 Use Class that was existing on 12th March 2020 and its replacement with either a single purpose-built block of new flats or a single purpose-built house with up to two additional storeys for the new structure in the airspace.

The maximum height of the old building including radio masts and antennae is 18m.

Again, there are quite a few considerations that the local authority will need to consider as part of the prior approval for Class ZA.

These are transport and highways, air traffic and defence assets (if increasing in height), contamination, flood risk, external appearance, design of the new building, natural light in all habitable rooms, impacts of noise from any commercial premises on the intended occupiers, impact on increased residential user in the local area, impact on the development of heritage and archaeology, landscaping, method of demolition, impact upon amenity space of the existing building and neighbouring ones, overlooking/privacy/loss of light, impact on a protected view identified in the Directions Relating to Protected Vistas.

That is a significant task of interpretation for local authorities, almost equivalent to dealing with a full planning application.

If these replacement buildings were not created by permitted development, design codes would be able to be applied to their replacement.

Conclusions

The main criticism of permitted development is that it is a national, ‘one-size-fits-all’ approach, whereas economic conditions, history, property markets, heritage assets, character and local requirements vary across England in a way that local authorities should be allowed to interpret without national diktats.

The resources of a local authority could be consumed in dealing with prior approval and other conditions in a way that would not be proportionate to the benefits of the permissions.

The Government has promoted the concept of using design codes as in the National Model Design Code publication and its guidance to plan changes but permitted development prevents that approach being implemented effectively and removes some decision making opportunities. That would cause disillusionment for communities as they see their localities changed in ways that are not beneficial and it would reduce, rather than increase, their engagement in local planning, contrary to the Government’s objectives.

HCLG Committee call for evidence questions

With specific reference to permitted development in respect of large-scale development, commercial-to-residential conversions and changes of use between different types of commercial and retail premises:

- **What role should permitted development rights (PDR) play in the planning system?**

London Forum proposes that the current highly deregulatory role that PDRs have with regard to change of use should have **no** part to play in the planning system.

As an England-wide, one-size-fits-all planning tool it is crude, poorly-targeted, and often inappropriate instrument for achieving most public policy aims in the NPPF, indeed it often works directly against those policies. Recent changes seem to provide an “exit strategy” for a growing number of land uses to change use to housing .

They take away the ability of local planning authorities to plan for the best outcomes which should be dependent on location, economies including industrial uses, housing needs and infrastructure requirements in order to achieve development that is sustainable.

There is a need for a local strategy by each local authority, dealing with existing problems and future requirements for renewing our town and local centres. These proposals would nullify any attempt to do that by allowing unsustainable cherry-picking small-scale housing schemes. In the process, this could produce irreversible damage to the vitality and viability of our town centres despite the claims that this would bring about “the regeneration of our high streets and town centres”.

The Government states that its proposals are to give “planning certainty”. In fact, they would provide uncontrolled developer certainty and take away the right of local authorities, their communities and businesses, working in partnership, to determine the strategy and direction for the future for what should change and where in town centres and local neighbourhoods with the right mix of uses in the right locations for cohesive and walkable communities.

The aims of the proposals could be achieved through the current planning system, without more permitted development.

- **What is the impact of PDR on the quality and quantity of new housing, including affordable and social housing?**

The offices to housing PDR has been running since 2013 during which time there have been lots of examples of poor quality schemes, including:

- **poor space standards** - despite the Government having promoted nationally described space standards in March 2015 and endorsed the London Plan “Minimum space standards for new dwellings” in 2016, it has taken **nearly 5 years** and some extreme cases in a damning Government report “Research into the quality standard of homes delivered through change of use permitted development rights’ (2020)” before an additional prior approval criterion was introduced on 30 September 2020.

- **inadequate natural light** – another example of poor standards which will now at last be added to the list of prior approval assessment criteria
- **fire safety** - it is now nearly 4 years since the Grenfell tragedy and it is only now being tackled for these conversions. However, this is not yet a prior approval criterion, although there is a proposal to produce separate legislation later this year.
- **appearance** - shops have not made satisfactory dwellings, with incompatible frontages and waste bins stored on pavements which harms the attractiveness of shopping parades and leads to further degradation to the public realm and decline in footfall.

The **quantity of housing** produced by offices to housing has peaked and, especially with new prior approval criteria, is likely to decline.

Since these schemes do not require a planning consent, it has not been possible to obtain contributions to social or other affordable housing or to other social infrastructure, which has made PDR schemes more attractive in financial terms than conventional schemes.

Without a breakdown of the size of individual schemes it is difficult to estimate the amount affordable housing “foregone” by PDR projects, although it could be assumed that schemes involving the creation of 10 or more units would have attracted a requirement for affordable housing or other contributions for social infrastructure.

