

## MHCLG Consultation: Supporting housing delivery and public service infrastructure – TGKP Officer Response

*This sets out TGKP Officers' response to MHCLG's consultation<sup>1</sup>. In this text 'yes' corresponds with 'Agree' and 'No' with 'Don't Agree' in the online questionnaire; 'Don't know' is sometimes stated and elsewhere reflected in comments. TGKP responses are shown in **bold** type.*

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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.

**No. Conversion to residential of larger format retail or industrial premises that fall within Class E could give rise to substantial demands on local infrastructure and amenities. Since the right is not restricted to town centres these could be in less sustainable edge of town or out of town locations. Conversion through PDRs in these circumstances would do nothing to contribute to town centre vitality. We suggest a size limit of 0.25ha or 1000m<sup>2</sup> Gross Internal Area should apply, whichever is applicable to the situation.**

**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.

**Yes, we agree that PDRs should not apply in these areas.**

**Q2.2** Do you agree that the right should apply in conservation areas?

Please give your reasons.

**No. The range of reasons for which a conservation area is declared should be taken into account in decisions about change of use, which is only likely to occur where there is a planning application. Proposals that would be allowed outside a conservation area should not be unreasonably refused provided they do not prejudice the objectives of conservation area status.**

**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.

**Don't know. It follows from the response to Q2.2 that we do not think these PDRs should be available in conservation areas. But if the Government pursues this then as a minimum the impact of loss of ground floor use to residential should be considered through prior approval. The loss of active frontages at street level can have a negative impact on vitality.**

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<sup>1</sup> <https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure>

**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.

**Yes, these should always be considered.**

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

Please specify.

**It might be assumed that in central locations, housing created through conversion of commercial premises etc would have access to amenities. But this will not necessarily be the case, for example in relation to healthcare facilities (such as GP surgeries) or schools which may be in areas where residential densities are sufficient to support them. But because these PDRs are not intended to be limited to town centre locations in any event, there is a risk that housing created could have poor access to amenities. As a minimum, therefore, prior approval should additionally consider access to public transport services, healthcare, and educational facilities congruent with the expected demographic profile of future residents, accessibility (including for mobility-impaired residents) and car parking.**

**In view of the Government's stated ambitions for net zero carbon proposals should also be consistent with sustainable development objectives and contribution towards carbon reduction.**

**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.

**If this PDR is introduced, then yes.**

**Q4.2** If you agree there should be a fee per dwellinghouse, should this be set at £96 per dwellinghouse?

Please give your reasons.

**Don't know. The reference in paragraph 23 of the consultation paper to capping the fee at the level of 50 homes indicates contemplation of fairly sizeable developments proceeding under PDRs, by implication larger than 50 homes. The issue here is not the fee but the scale of development. The average density of new residential development will vary according to location and type, but nationally is around 35 dwellings per hectare (dph). Proposals for 50+ homes could therefore likely involve an area greater than 1ha – which is the threshold being proposed in paragraph 49 of the consultation paper for defining “major development” in the context of public service schemes. We therefore suggest that proposals of this scale should require a planning application and not be allowed under PDRs.**

**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?

Please specify.

**We remain opposed, in the main, to extension of permitted development rights. PDRs undermine sustainable planning and place-making. PDRs should, where created, be restricted to development or changes that are relatively inconsequential, the impacts of which have limited**

**broader impact. But the proposals here could have far-reaching consequences and cause irrevocable change on a scale which has not yet been quantified.**

**The Government has only belatedly reacted to modify existing PDRs where confronted with evidence of predictably poor-quality outcomes (e.g. residential units with no natural light and sub-standard space). The lessons of rushed PDRs need to be learned. It is one thing to introduce short-term measures to help revitalise high streets and provide economic stimulus in response to the Covid-19 pandemic. But sweeping use of PDRs as a response to short-term pressures could have a negative long-term legacy.**

**It is well understood that high streets need to change in response to trends and factors that were already evident before the pandemic and have been further exacerbated by it. It is unclear how enduring changes in working patterns might be as a consequence of the pandemic, but it seems likely that some of these may be more or less permanent including reduced or part-time commuting, individuals and companies looking for premises and co-working space closer to home and more decentralisation away from large corporate offices. These factors could therefore potentially increase demand for new commercial workspace in high streets and town centres. But the emphasis on conversion of commercial and retail space to housing, as in this consultation document, could strangle the supply of potential commercial premises to respond to these new requirements and working patterns at just the time when they are most needed.**

**One of the few welcome proposals in the Government's Planning White Paper was the proposal to require development created under permitted development rights to contribute towards a reformed infrastructure levy. We strongly urge that no new permitted development rights should be introduced unless accompanied by a mechanism to exact an appropriate contribution towards local infrastructure. Otherwise, existing infrastructure deficits will simply get wider.**

