

UDL Response to Supporting Housing Delivery & Public Service Infrastructure Consultation

January 2021

Background

UDL is a not for profit training, discussion and support organisation for built environment practitioners and councillors, running events under our Urban Design London and Urban Design Learning logos. We provide over 70 events a year, attracting well over 5000 bookings.

We held an event on 15 December following the launch of the consultation called 'Managing permitted development and prior notification planning processes'. The event, which had 61 bookings, discussed the proposals with the predominantly local authority audience, drawn from London and right across the country. This document sets out the points raised at this event and other recent events on planning policy we have held in recent months. Where questions posed by MHCLG were not directly covered at the sessions we have indicated where additional thoughts from our team members have been provided.

Summary

Our members' and team concerns on the proposal to extend permitted development rights centre on two areas. Firstly, we would question the quality of life possible for many residents living in converted buildings which were not designed for a residential purpose and which may lack the fundamentals of good housing design, particularly in the areas of good lighting and ventilation, with risk of ill health related to lack of light, poor air quality and overheating.

Secondly there is a concern over the impact of the permanent loss of land for active common use in strategic centres, particularly at ground floor level in urban and local centres. If these cornerstone locations are lost, long term damage may result to the wider fabric of the community which will not be possible to reverse, narrowing the scope for cohesion and productivity into the longer term.

Regarding the proposals to extend public infrastructure through the planning system, the key concern is about the use of a tightly constrained process for greater degree of development. This risks reduction in the quality of development and greater negative impacts to neighbours, nature and the wider community. It therefore runs counter to the ethos set out in the National Design Guide where development is expected to enhance the surroundings and contribute to quality of public space.

Concerning the consolidation and simplification of existing permitted development rights, it is difficult to agree or disagree with the broad approach without knowing the impact on the rights, whether they are broadened or restricted. Careful work on the detail of the changes alongside further consultation will be needed to ensure there is an overall benefit to changes made.

Finally, we would like to emphasise our members' concerns about the further extension of an additional 'track' for development influences existing methods. It will undermine ability for planners to uphold standards of high quality through conventional routes, already constrained by the lack of resources and the threat of appeal.

1. Response on supporting housing delivery through a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential

Permitted development is allowed if it meets the legal criteria, regardless of planning policy. In terms of design development, meeting these criteria can only be blocked by a very tightly constrained group of 'necessary safeguards', which must be applied within very short time constraints alongside short timescales and constrained application of consultation. If the planning authority does not meet the time constraints, the development is permitted by default, and the consultees allowed to object must do so within the short time limits to ensure any consideration of their views.

Until as recently as 2013, permitted development was limited to agricultural, forestry and telecommunications installations, a very narrow range of development types with straightforward planning and design issues controlled by the limited safeguards.

This is no longer the case with over 70,000 homes being provided in just five years under change of use from commercial to residential. This is likely to increase considerably as the use classes possible to be converted to residential are expanded. If the number of homes simply doubled, one quarter of a million new homes provided over the next 10 years would be PD homes.

This degree of expansion represents a change in the character and use of many areas, governed by extremely limited safeguards and constrained by tight timescales and limited consultation, with default to approval. An immediate concern therefore is how local communities will be able to resource their planning departments to deal adequately with the applications which will result, many of which may be submitted speculatively. The increase in work pressures within tight constraints has an effect on morale and the willingness of planners to stay in the sector at a time when recruitment and retention are already very difficult.

If enacted the fee which should be required must match the level of resources needed by the planning authority to process the application with all relevant consultation required. If a capping arrangement is used this may result in a very low level of fee being provided for a scheme which will require high levels of resource, for example due to the sensitivity of the development, complexity of access arrangements etc.

The other pressing concern is the danger of the balance of development moving too far in the direction of residential, resulting in damage both to the environment and the amenity of areas, as once buildings are converted, they will not be able to switch back to non-residential uses easily. Economic prospects will then be reduced by lack of access to jobs and services as places to locate these are unable to be found. This may limit the future location of new schools, entertainment or healthcare facilities. If essential services no longer have space, it will disrupt active travel strategies as people have to take more, longer and less active journeys.