- **What is the impact of PDR on local planning authorities, developer contributions and the provision of infrastructure and services?**

For PDR proposals seeking prior approval rather than planning permission, the increasing number of prior approval criteria mean that local planning authorities need to do almost the same amount of work but for a lower fee. Even though the fee has been increased in the latest Government proposals of March 2021 to £100 per dwelling up to a maximum of £50,000.

Plans of local authorities to follow the guidance of the High Streets Task Force for recovery from the effects of the pandemic are being nullified by the new permitted developments and their use of the High Streets Fund contributions is being severely restricted.

As indicated above, it is not possible to require affordable housing or any other developer contributions for other infrastructure or services. The current facilities and services may be inadequate to support additional residents in converted properties which would not be sustainable.

Existing social infrastructure may also be put at risk by the PDR if they are displaced by housing. Reducing the critical mass of local services and forcing people to travel elsewhere for their day-to-day needs will undermine the aim for creating sustainable, walkable communities.

In London, where densities should support local centres and walkable neighbourhoods, this could mean the loss of focus to our communities. This may sound pessimistic, but these changes are likely to be a “one-way trip”, leaving areas which are no more than dormitory housing areas with limited services.

- **Is the government's approach to PDR consistent with its vision in the Planning White Paper?**

No – The Planning White Paper refers to “supporting careful stewardship and rebirth of town and city centres” and increasing densities in and around town centres and high streets through designating them as “renewal areas” – identifying town centres as distinct areas. This would focus on building onto the existing strengths and adding housing rather than converting town centre uses to housing.

The Planning White Paper stresses the need for design codes for providing additional safeguards where PDRs are used, such as for upward extensions.

The White Paper proposes that the Local Plan process should focus primarily on identifying land for development, and on specifying what can be built on that land. Permitted development is not consistent with that proposal.

In addition to consideration of PDR against the content of the Planning White Paper, London Forum considers that there are **serious conflicts of permitted changes of Class E properties with the National Planning Policy Framework, for the following topics.**

- **supporting town centres – focusing main town centre uses there**
- **supporting local communities – promoting and safeguarding existing local services**
- **reducing dependence on cars – locating trip-generating uses in accessible locations**

within the following NPPF chapters:-

- 2 - ‘Achieving sustainable development’ by economic and social objectives;
- 3 - ‘Plan-making’, which promotes a genuinely plan-led planning system;
- 6 - ‘Building a strong and competitive economy’;
- 7 - ‘Ensuring the vitality of town centres’;
- 8 - ‘Promoting healthy and safe communities’;
- 9 - ‘Promoting sustainable transport’ - limiting the need to travel (§103); and
- 12 - ‘Achieving well-designed places’

- **What is the impact of PDR on the ability of local authorities to plan development and shape their local communities?**

PDRs prevent local authorities planning the location of development and the achievement of their local economic development objectives, as well as the delivery of specific types of housing and infrastructure, and the retention and enhancement valued facilities.

Local authority strategies and policies which seek to plan for the future of town and local centres, and to tackle their weaknesses and threats, would be severely restricted if PDRs allow changes to happen which they would not want or which could be harmful. Sites in town centres for planned future uses that will be required may not be available in the best locations if changes of use due to PDRs preclude business or commercial development essential to the viability and vitality of these centres.

Councils, their Town Centre Management teams, Business Improvement District partnerships, Chambers of Commerce, local traders and residents are best placed to decide what retail, service, commercial and other facilities should be provided in their town, district and local centres and where they should be best located for accessibility.

Planned additional homes on the edge of town centres or by densification of existing housing would result in better support for high streets. Mixed-use developments which retain the existing economic activities as well as producing additional housing is the most effective strategy. In most places it should not be necessary to involve the loss of commercial, business and service uses, but to incorporate more housing in any redevelopment. It should not be a zero-sum game.

The Government's aim to bring more footfall to high streets by introducing additional dwellings would be best met by such a plan-led approach, utilising the concept of Renewal Areas in the Planning White Paper for town centres in Local Plans. This could retain business uses whilst increasing the amount of housing

The permitted development rights prevent local authorities using design codes, as recommended by Government in the National Model Design Code guidance, to control what kind of developments are to be allowed for what purpose and in which locations.

- **Is the government right to argue that PDR supports business and economic growth?**

No. Businesses need footfall or visibility and an adequate turnover for their financial survival. The Government's extensions of PDR could result in lower daytime activity in town centres and even a decline in business.

We are particularly concerned what could happen to those boroughs outside Central London whose local economy critically depends on providing accommodation for small firms. If they are squeezed out, the supply of such office space would be significantly reduced, with no prospect of being replaced elsewhere in the borough.