**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.**

**Yes. As indicated in response to Q5, PDRs limit planning authorities' scope to deliver positive planning and place-making. They undermine Local Plans by allowing developments of types and in locations which may not be congruent with plan policies. In the present instance, these proposals are being brought in the context of response to a particular societal challenge – the Covid-19 pandemic – but their effects for good or ill will endure for decades. Such effects should be considered in a holistic manner which is not possible through the prior approval mechanism alone, still less under prior notification only.**

**The range of issues that need to be considered for proposals made under PDRs may in some instances be as complex as a planning application, but the fee is much lower. Local planning authorities' resources are therefore likely to be further stretched to cope with the demands that would be generated by creating these PDRs.**

**Q6.2 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could give rise to any impacts on people who share a protected characteristic?**

**If so, please give your reasons.**

**The creation of new housing above existing premises (both commercial and residential) could discriminate against people with limited mobility unless suitable access arrangements and assistance (for example, lifts) are incorporated into the designs.**

**Where people are dependent upon local shops and amenities, for reasons of restricted mobility or lack of access to personal or public transport, the loss of such local amenities through conversion to residential use may be detrimental. It should not be assumed that the only premises that might be targeted for such conversion would be those that are vacant or surplus: it could also affect businesses that are going concerns if developers and landowners see residential development as more profitable. Loss of viable local amenities could particularly impact upon older people who are more likely to have mobility issues.**

**Q7.1** Do you agree that the right for schools, colleges and universities, 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 greater?

Please give your reasons.

**250 metres square is not insignificant – equivalent to about 4 standard classrooms capable of accommodating 120 students in the absence of social distancing measures, so perhaps half that number whilst distancing measures are in force. In reality not all such an expansion would be classroom space once other space needs are taken into account. In the interests of flexibility this seems sensible, but we suggest that this PDR should be time-limited (e.g. 2 years) if it is seen as primarily to enable flexibility in response to Covid-19. We suggest that the calculation of footprint should exclude existing temporary buildings on the site.**

**Q7.2** Do you agree that the right be amended to allow the height limit to be raised from 5 metres to 6?

Please give your reasons.

**No opinion.**

**Q7.3** Is there any evidence to support an increase above 6 metres?

Please specify.

**No opinion.**

**Q7.4** Do you agree that prisons should benefit from the same right to expand or add additional buildings?

Please give your reasons.

**Don't know. We suggest any expansion should be within existing perimeter and not involve any enlargement of the perimeter of the site.**

**Q8.** Do you have any other comments about the permitted development rights for schools, colleges, universities, hospitals and prisons?

Please specify.

**One downside of this proposal is that it is likely to lead to the loss of open space on these sites for what may be short-term expedient reasons. Playing fields aside, schools need open space for circulation space, playgrounds, break-out areas and for the general health and well-being of the whole school community. Incursion into outdoor amenity space should be minimised.**

**There is clinical evidence<sup>2</sup> about the benefits, in terms of patient recovery rates, of hospital wards having an outlook onto 'natural' space such as gardens and trees (compared with those with an outlook onto buildings). It is therefore important to maintain as far as possible natural space within hospital sites and avoid loss of trees or other planting that also often fulfils a screening purpose.**

**The Government should consider how to frame these PDRs to safeguard tree-cover and retention of other natural features.**

**Design issues are also important and can be a major factor in determining local acceptability of development proposals. The PDR approach could give rise to insufficient attention to or scrutiny of design issues.**

**Q9.1** Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could impact on businesses, communities, or local planning authorities? If so, please give your reasons.

**It is important that all these public and semi-public institutions maintain good relationships of trust with the resident and business communities within which they are located. Extending PDRs in principle enables these bodies to carry out development regardless of local impact. As a minimum, good communication about proposals is essential to gain local understanding, if not support. Ideally there should still be a degree of consultation to enable any concerns to which the proposals might give rise, including adverse impacts, to be addressed in modifying development proposals.**

**Q9.2** Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons.

**No comment**

**Q10.1** Do you think that the proposed amendment to allow prisons to benefit from the right could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

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<sup>2</sup> For example see <https://www.healthdesign.org/chd/knowledge-repository/view-through-window-may-influence-recovery-surgery> or [https://www.researchgate.net/publication/305207784\\_Effect\\_of\\_Hospital\\_Landscaping\\_on\\_the\\_Health\\_and\\_Recovery\\_of\\_Patients](https://www.researchgate.net/publication/305207784_Effect_of_Hospital_Landscaping_on_the_Health_and_Recovery_of_Patients)

**No comment.**

**Q10.2** Do you think that the proposed amendment in respect of prisons could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons

**No comment.**

**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.

**Not sure. If this change is to apply it makes sense only to apply to major (non-EIA) development. But unless local planning departments are appropriately resourced to process such applications on an accelerated timescale, the consequence of giving these priority could be that timetables are not achieved for other major developments. One risk there is that applicants might then appeal to the Secretary of State on grounds of non-determination, both increasing caseload at Ministerial/Planning Inspectorate level and taking decision-making on schemes of legitimate local interest out of local planning authorities' hands.**

**It should also be recognised that however relatively rare such public service applications might be, they might also coincide with applications for other major development – e.g. major highways schemes, or Nationally Significant Infrastructure Projects – which demand priority and impose strict timetables on the local planning authority. The pressures these impose need to be recognised and a pragmatic approach taken to the relative priority of schemes unless additional resources are made available to enable such competing pressures to be met.**

**Q12** Do you agree the modified process should apply to hospitals, schools and further education colleges, and prisons, young offenders' institutions, and other criminal justice accommodation? If not, please give your reasons as well as any suggested alternatives.

