

BPF response to MHCLG's consultation on supporting housing delivery and public service infrastructure



British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. We welcome the opportunity to respond to this consultation. We have focused our response solely on the aspect of the consultation proposing a new Permitted Development Right (PDR) to enable uses falling within the recently introduced commercial, business and service (class E) use class to be converted into residential uses without planning permission.
3. Our members have been raising concerns regarding the quality of certain PDR developments for some time. We were glad to see government address some of these issues through the introduction of national space standards for PDR and the prior approval process. However, our concerns are deeper and not just about design, but appropriate uses in appropriate locations. Poor quality development can erode trust in the development process and makes the delivery of future, high quality development more difficult.
4. In broad terms, our members are not supportive of the introduction of this new proposed PDR because of the detrimental and permanent impact it could have on our town centres and urban settings. We have set out our general concerns below before turning to the questions posed within the consultation document. We also provide alternative means through which high street decline can be addressed without the need of this far-reaching PDR which risks unintended consequences for our town centres.

General comments

The commercial business and service (class E) use class needs more time to take effect before further reform is pursued.

5. The stated intention of the commercial, business and service (class E) use class is focused on supporting the high street and enabling greater flexibility between uses in response to changes in local market conditions. However, given that it was only introduced in September 2020, the impact of this new blended use class is yet to be seen. In this context, it feels too soon for government to be pursuing further reform in this sphere before the true impacts of the new use class are apparent.
6. There is also a fundamental contradiction in adding this proposed new PD right to the new commercial, business and service use class. On the one hand, the policy intent is to support town centres (through the introduction of a more flexible use class). On the other hand, landlords are being given the ability to convert

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vacant retail units to residential units before considering other complementary commercial and community uses. This will lead to permanent change in town centres on the basis that residential units are rarely converted back to commercial and community use.

7. A further point to consider is, given the impact of Covid-19 and the associated restrictions on the economy, the temptation for commercial landlords to prioritise swift returns by enabling the conversion of vacant commercial units to residential will perhaps be even greater. This further risks the state of our high streets, particularly those in fragmented ownership.

Focus on what drives vitality in a town centre context through positive planning locally.

8. We understand that it is the government's position that reform is needed for town centres (partly due to the Covid-19 pandemic) to avoid terminal decline. The government says it is committed to a plan-led system and localism (through the Planning White Paper reforms), however through this proposal, the policy response from government is further deregulation.
9. If the issue is how to breathe new life into existing town centres, retail frontages and edge of centre retail parks, the starting point for any government reforms should be on what drives vitality. Whilst we accept that obsolescence and vacancy is a drag on the town centre, we would also argue that poorly planned and poor-quality PDR development operating at a secondary or tertiary level would be equally damaging.
10. The government knows what makes a good town centre, as there have been several studies and recommendations over the past decade, going back to the Portas Review. It is well-planned places, with a diversity of uses (office, retail, leisure, community and residential) and a good mix of independent and national retailers. This proposal will not deliver that, and act as an obstacle to it.
11. A local, policy led response, drawing on a range of interventions may prove a more effective alternative starting point for breathing fresh life into our town centres. One option could be for government to introduce greater incentives for Local Authorities to adopt Local Development Orders to enable greater flexibility on the high street.
12. A further alternative approach, which arguably does not run the same extent of risks as this sweeping PDR, would be to amend the NPPF, creating a strong presumption in favour of different changes of use. Combined with a properly resourced Planning Inspectorate, this could prove a more effective process in achieving the government's policy objectives without running the risks of a fragmented and disjointed town centre because of this proposed PDR.

The risk of poor outcomes is far greater when a town centre is in fragmented ownership.

13. It has been noted by BPF members that there are less risks of this PDR leading to poor quality development and townscape where there is single institutional ownership of an urban area or town centre setting. For example, a location such as King's Cross, where it is in single ownership, the landlord would be able to take a holistic view for the entire area when considering the merits of converting, for example, a retail unit to residential. Ultimately, the large landlord would be highly unlikely to go ahead with any conversion as this would be to the detriment of the wider 'place' they are seeking to create.

