

DCLG: EXTENDING PERMITTED DEVELOPMENT RIGHTS FOR HOMEOWNERS AND BUSINESSES

COMMENTS OF THE LONDON FORUM OF AMENITY AND CIVIC SOCIETIES

The London Forum of Amenity and Civic Societies (London Forum) is a charity established in 1988 by the Civic Trust and represents over 130 community groups in London.

Key Points:

The proposed changes to permitted development rights, if applied in London would:

- make existing rights more complicated and confused, causing confusion, uncertainty and concern and bring the planning system into disrepute for failing to control adverse impact on neighbours;
- be impossible to monitor if no planning consent is required; yet
- result in lawyers asking for certificates of lawful development because of high property values; and
- would not save much money or time.

Our conclusion is that PD rights for **householder extensions** would provide little if any benefits, yet make the system less transparent and more resented. The bottom line is that in many areas in London the existing limits are sufficient. A top-down, blanket change as an experiment would cause more problems than it is worth.

Extending **commercial permitted development rights** in most of London will have no impact as there is seldom the space to take up existing rights.

The London Forum is, however, extremely concerned about the proposal to encourage **broadband roll-out** without any need for telecoms providers to consult about the siting and impact on amenity of large broadband cabinets, telegraph poles and overhead cables, especially in conservation areas. This equipment is seldom if ever removed it is important to get this right. The London Forum would propose that prior approval be retained, especially in conservation areas, and that good practice guidance be provided to guide the siting of new equipment.

These proposals illustrate the inappropriateness of nationally-imposed policy changes that provide no sensitivity to the different circumstances around the country, especially those in high-density urban areas like London.

The London Forum considers that all of the proposals are inappropriate in London.

Background:

Our comments seek to reflect the variety of local circumstances in London, including areas with:

- blocks of flats which have no permitted development rights, which are largely unaffected by these proposals (see paragraph 18);
- high-density, terrace housing with very small gardens which are also largely unaffected, as the scope for extensions is limited and largely catered for by existing permitted development rights;
- terrace housing with gardens which could be adversely affected by the proposed changes, although the “limits” suggested in paragraph 19 should prevent the most damaging proposals;
- semi-detached or detached houses where there would appear to be most scope for rear extensions and where the “limits” in paragraph 19 would still leave scope for very large extensions which would otherwise be refused because of their likely impact on neighbours;
- high streets where the commercial properties are closely hemmed in by surrounding housing and very limited opportunities for expansion; and
- high streets and other commercial areas where there are larger sites where rear yards provide the necessary opportunity for servicing off the street rather than from the high street itself.

Layered onto this mix are conservation areas where most of these additional permitted development rights will have no effect (see paragraph 10).

However, the changes that affect all areas, including conservation areas, are the proposed changes to the requirements for prior approval for the installation of broadband cabinets, telegraph poles and overhead lines, which is labelled “delivery of superfast broadband”.

Our response

The London Forum questions the basic propositions in the introductory section of the consultation document, the evidence presented on the scale of activity and the savings that could be generated and whether the proposals would indeed make the planning regime governing householder applications quicker, easier and cheaper, let alone simpler, clearer, more transparent or legally attractive. We do not believe that they achieve those aims.

These issues have been raised by the Select Committee, although we would go further:

- just because no planning consent would be required, that **would not remove the need for other consents**, such as building regulations, highway approvals and environmental legislation (see paragraph 15);
- apart from the requirements of other consent regimes, there will **still be a need to produce plans for the construction of any buildings – the cost savings may be very small**;
- **the changes would generate uncertainty about how much “unused” permitted development rights exist or remain and whether the proposals would still require consent**; and, nevertheless
- **lawyers will advise their client to ensure that what they propose (or what they are about to purchase) is legal and will not cause problems when selling the property** - this would result in a sharp increase in the demand for Certificates of Lawful Development from the local planning authority. This would involve extra work for local planning authorities and the time savings may be small.

