

Response:

Planning reform consultation: supporting the high street and increasing the delivery of new homes

14 January 2019

On 29 October 2018, alongside the Budget, the Ministry of Housing, Communities and Local Government (MHCLG) published a [consultation on various planning reforms](#). These included:

- extensions to permitted development rights and amendments to planning use Classes
- amended provisions for the disposal of local authority land
- listed buildings consent changes for waterway structures
- changes to compulsory purchase guidance for new town development corporations.

The Federation responded to questions in the first two of these categories, consulting extensively with members in doing so.

This briefing summarises our response to the consultation. In addition to our answers to the Ministry's detailed questions, we wrote to the Secretary of State highlighting our main arguments:

- Proposals to allow significant upward extension of buildings and to demolish and rebuild offices as homes without going through a full planning application process are inappropriate and likely to encourage poor quality development.
- Further extension of permitted development to cover the likes of out of town retail parks is unlikely to be acceptable.
- Previous extension of permitted development to allow offices and storage premises to be converted without planning permission has led to a considerable amount of poorly designed housing. Our members have been offered the opportunity to invest in such projects – but have declined on quality grounds.
- Adequate enhancement of prior approval processes governing permitted development for larger developments seem impractical and could become almost as demanding as a full planning application. It also still omits important elements such as professional judgement, community consultation and democratic oversight.
- More attention should be given to the resourcing of planning departments to provide a good service under the normal system, rather than undermining it.
- Rules governing the sale of local authority land for housing and regeneration projects at less than maximum value should be relaxed where this leads to provision of greater levels of affordable housing and better placemaking than might otherwise be achieved.

For more information, please contact [Duncan Neish](#).

1. Introduction

This briefing summarises our response to the recent Ministry of Housing, Communities and Local Government (MHCLG) consultation on a wide range of planning reforms intended to support high streets and increase the delivery of new homes.

Perhaps most significant among the proposals were those intended to increase the scope of permitted development whereby a full planning application is not required. Under permitted development, permission to build is secured via a simplified prior approval process, which covers fewer criteria and leaves less scope for professional interpretation and negotiation.

Permitted development has traditionally been for small, often domestic, projects or minor changes of use. Since 2013, the Government has extended the scope of permitted development rights to include conversions to residential use of office and some storage/distribution and agricultural buildings. The changes have been successful in bringing forward additional homes but serious concerns have been raised over the quality of many conversions.

Permitted development homes are exempt from many criteria covered in a regular planning application, including important design and size criteria. Additionally, permitted development projects are not required to contribute to wider policy objectives that might be sought via a planning application, such as to amenity space, transport improvements or affordable housing. Thousands of affordable homes have been foregone.

It is worth noting that both the Federation and the Government's current national planning policy are supportive of the principle of conversion and upward extension. The Government included explicit support for re-use and upward extension in the recently revised [National Planning Policy Framework](#) (NPPF) (see para 118) following its apparent acceptance that a prior approval process which covered the appropriate range of issues would be no less onerous than a planning application¹.

Our consultation response focused on those questions of most relevance to members and to larger scale residential development.

1.1 The Federation's response

Part 1: Permitted development rights and use classes

A new permitted development right to support housing delivery by extending buildings upwards to create additional new homes

Question 1.9: Do you think there is a role for a permitted development right to provide additional self-contained homes by extending certain premises upwards?

We are not against the principle of upward extension or increasing density: they are important tools for our members' work, particularly in urban regeneration, and we endorse the recent NPPF revisions to support such changes.

We are concerned, however, that the permitted development extensions proposed in this consultation are not an appropriate route to encouraging desirable extensions.

¹ In its 2017 response to feedback on [the Upward extensions in London consultation](#)

Experience of recent permitted development extensions have seen widespread creation of poor quality homes by private developers while also depriving local authorities of reasonable recompense for their prior approval work, and communities of contributions to good quality affordable homes in well-designed places (due to the lack of Section 106 contributions and other planning requirements).