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14. However, as noted above, the risks associated with this proposed PDR in terms of poor outcomes for our town centres and urban locations is greatest when a particular location is in fragmented ownership without a large developer/landlord being in a position to take a holistic view. The result, BPF members fear, is that in these situations towns and urban centres will be incoherent and poorly planned. We do recognise that many of the United Kingdom's high streets and local frontages are already suffering in this way however we would argue that the remedy to revitalise these places is more positive local planning. It is the more struggling and more marginal retail areas that are the most vulnerable.

Developments brought forward under this new PDR would not contribute adequately to the provision of local infrastructure, thus undermining local consent for these developments.

15. One of the drawbacks of PDR developments is that they take no account of location or context. Although market factors will deal with some of that, not always. That has been apparent with the current PDR allowing office to residential conversions, which has sometimes led to out-of-town conversions, with no local services or public transport. This proposed PDR would capture far more buildings in inappropriate locations, which could be converted to housing.
16. Without a size-limit, conversions could also be of significant scale, impacting demand for local services and infrastructure without any developer contributions to compensate for it. We note that the government are considering extending their new proposed 'Infrastructure Levy' to include PDRs, however it should be noted that the Planning White Paper reforms require primary legislation, which is not as of yet timetabled. Therefore, it remains a concern that residential conversions (of a significant scale) under this new PDR route will not be contributing adequately to the provision of local infrastructure over an indeterminate time.
17. Further, it seems contradictory that government can continue in the short to medium term to justify not imposing on these permitted development schemes the requirements that would be applied by way of S106 obligations to schemes that are brought forward by way of a traditional planning application. With no affordable housing contributions, contributions to schools and other social infrastructure, it would appear unfair to those developers bringing forward schemes through the traditional planning route where they face local policy requirements that the PDR system enables certain schemes/developers to avoid. In a world where the government's stated aim is to raise more, and to ensure that development 'pays its fair share', it also seems contradictory to be giving some developments an exemption. If the government wants to provide some incentive to development to aid economic recovery then far better to aim that at developments supporting wider policy objectives.

This new PDR runs contrary to the government's 'Building Better, Building Beautiful' agenda

18. As noted above, our members have serious concerns that the introduction of this new PDR would risk poor quality residential conversions, particularly in high street locations in fragmented ownership. The government are committed to a number of ambitious proposals, as set out in the Planning White Paper, which are aimed at improving design quality within the English Planning system. For example, the

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government are committed to new development being “beautiful...to create a net gain not just a no net harm... with a greater focus on placemaking and the creation of beautiful places”.¹

19. The government's longer-term ambition to enhance design standards within the planning process is laudable however the proposals in this section of the consultation document, through the proposed introduction of this PDR run contrary to the government's longer-term aims.
20. We have acknowledged above, the new requirements for minimum space standards in projects delivered through PDRs, but we would note that space standards do not equal quality. Quality, particularly in residential development, encompasses a long list of considerations including but not limited to internal and external design quality (use of space as well as amount of space), sunlight amenity, energy efficiency, air quality, access to local community spaces, local services and open space. With the conversion of existing commercial uses to residential accommodation, many of these elements may be compromised, as unlike traditional development the starting point has not been 'the right use in the right place'.
21. A further point to consider is how this PDR would affect streetscape. Residential development requires a greater degree of privacy, leading to the loss of vitality at the street level and poorly conceived alterations which the LPA will not have any powers to stop.

Government needs to consider the impact of the new PDR on Local Authorities' finances.

22. In the areas where take up of this PDR is greatest, there is the potential that this could lead to significant shortfalls in collection fund income for certain local authorities. In many areas, it is the case that the council tax take (from the residential conversion) will be much lower than what the local authority would have been able to collect through business rates from the previous commercial use.
23. Government should therefore present more detailed analysis of the likely impact of this PDR on council income before considering this proposal further.

Government should consider extending existing PDRs in the event that this new PDR is not brought forward.