The London Forum considers that, even with some of the “safeguards” suggested in paragraph 19, the proposals for householder extensions would:

- **be potentially damaging to the amenity of neighbours and result in increased dissatisfaction with the planning system**;
- **further complicate and confuse householders about their permitted development rights**, which are already extremely complicated and have become more so with every proposal to extend them – even the planners have increasing problems interpreting them, despite the Planning Portal’s “helpful” interactive house, most of which does not apply to large parts of London.
- **result in an increasingly risk-averse approach by lawyers to the legality of any changes made without formal consent or require formal evidence of the legality of the extension** (i.e. the requirement for a Certificate from the local planning authority) because of the additional uncertainty created and, in London, the size of the investment at stake when buying or selling a house.

In our view, rather than make the process of householder extensions quicker, easier and cheaper it could have the opposite, perverse effects that would nullify the intentions of these proposals. In short, we agree with the Select Committee’s conclusions that both the logic and the impact assessment are “flawed”.

London Forum considers it unreasonable to encourage rear extensions, which would consume building resources of bricklayers, electricians, plumbers,

decorators, etc. at a time when there are hundreds of thousands of new dwellings with planning permission waiting to be built. The Government appears to be changing its priorities on housing and development. London has a huge unmet need for new homes. These measures would not provide a single additional home and divert resources away from the main task.

Policy Context

The London Forum is, therefore, not convinced by either the assertions or the arithmetic. If there are cost or time savings involved, these are considerably less than suggested and would not justify the claims made. The sentiments sound very attractive, but in a densely-developed urban area like London the benefits could well be elusive and illusionary, whilst the potential conflicts could be very real.

The London Forum **welcomes** the recognition that these “added flexibilities” would not apply in conservation areas, where the more compact forms of development, such as terrace housing with small gardens, would not allow large additions and where close proximity to neighbours makes the impact on their amenity highly likely.

Legal Background

This section fails to specify the “baseline” for assessing permitted development rights, especially for buildings over 65 years old (i.e. pre 1948), where much of the existing rights may well have been used up. If there is a limit of a maximum of no more than 50% of the curtilage of the house – what is the “baseline” and which extensions and which freestanding buildings within the curtilage (e.g. garages, home offices in the garden, sheds, summerhouses/gazebos) count toward the 50% coverage of the curtilage? Similarly, the curtilage will need to be defined – is it those areas of the plot not covered by the main building before extensions had been added or, for older buildings, the building as it was in 1948?

This all suggests an increasingly complex and confusing situation – for which some certainty will be sought. It is likely to bring the planning system into even greater disrepute. Local planning authorities may well want to clarify or simplify permitted development rights in their own particular circumstances (paragraph 16), but the consultation document would seem to discourage Article 4 directions - these are in any case resource intensive solutions.

Proposals

Increased limits for homeowner rear extensions and conservatories

Since extensions to the front and, where it exists, the side of a house are mainly excluded from permitted development rights that leaves only rear extensions and subterranean development under the house and/or the rear garden.

The consultation document makes the issue of extensions sound straightforward - a single-storey rear extension. Whilst this may be the case in much of the rest of the country, extensions in Inner London can involve extensions both to the rear of the property, under the house and/or under the garden. Are these separate or additive? Is subterranean permitted development subject to the same issue of additional volume as rear extensions? Since the GPDO is silent on this issue, are there any limits subterranean permitted development – if so, where are these stated? Or is this solely concerned with “concreting over gardens” and not with defining and clarifying permitted development rights?

The London Forum **welcomes** the clarity of paragraphs 18 and 19 – that there are no permitted development rights for flats and that there would need to be clearly stated limits to the scale of rear extensions to ensure the amenity of neighbours is protected.

We particularly **welcome** the permitted development rights will not exceed 50% of the curtilage of the house, but consider that this will require very precise definition (see comments on Legal Background above).

There is, however, the suggestion in paragraph 20 that these permitted development rights do not cover outbuildings for residential accommodation or for the creation of separate residential units, but there is no indication whether other buildings, such as freestanding garages, home-offices, summerhouses or sheds, are disregarded or subtracted when defining the area of the curtilage to which the 50% limit would apply (i.e. what is the definition of the unbuilt curtilage?).