**The category should be kept tightly defined otherwise the supposed fast-track approach becomes self-defeating.**

**Q13** Do you agree the determination period for applications falling within the scope of the modified process should be reduced to 10 weeks?

Please give your reasons.

**See response to Q11.**

**In addition, it should be noted that delays in determination of planning applications is often on the part of statutory consultees including national agents such as Highways England and Natural England, and utility providers. If a shorter deadline to be prescribed for this type of development, as well as encourage pre-application engagement, we suggest the Government should ensure that its agencies are both mandated and resourced to respond in a manner and timescale that will enable any shortened deadline to be met.**

**Q14.** Do you agree the minimum consultation/publicity period should be reduced to 14 days? Please give your reasons.

**No. 14 days seems an unreasonably short period of time for consultation on what is by definition major development, regardless of the extent of any previous community engagement. It also allows limited time for organisations to follow through any internal governance arrangements, however informal, they may have for approving a response. Unless wholly delegated, this might typically involve scrutiny of the proposals, preparation of a draft response, preparation of advice and recommendations to the decision-making body, inclusion on the agenda of a scheduled meeting or a bespoke meeting (physical or virtual) or agreed alternative mechanism and then submission of a final response. We would favour retaining the present 21-day minimum period.**

**Q15** Do you 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 it anticipates making a decision? Please give your reasons.

**This adds a bureaucratic task to the process. It is probably unobjectionable in principle but it's not clear what useful purpose is served.**

**Q16** Do you 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? Please give your reasons.

**The guidance needs to convey this message in multiple directions: local planning authorities should indeed be proactive, but the scheme promoters and any statutory consultees including national agencies also need to engage in a solution-focused manner and the guidance should reflect this shared responsibility.**

**Q17.1** Do you have any comments on the other matters set out in this consultation document, including post-permission matters, guidance and planning fees? Please specify.

**Post-permission matters, including s.106 agreements, can be a relatively time-consuming part of the process. Local planning authorities can legitimately be monitored for the performance of their part in the process but any difficulties or delays attributable to applicants or other stakeholders need to be recorded.**

**Q17.2** Do you have any other suggestions on how these priority public service infrastructure projects should be prioritised within the planning system? Please specify.

**No further comments.**

**Q18** Do you think that the proposed amendments to the planning applications process for public service infrastructure projects could give rise to any impacts on people who share a protected characteristic? If so, please give your reasons.

**No further comments.**

**Q19.1** Do you 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?

Please give your reasons.

**There may be sound reasons for rationalisation, but we are uneasy about the sweeping nature of these proposals. Fundamentally the purpose of different use classes, and control over change from one to another, is that uses with similar impacts should be treated in a similar way. However the Government, through its extension of permitted development rights and changes to use classes, has bracketed together uses that have quite different impacts, both in planning terms and in lived experience. We therefore urge great caution about rationalising use classes and extending PDRs. If de-regulation is misjudged it is much harder to rectify through re-regulation, and any harm done probably cannot be undone.**

**Q19.2** Are there any additional issues that we should consider?

Please specify.

**No comment.**

**Q20** Do you agree that uses, such as betting shops and pay day loan shops, that are currently able to change use to a use now within the Commercial, Business and Service use class should be able to change use to any use within that class?

Please give your reasons.

**No comment.**

**Q21** Do you agree the broad approach to be applied in respect of category 4 outlined in paragraph 76 of the consultation document?

Please give your reasons.

**We would reiterate the point in response to Q19.1 that uses should only be bracketed together, and change permitted between them, where they have broadly similar impacts. Consolidation and simplification should be consistent with this principle.**

**Q22** Do you have any other comments about the consolidation and simplification of existing permitted development rights?

Please specify.

**We strongly urge MHCLG to consider and 'stress-test' different scenarios and the implications of the proposed changes in each scenario pursued at different levels of intensity. These analyses should be reflected in comprehensive impact assessments made available for public scrutiny before any measures are enacted. This should include, for instance, looking at what safeguards there would be to ensure that appetite for conversion to residential did not result in high streets becoming devoid of commercial or employment uses, which would not serve the wider community and public interest.**

Dr Richard Longman

TGKP

Submitted 25 January 2021