More generally, we are unclear that the Government has learned lessons from the results of recent 'on the ground' experience of extending permitted development rules. The well-known [RICS study of May 2018](#) (perhaps one of the most robust sources of evidence given the lack of official review of experience) found:

- the number and impact of conversions was much greater than the Government's expectations
- costs to local authorities, communities and affordable housing were greater than the Government expected
- a significant amount of poor quality housing had resulted.

In light of these findings, we cannot support proposals for further relaxation of permitted development without proper reflection and learning from recent experience – despite the fact that the changes offer short-term benefit to some of our own members.

We would be pleased to discuss ways in which good quality development can be brought forward more quickly and easily with the Government and others. There may be more potential for use of the likes of Local Development Orders (particularly for town centres), Neighbourhood Plans, higher planning fees for greater certainty (including Planning Performance Agreements) and enhanced partnership arrangements, including the recently agreed strategic partnerships. Such arrangements could expedite delivery of the kinds of homes the Government says it wants, while avoiding the kinds of homes its recent and proposed changes have in many cases actually delivered.

The loss of contributions towards affordable housing (and other important local infrastructure, including transport, amenity space, education and health) from permitted development is well-known (although not predicted by the Government). The Local Government Association [has estimated that](#) up to 10,000 decent quality affordable homes may have been foregone as a result of the recent relaxation of permitted development. This problem should not be prolonged or extended.

Question 1.10: Do you think there is a role for local design codes to improve outcomes from the application of the proposed right?

Local design codes are generally positive in principle. They could help mitigate some – if far from all – of the worst excesses of recent permitted development conversions. To be most useful, however, design codes need intelligent application by skilled professionals who can make judgements based on the unique circumstances of each location and development.

Local authority design capacity has been under particular pressure in recent years and is often not as effective as it should be. Channelling design via permitted development is unlikely to help. We believe an appropriate response is to ensure better resourcing of, and application by, professional local authority planners – not to reduce that capacity and capability further.

<http://www.udg.org.uk/publications/other-publication/design-skills-english-local-authorities>

In preparing this response, we consulted with a wide range of members. We received multiple examples of concerns raised about the poor quality of design – materials, space standards, location, amenity space, etc. of much of the housing stock provided through recent permitted development

projects. One member noted, “We’ve had many permitted development opportunities come up that we have not wished to take forward due to incredibly poor design and amenity provision”.

[Research by Which?](#) found new permitted development homes were often overlooked by mainstream mortgage lenders, and grew more slowly in value than ‘traditional’ homes. This might suggest that many such developments are exploiting those with little choice and who the Government should protect through standards and regulation for new homes.

Finally on this point, we sense some potential for contradiction between the Government’s recent creation of Building Better, Building Beautiful commission, and the actual and proposed extension of rights which have been demonstrably harmful to the quality of design of buildings and places.

Question 1.11: Which is the more suitable approach to a new permitted development right:
a. that it allows premises to extend up to the roofline of the highest building in a terrace; or
b. that it allows building up to the prevailing roof height in the locality?

We don’t think this question can be sensibly answered (a) or (b): the answer may be either – or neither – depending on the specific circumstances of individual locations and developments.

The most suitable approach is to apply professional judgement underpinned by transparent design principles and codes. By way of example, some terraces are specifically intended to have varying roof heights, perhaps with additional stories at junctions or other focal points or to account for daylight or privacy issues. To undermine this considered design approach with blanket rules seems the wrong approach.

Question 1.12: Do you agree that there should be an overall limit of no more than five storeys above ground level once extended?

We don’t believe it is wise to apply arbitrary limits to widely varying situations. In some cases five storeys may be too many – in others it was pointed out to us by a local authority that it may actually be too few! It is possible that developers could be tempted into an easier and ‘quick buck’ development when a more considered approach might deliver a taller development of better design quality, delivering more homes.

When considering developments that will impact hugely on many, including non-residents, over many decades, incentivising unduly short-termist thinking seems unwise.

Question 1.13: How do you think a permitted development right should address the impact where the ground is not level?

Again, we do not think a permitted development is an appropriate tool for application in these circumstances. These are judgements for professionals interpreting and applying transparent policy principles in individual circumstances.