There are, however, many houses in London with large front gardens which would allow a considerable rear extension. Many gardens have garages or other structures in back gardens now. We consider that no extension permitted under permitted development rights should exceed 50% of the undeveloped area to the rear of the dwelling footprint. Side extensions should need planning permission to control detached and semi-detached properties being made into terraces.

Clarification would be needed on the limits of the width of extensions. For example, is it proposed that they could extend up to the rear party fence between properties?

Question 1: No – we do not agree that in non-protected areas the maximum depth of rear extensions should be doubled.

Making it easier to carry out garage conversions

There is a misconception in paragraph 21 – an annex to a house remains part of the same planning unit – it does not increase housing supply, but merely expands the living space of an existing unit. This is actually explained in paragraph 22.

Paragraphs 22 to 24 explain clearly the existing situation. In most of Inner London, except in mews houses or new housing, there is no off-street parking let alone garages. In Outer London garages are more common, especially in new housing, where there may also be hardstanding. In many cases these garages are used for storage rather than accommodating cars.

Their conversion into living space should be controlled and their height should not be increased without planning permission.

Question 2: No - the existing permitted development rights are sufficient and any proposals for major rear extensions should be counted against the total. Any additional storeys would and should require planning consent.

Increased limits for extensions to shops and financial/professional services establishments, with development to the boundary of the premises

Most shops and financial/professional services establishments, especially in London but also in most town centres, are let on short leases. The take-up of the proposed increased limits would be limited by ownership, finance and the physical limitations of many of the sites. In short, this is likely to be a bit academic! High street premises in London would not be able to take up these rights – this can probably be seen by the low take-up rate of existing rights. If there is no evidence of a problem, why change the limits?

Question 3: No – there is no evidence of either a problem or a demand for these changes.

Question 4: Yes, but with more exceptions such as not developing rear service areas.

Increased limits for extensions to offices

The same issues arise here – offices are usually on short leases rather than owner-occupied. Again what evidence is there of a problem or a demand for such changes? What is the current take-up rate?

Question 5: No – there is no evidence of either a problem or a demand for these changes

Increased limits for new industrial buildings

Question 6: Yes, although in urban areas the other limitations will limit the take-up rate

A time limit on the changes

Since we do not consider that most of these proposals would be justified and/or have an optimism bias that there is unmet demand and likely high take up, the London Forum does not see the need for many of these proposals, but accepts that if they are either ineffectual or harmful this commits local authorities to monitoring to provide the evidence to retain the changes or revert to the current permitted development rights. We would prefer that there were a better evidence base for the proposed changes and a better-evidenced impact assessment.

Question 7: No – we don't see the need for the changes

Question 8: Yes - if the proposal were to go ahead

Protected areas

The London Forum **strongly supports** the continued exception for protected areas.

Question 9: Yes

Delivery of superfast broadband

The London Forum is **very concerned** about the pressure being put on the Government by British Telecom to install large superfast broadband cabinets without a prior approval process, except in SSIs.

More specifically we are concerned about the removal of the prior approval requirement as it applies to conservation areas, although the principles of where

and how to site the new larger cabinets, let alone the re-introduction of telegraph poles and overhead lines, should apply everywhere.

BT's problems are based on their being wedded to old technology, tied to their existing networks and a marked reluctance to be flexible about locations and siting of equipment. It is their intransigence and unwillingness to consult on the siting of cabinets that has slowed their rate of installation. The proposed 5-year period of no effective controls on the siting of equipment could result in a lot of harm to the character and appearance of conservation areas.

The London Forum would prefer the development of a clear code of practice and requirement on all parties to co-operate. There is already a management by exception approach in prior approval – this is already or should be an effective incentive to cooperation. Whether consultation is on the critical path for implementing a programme of installing a new superfast broadband network is more a question of how the process is managed.

Question 10: No – we strongly object – there should be a duty to cooperate.

Benefits and impacts from the proposals

The London Forum **strongly questions** the evidence base for justifying these proposals. It is “suck and see” not evidence-based policy making.

For most of the measures the benefits appear to be overstated, the problem not established and the demand/likely take up is pure guesswork.