24. We note that one of the government's rationales for the introduction of this PDR is to consolidate a number of the existing PDRs into one new regime. However, as noted above, our view is that this new PDR is too far reaching and would have a detrimental and permanent impact on our town centres and urban settings. Therefore, it should not be introduced.
25. We also recognise that a suite of existing PDRs are due to expire in July 2021. An outstanding question for government is what to do exactly with these PDRs in the event that this new PDR is not brought forward. We would advocate simply extending the existing suite of PDRs given that there are already a number of adequate safeguards built into these (such as a vacancy test for office-to-residential PDR).

¹ <https://www.gov.uk/government/consultations/planning-for-the-future>

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- 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.
26. As noted in the general comments section, the BPF do not support the introduction of this new PDR and hence what flows from this position is that we do not have specific views relating to a precise size threshold for the new right.
27. However, given our members' views on how the new right could enable the conversion of large buildings into residential (without any associated developer contributions), if this PDR is to be introduced, we would be in favour of a size and unit number threshold so that larger buildings/conversions cannot be included within this new regime.
- 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.
28. We agree that the right should not apply here.
- Q2.2** Do you agree that the right should apply in conservation areas? Please give your reasons.
29. As the BPF does not support the introduction of this PDR at all, we do not support its application within conservation areas.
- 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.
30. If this new proposed right is to be taken forward, we are of the view that it should not just be local authorities in conservation areas that are given the adequate safeguards to preserve the vitality and form of their high streets.
31. Indeed, the BPF would argue that all local authorities should be provided with the tools to assess the impact of any new proposed residential conversion through this new right and be in a position to reject the conversion where it has been locally determined that the scheme would be to the detriment of the area and local community.
- 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.

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32. As noted above, BPF does not support the introduction of this PDR. However, if government is wedded to its introduction, it is our view that all local authorities should have the ability to assess the impact of any loss of retail frontage/ ground floor use to residential via the prior approvals process. This ability should not just be afforded to local authorities in conservation areas, as currently proposed in the consultation.

33. Consideration should also be given to 'agent of change' principles to ensure that regard is given to the suitability of the change of use, and potential mitigation measures to help achieve a satisfactory living environment, having regard to the existing or future activities of nearby businesses.

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

34. Consideration should be given to the introduction of CIL and S106 obligations (including Affordable Housing) at levels fairly and reasonable related in scale and kind to the development, in order to mitigate the impact of development on local facilities, services and infrastructure.

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.

35. We agree. The PDR regime needs to pay its way and should not be taking valuable resources away from local authority planners processing full applications. When compared to other council fees, it would appear that the proposed fee of £96 per dwellinghouse is low and does not cover the costs of local planning authorities. For example, the government sets a higher fee of £100 for a street pavement licence application for businesses.

36. Therefore, a slightly higher fee may be appropriate, particularly given that this new right will have many 'considerations' through the prior approval process. This will inevitably add further time and cost into the process for local authorities. The precise fee level may therefore require further consideration. Ultimately, it should be set at an amount whereby PDR applications are economic to process for local authorities.

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?

37. If this right is to be brought forward, in areas where take up is greatest, it will be important that local authorities do not place an overreliance on the potential for residential conversions when reviewing their development plans and calculating their five-year Housing Land Supply of specific deliverable sites.

38. An overreliance on the potential for residential conversions through this new PDR route is likely to represent a significant threat to the robustness of plans and the delivery of homes due to uncertainty over these factors, and whether conversions are able to provide a suitable mix and type of homes in the right location to meet housing requirements.

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.

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39. We have set out our views on this in the general comments section. There is a clear contradiction between the government's long-term Planning White Paper reforms (which focuses on a plan-led system with greater transparency and the desire for more community involvement) and this new proposed PDR in that it takes away local decision-making power and agency for relevant local authorities.

A faster planning application process for public service developments

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.

40. It will be important that this does not result in any consequential delays to the determination of planning applications for much needed housing by local planning authorities at a local level or via the appeals process. The government recognises that local authority planning departments are under great pressure with *"spending per person on planning and development down 60 per cent and shortages of specialist skills"*²

For further information please contact:

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² <https://www.gov.uk/government/consultations/planning-for-the-future>