Economic growth could be harmed by the conversion of offices, industrial and storage premises to housing.

We have been increasingly concerned by the disingenuous claims, which bear little relationship to reality, in both Ministerial statements and in consultation documents, which assert the alleged beneficial effects of the proposed changes to the local economy and specifically to town centres.

The consultation claimed that making the change of use from the recently introduced new E Use Class, which brought most "main town centre uses" (as defined in the glossary of the NPPF) into one use class, and then introducing a permitted development right for these to be converted to housing, plus the introduction of the new Use Class MA, would deliver the following benefits:-

- More homes
- Stronger town centres
- Increased High Street footfall

No evidence was provided to support these assertions and nor was the likely impacts considered, (as required by law), for different areas and different types of centres. The impact of the proposals will depend on:

- the strength of the local property market;
- the differential in value between housing values and those for E Use Class properties;
- the ownership of the properties;
- the nature of the properties;
- the size, strength and type of centre; and
- the local aspirations for the future of these centres.

In London, there are:

- much higher housing values than most of the rest of the country
- a higher differential between housing values and those of properties in the E Use Class
- a major difference between the ownership and types of properties between major centres, where there may be properties owned by major landowners, such as pension funds, and which have large floorplates and those in small centres
- larger centres will be much less vulnerable than local, neighbourhood centres and parades;
- strong policies in the London Plan and borough Local Plans to support town centres and to manage the mix of uses to ensure that they remain vital centres; and increasingly
- boroughs are trying create and maintain local neighbourhood centres as the focus for sustainable walkable neighbourhoods.

The claims that the new permissions will make a substantial contribution to housing supply and will revitalise town centres are unsubstantiated and highly unlikely. New dwellings created could be in the wrong locations for sustainable living and not of the required type.

Firstly, picking off individual “shopfront” uses will not provide many additional housing units – it would involve random “pepper-potting” conversions, which could reduce the attractiveness of the centre through “dead frontages” rather than a coordinated approach managed by the local planning authority.

Secondly, the few additional homes produced would deliver an imperceptible change in the number of customers – town and even local centres rely on a large catchment population.

Thirdly, a larger gain in housing units from the conversion of upper-floor offices, would produce slightly more housing, but at the same time this would reduce local expenditure from office workers as well as reduce the scale of economic activity which supports the centre.

London Forum recognises that, whilst the scale of retail and other town centre uses may be less affected in larger town centres, there could still be a further loss of offices. Our major concern is for the future of local centres and maintaining sustainable walkable communities. These changes to PDRs could not only kill the “corner shop”, but also local parades and local centres.

In so far as the Government sees the secondary benefit, after any housing gain, as stronger town centres, there are two other matters to consider:

- the recognition, first noticed in Inner Cities policy, that “A rising tide does not raise all ships” – a national, “one-size-fits-all” policy is not a universal panacea for success in all circumstances. In this case, the change of use of E Use Class Uses to housing, the housing gain could be small, whilst the collateral damage could be permanent in its impact on local centres and on the local economy; and
- the change of use to housing is usually irreversible – it is a one-way trip

- **What is the impact of PDR on the involvement of local communities in the planning process?**

Local authorities will be blamed by their communities for the uncontrolled loss of essential and valued shops, services and facilities.

That would damage the reputation of Councillors and the engagement of people in local democracy, which is contrary to the Government's aims in the Planning White Paper for community participation in planning.

The National Model Design Code guidance also led communities to expect full engagement in what is planned to be developed and changed in their locality. PDRs effectively mean that potentially significant and damaging changes are beyond their control.

The potential harm that London Forum believes will occur from PDR of Use Class E changes, the introduction of Class MA and PDR for building upwards would make communities disillusioned with the planning system and the ability of their local authority.

Local democracy could be seriously affected with reduced community participation.

That would be worsened because of the way in which the Government has defined the conditions that should be met for Prior Approval. Many of them are not easy to understand or interpret, such as "adequate light", "unsuitable neighbours" and "important for industry".

Harm and benefit are not covered by prior approval considerations which would make conclusions unsound.

Also, the way in which assessment on the "impact" and "sustainability" of permitted conversions in Conservation Areas would be interpreted adds to the complexity.

'Sustainable development' has not been defined by the Government and a lot of case law will have to be established on the prior approval interpretations of conditions, involving expensive, delaying and unnecessary appeals.

- **Should the government reform PDR? If so, how?**

PDF must be reconciled with NPPF policy objectives on town centres, neighbourhoods, transport, infrastructure and sustainability, especially for promoting town centres and 10-minute neighbourhoods.

There should be impact assessments for each type of PDR for their effect on high streets, neighbourhoods, communities, infrastructure provision, local character, views and equalities.