Question 1.14: Do you agree that, separately, there should be a right for additional storeys on purpose built free standing blocks of flats? If so, how many storeys should be allowed?

Quite apart from the technical, financial and safety considerations of adding additional storeys to existing blocks of flats, we again do not think a permitted development approach is appropriate.

Even where an upward extension is feasible on technical, financial and safety criteria, many purpose-built blocks were deliberately not taller due to their impact on the surrounding environment. As with previous questions, there can be no fixed national figure for what is appropriate.

It has been suggested this was a proposal of particular interest to our members. While some members have indeed expressed interest in the principle of extending permitted development (while also noting concerns around quality and affordable housing contributions) and have cited some actual and possible examples – significant extension of freestanding blocks of flats has not been a focus.

The implications for building safety and the application of existing standards would need to be extremely carefully considered in advance of, during and subsequent to any conversion of taller blocks. Few, if any, existing blocks of flats were designed with subsequent upward extension in mind, and the safety standards considered adequate at the time of their construction may not be acceptable for new builds of the same height, let alone a taller building. Building regulations intended for conversions on a modest scale may not be adequate to ensuring safety and other decent living standards in major extensions to existing structures.

Question 1.15: Do you agree that the premises in paragraph 1.21 of the consultation document would be suitable to include in a permitted development right to extend upwards to create additional new homes?

We do not think this is the best way to proceed for the reasons outlined in our earlier answers.

Question 1.16: Are there other types of premises, such as those in paragraph 1.22 of the consultation document that would be suitable to include in a permitted development right to extend upwards to create additional new homes?

We were concerned by the suggestion that out of town retail parks might be considered for upward extension to create new homes via permitted development.

There may well be such locations that are suited to carefully-considered redevelopment for residential and other uses through proper planning applications accompanied by appropriate contributions via Section 106 and the Community Infrastructure Levy (CIL).

Retail parks are often owned by large property and investment interests who are well equipped to deal with the current planning system and the range of tools it offers to facilitate good, long-term outcomes in the public interest.

Generally, a permitted development approach is much more suited to small developers and householders considering small scale, low impact developments.

Question 1.17: Do you agree that a permitted development right should allow the local authority to consider the extent of the works proposed?

Yes. But a permitted development on such a scale that requires this level of scrutiny should be processed via a planning application.

Question 1.18: Do you agree that in managing the impact of the proposal, the matters set out in paragraphs 1.25 -1.27 of the consultation document should be considered in a prior approval?

Yes. But a permitted development on such a scale that requires this level of scrutiny should be processed via a planning application.

Question 1.19: Are there any other planning matters that should be considered?

Yes. The contents of paragraphs 1.25-1.27 seem to be approaching the remit of a full planning application (albeit lacking in reference to affordable housing contributions). This seems to be contrary to the spirit of permitted development, and not a suitable approach to the complex and unique characteristics of development proposals on any significant scale.

Trying to prescribe such broad prior approval processes in black-and-white detail also runs the risk that gaps and loopholes inevitably remain and/or that the necessary detail becomes ever more complicated, risking confusion, misunderstanding and unintended consequences.

The Government has approached this conundrum before and correctly backed off. [Its response to a previous consultation on this topic](#) reported that “the complex prior approval that would be required to protect neighbours and the character and amenity of an area would result in a permitted development right that is no less onerous than a planning application”. We are unclear why this is no longer the case.

We think that professional human judgement is a better solution, which the traditional planning application process is better able to deal with – particularly when properly resourced.

Finally, we were alarmed to see the suggestion “we expect prior approval on design to be granted where the design is in keeping with the existing design of the building” included a few short paragraphs after the suggestion that out of town retail sheds could be considered suitable for housing.

Making permanent two time-limited permitted development rights

Question 1.24: Do you agree that the existing time-limited permitted development right for change of use from storage or distribution to residential is made permanent?

No. Storage and distribution facilities, including their choice of location and immediate surroundings, were not designed with residential needs in mind and we are not aware that the Government has assessed the actual or likely future effects of allowing such conversions. The limited prior approval regime currently in place is inadequate and should not be made permanent without proper review. We are aware of examples of families being housed in such conversions where there is no safe amenity space for children to play.