The link between quality of life and a loss of productivity has already been highlighted, see the report by the APPG on Building Communities: (<https://www.acenet.co.uk/media/6059/productive-placemaking-appg-on-building-communities.pdf>). This illustrates the reason planning is in place, which is to balance the demands and needs of land, balancing social, economic and environmental needs. Without this control over the location and quality of large numbers of developments this balance risks being upset with longer term difficulties for communities. Allowing demand led development without any consideration of the effect on transport and other infrastructure, character, context and the other key characteristics of great places risks doing damage to communities which is not easily reversible.

Our members have therefore questioned how the proposed changes support the objectives of the White Paper and National Design Code. While these documents strongly recommend that quality is 'baked in' to development, permitted development puts this at risk due to the lack of control at the planning stage. The National Design Guide includes considerations of context, identity, movement, nature, public space, use, the design of homes, resource use and lifespan. These may not be possible to control within the narrow range of considerations under permitted development and therefore present a high risk of poor-quality development.

The pressure to build more provides a good opportunity to make changes, but rather than expanding permitted development as proposed, a more balanced approach to change of use and the ingredients that need to be held in tension should be explored. This ensures good design by holding all the various factors together to get the optimum outcome.

The proposed new 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. We also disagree that right should apply in conservation areas.

The addition of a further 'track' for development has an effect on existing planning practice. As regulation on conversion to residential has such limited safeguards or control over design, it will undermine the ability for planners to uphold standards of high quality through conventional routes already constrained by the lack of resources and the threat of appeal. It further undermines the planning system as a whole, as this is based on ensuring that the uses of buildings are located carefully within the community. By allowing uses to be changed to residential, this undermines the need for such uses to be planned at all and encourages resistance to such planning.

Additional comments from the UDL team:

We believe there should be a size limit on buildings which could benefit from the new right. Larger buildings pose unique challenges in conversion to residential, in particular relating to:

- development of single aspect homes
- ability of sunlight to enter windows
- ability of the homes to be naturally ventilated

For these to be relevant considerations during prior approval, 'appropriate living conditions' would need to be listed as a matter for prior approval and this consideration would need to include the above aspects. Note the National Planning Policy Framework does not cover these aspects and sets aside sunlight considerations where living standards are deemed to be 'acceptable'. These aspects are also not covered by Building Regulations.

Without any restrictions on homes which are required to be mechanically ventilated, with no sunlight and with a predominance of single aspect homes, several health and wellbeing consequences are likely to result as follows:

- Poor ventilation (for example widespread poor ventilation of mechanically ventilated homes discovered by the NHBC (<https://www.theconstructionindex.co.uk/news/view/nhbc-acts-on-mvhr-failures>) with resulting health risks, particularly sick home syndrome (<https://www.healthline.com/health/sick-building-syndrome>))
- Overheating (see MHCLG report (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835240/Research_into_overheating_in_new_homes_-_phase_1.pdf) which leads to poor health (<https://www.theccc.org.uk/2017/08/08/hidden-problem-overheating/>))

- Sunlight – the amount of sunlight links to the wellbeing of residents (<https://dspace.stir.ac.uk/bitstream/1893/24031/1/Final%20revisions%20Behav%20Sunshine%20and%20wellbeing.pdf>)

In addition to the above health impacts, there are the following affordability and resource use impacts:

- Homes which lock in reliance on 24-hour mechanical ventilation result in the high use of electricity over the years with high CO2 emissions locked in. Even if electricity is made from fully renewable sources, the increasing fuel cost will also reduce the affordability of these homes, resulting in fuel poverty.
- Standards for energy efficiency are worse for conversions than for new build (see the MHCLG report (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902220/Research_report_quality_PDR_homes.pdf) and due to the high number of homes likely to be converted, this means there will be a high cost to convert these to zero energy development and it may not be possible to achieve zero energy, locking in high energy use into the long term.

Ways to reduce the above issues include the following:

- to limit elements of the size of buildings which can be converted to residential, for example the depth of the footprint of the building which results in double backed corridors
- to include specific requirements for example, front to back aspect and natural ventilation.

Permitted development homes risk poor ventilation, lack of sunlight and reduced aspect leading to overheating. These risks have a disproportionate effect on several groups with protected characteristics particularly young and old age, disability, pregnancy and sex. This is because residents in these groups spend greater time at home than those of non-protected groups and so are exposed to greater risks. This means that these groups will be more adversely affected by poor housing quality.