Supporting housing delivery by allowing for the demolition of commercial buildings and redevelopment as residential

Question 1.27: Do you support a permitted development right for the high quality redevelopment of commercial sites, including demolition and replacement build as residential, which retained the existing developer contributions?

No. We strongly oppose this suggestion.

Of all the specific proposals included in the consultation document, demolish-and-replace was the one that attracted the most outright opposition. Not because demolishing obsolete commercial property and replacing it with new homes is a bad idea – it is often a good idea – but because experience

shows permitted development is not an appropriate route to achieving suitable and high quality redevelopment.

The consultation makes various references to extending the scope of prior approval but – as noted by multiple experts and in the Government’s own response to previous consultation on extending permitted development – the range of factors which should be covered are such in their number and complexity that a full planning application is more appropriate.

The mention of developer contributions – notably absent in other proposals - is positive but not adequate to overcome the likely difficulties.

Question 1.28: What considerations would be important in framing any future right for the demolition of commercial buildings and their redevelopment as residential to ensure that it brings the most sites forward for redevelopment?

The number and complexity of the considerations required in this type of redevelopment is such that permitted development is not an appropriate mechanism for dealing with them.

Impact assessment

Question 1.29: Do you have any comments on the impact of any of the measures?

i. Allow greater change of use to support high streets to adapt and diversify

We expect that the impact would be mixed – but predominantly negative.

Some housing associations have expressed interest in the proposals: given their long-term commitment to owning and managing homes, supporting residents and wider communities, and their social purpose (see our [Great Places programme](#) for more details of how our members do this. We would expect some good development to be brought forward. Most developments of this sort would – and do – gain planning approval through traditional planning processes. Frustration with an under-resourced planning system can make permitted development a potentially appealing alternative for bringing forward good development more easily.

Our concern – shared by every member who contributed to our response – is that extended permitted development rules have allowed, and will allow, developments that are simply poor. There is plenty evidence that many of these have occurred, and are likely to be damaging to the wellbeing of people and places. Regrettably, the Government seems not to acknowledge this.

Frustration with an under-resourced planning system are legitimate and often justified. We do not think that extending permitted development is the correct solution, however – particularly for ever larger, more complex and impactful developments which will leave a decades-long legacy.

We would be pleased to discuss ways in which good quality development can be brought forward quicker and easier with the Government and others. There may be more potential for use of the likes of Local Development Orders (particularly for town centres), higher planning fees for more certainty (including Planning Performance Agreements) and enhanced partnership arrangements, including the recently agreed strategic partnerships. Such arrangements could expedite the delivery of the kinds of homes the Government says it wants, while shutting out the kinds of homes its recent and proposed changes have in many cases actually delivered.

ii. Introducing a new right to extend existing buildings upwards to create additional new homes

See previous comments.

v. Making permanent the right for the change of use from storage to residential

We think there may be potentially serious negative consequences, including for building safety, from extension of this right.

Public sector equality duty

Question 1.30: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equality Act 2010?

We are concerned that poor conversions of non-residential property are unlikely to serve the needs of elderly and disabled people as well as new homes created via planning applications. Beyond the list of protected characteristics, we fear the extension of permitted development is contrary to aspirations to create homes and places suitable for a variety of people, including children and families.

Is there anything that could be done to mitigate any impact identified?

We think the Government should not pursue the extension of permitted development rights and should also commission a proper independent review of the effects of recent changes.

Part 2. Disposal of local authority land

Question 2.1: Do you think that the threshold for the existing general consent for the disposal of land held for purposes other than planning or housing at undervalue (under section 123 of the Local Government Act 1972) should:

- a. remain at the current level?
- b. be increased?
- c. be removed completely?

To be consistent with the General Power of Competence, and to be consistent with other similar controls, we think there is a good case for increasing the threshold and possibly removing it entirely.

Question 2.3: Do you agree that the Secretary of State should issue a new general consent under section 233 of the Town and Country Planning Act 1990 for the disposal of land held for planning purposes?

Yes. To be consistent with the General Power of Competence and to enable the development of more good affordable housing.