2. Response on supporting public service infrastructure through the planning system

We disagree that the right for schools, colleges and universities, prisons, young offenders' institutions, and other criminal justice accommodation 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 larger. The provision of permitted development rights extends the previous rights considerably, as the new limit of 250m² has no relation to the size of the footprint of the existing buildings and is two and a half times the previous maximum permitted cap. This, alongside the height increase to 6m means that the risk of such extensions having an adverse impact on surrounding uses is much greater.

The risk of poor quality is also greater due to the tightly constrained timescales, limited considerations and narrow scope for consultation which is the key feature of permitted development and combined with the resource constraints faced by planning authorities risks developments being granted without effective control or community input.

These risks run directly counter to the ethos set out in the National Design Guide where development should enhance the surroundings and contribute to quality of public space. These spaces also risk reducing biodiversity as the relative size of the building ratio is increased.

For loosened controls on the extension of schools, colleges, universities, hospitals and prisons without good, detailed and well thought out consideration of the effect on transport and other infrastructure, character, context and the other key characteristics of great places risks doing damage to communities which is not easily reversible.

As regulation on larger extensions has such limited safeguards or control over design, it will undermine ability for planners to uphold standards of high quality through conventional routes already constrained by the lack of resources and the threat of appeal.

We do not 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). This fast-tracked process should not apply to *any* size of development due to the risks of inadequate time and resource being given to the important planning matters that will require consideration and inadequate time and consideration allowed by the communities affected.

The other risk of implementing this process is that priority is required to be diverted to such applications and this, together with the changes to permitted development rights, risks acting as a double impact upon the resources of planning authorities. To this is added the required priority post permission of dealing with reserved matters, discharge of conditions and applications to amend the permission.

We do not 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 anticipates making a decision. Requirements to notify the Secretary of State within certain timescales for these applications further increases the burden of duties on planning authorities.

We do not 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. This requirement places the onus on the planning authority to identify and resolve key planning issues prior to application submission, however there is no statutory equivalent requiring the applicant to provide the required information, although the reduced application deadlines are proposed on the basis that the planning authority will have received and resolved the key matters prior to application. The risk therefore is that the applicant does not co-operate and that for poor quality development there will be no time built in for important matters to be resolved.

People with protected characteristics are more likely to live in areas of deprivation. Poor quality development will increase the flight of people from such areas and raise the likelihood of deprivation. It therefore follows that increased poor quality due to poor control due to deregulation and tight constraints will have a greater impact on these groups than on other groups.

3. Response on consolidation and simplification of existing permitted development rights

We 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, without agreeing to the broadening of the use of permitted development rights. If they are broadened, the approach to categories 1-3 would be sensible.

While change of use from betting and pay day loan shops to a greater range of uses offers more flexibility in moving away from these kinds of uses, the change of use needs to be accompanied by safeguards which ensure the change of use fosters great places and allows communities to flourish.

It is difficult to agree or disagree with the broad approach to be applied in respect of category 4 without knowing the impact on the rights, whether they are broadened or restricted.

As permitted development rights are proposed to be used in applications for much greater numbers of homes, extensions and development of a larger size, changes made to characteristics, physical works and other conditions to be attached to permitted development will have more far reaching impacts than with previous legislation, across the built environment.

This needs to be met by a far greater degree of consideration, discussion and consultation on the detail of all of these changes before they are implemented as the risks associated with permitted development detailed in our response are linked to the ability of the planning authority to exercise proper consideration and control, alongside the ability of the community to effectively input and influence the outcomes.

4. Additional comments

We held an event on 15 December following the launch of the consultation called 'Managing permitted development and prior notification planning processes. The event, which had 61 bookings, discussed the proposals with the predominantly local authority audience, drawn from London and right across the country.

Comments from our delegates included the following:

- The confusing nature of the existing Permitted development rights system with different considerations, timescales, consultation requirements, different number of stages of the process etc for different types of permitted development.
- Sense from delegates that rules were there to catch planning officers and communities out and therefore restrict input by default rather than enabling genuine input.
- The key concern about resourcing implications for planners is detailed in the responses to the consultation questions above.
- Concern that the permitted development rights system further erodes trust by communities of the planning system causing disenfranchisement and despair.
- Risk of poor quality borne out by existing reports into office to residential permitted development contradicts the messages within the National Design Guide on the importance of great places.
- There is a need for a body of information on what is and is not acceptable.
- The use of permitted development undermines the ability to negotiate for applications through other routes as it creates a very poor precedent which is referred to by applicants for other development and makes it much harder to refuse development on the grounds of poor quality.