

Supporting Housing Delivery and Public Service Infrastructure

Consultation Deadline: 28th January 2021

Submitted by: Planning Policy Team

PART 1 - 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

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.

The London Borough of Hillingdon recognises the proposed purpose of the new permitted development right (PDR), but does not agree with all the proposals in their current format.

The Council recognises that the economic context for retail uses has changed significantly and has been accelerated by the measures required to control the COVID 19 pandemic. However, the introduction of this new PDR and its proposed application to all Class E uses in all parts of the borough has the potential to limit the Council's ability to strategically plan land uses and growth.

Turning first to retail and other town centre uses now with Class E, it is noted that online retail sales have been growing steadily over the last decade and have accelerated rapidly during the COVID-19 pandemic. Coupled with the presence out of town centre retail parks, there has been a significant drop in retail visitors to town centres and the loss of some high-profile retailers. The need to reshape the high street as the country looks to recover from the COVID-19 pandemic is therefore well understood. This reshaping was already underway prior to the pandemic, including through:

- The reinvention of retail store experience.
- The emergence of independent retailers and local businesses moving into vacant retail floorspace left behind by larger retailers.
- An increase demand for flexible workspace following a rise in home working.
- An increase in restaurant, bars and cafes.
- A higher proportion of health and wellness uses in the town centre, particularly gyms, fitness centres and beauty treatment services.
- Certain town centres offering an all-day economy, with popular night-time uses attracting people to the town centre outside working hours.

It is recognised that the proposed PDR seeks to accelerate this reshaping process by allowing for high streets and other retail areas to adapt to the change in economic circumstances. Whilst this approach has some merits in specific areas which could be identified by the local planning authority, the Council has some concern that a blanket approach to all Class E uses in all locations will have unintended consequences. The Council would therefore welcome a refinement in the approach to ensure that a core area of a town centre or retail area can be excluded. The focus of the changes should be more on the secondary shopping areas, where a change of use of units on the edges of high streets and town centres may more easily merge into the surrounding residential landscapes. Without core commercial areas being protected, there is a concern that there will be a negative effect on the sustainability of remaining businesses, with the loss of each individual shop, office or business reducing footfall for the remaining units and eroding their viability

over time. This could result in further losses of businesses at a time when the economy is seeking to recover from a recession.

The Council therefore believes that the core of commercial areas should be protected to ensure town centres and local high streets continue to function in the future. A key consideration in one of the current PDRs being replaced (*Part 3, Class M of the Town and Country Planning (General Permitted Development) (Order) England 2015*) is the impact the change of use would have on the sustainability of the shopping area. If this new PDR is implemented, it is recommended that a similar requirement is included to protect town centres and local high streets by allowing local planning authorities to assess its impact on existing Use Class E, F1 and F2 uses. The size of the Class E units is also another key consideration that should be factored in at this stage. Given the limited options available for those business still requiring a larger area of floorspace in a sustainable location, it is recommended that a floorspace cap is included within the PDR.

There are some potential practical issues that could also arise from this PDR with regards to waste collection, deliveries, parking and potential anti-social behaviour along ground floor units in the middle of the high street. For example, residential waste being left for collection on the high street would further undermine the sustainability of the shopping area. This proposed PDR currently requires no consideration on the management of household waste collection and recycling. There is also the potential for the introduction of conflicting adjacent ground floor uses, such as a late-night bar and a new flat occupied by a family. The addition of consideration of these matters through a prior approval process would be welcomed.

As the new Use Class E is broad, there are also a number of different types of businesses at risk if the landowner sees more value in the site being converted to residential use. GP surgeries, dentists and nurseries / day-care centres are all important and valuable uses to local communities that are at risk of being lost or displaced under this new PDR. If units to accommodate these uses end up being in short supply, the costs of these premises to the NHS or businesses rises and effects their viability. The Local Plan currently has policies in place to protect these uses and the Council is concerned that the availability of such facilities to the local community could be impacted by the proposed PDR. It is therefore recommended community uses are excluded from the new PDR.

The consultation document outlines how many homes have been delivered through recently introduced PDRs and that this new PDR will also lead to many more homes being delivered. While the new requirement for homes delivered through PDR to meet minimum national space standards is welcomed, a number of other issues still exist with housing delivered through PDRs. The absence of a size limit on the original building further exacerbates these issues. While this new PDR will likely result in more homes being delivered, the developers of these homes are not required to contribute towards the provision of supporting infrastructure through CIL or S106 payments, nor can they be required to contribute towards affordable housing delivery. Whereas currently local authorities can rely on larger sites to contribute towards infrastructure and affordable housing delivery, not having a size limit on the buildings that can utilise this PDR means significantly fewer sites will go through the normal planning process and be considered against planning policies.

Research funded by the MHCLG has also concluded that new housing created through PDRs in England since 2013 is more likely to be characterised by poorer quality residential environments than housing created under the full planning permission process in relation to a number of factors vital to the health, wellbeing and quality of life of future occupiers. The Council is concerned that matters such as the predominance of non-family units (whilst recognising this maybe more suitable in some locations), poor access to amenity space, poor outlook and in some cases the inappropriate location of a site (for example in an industrial area) cannot be taken into account through the proposed PDR process.

A final issue of concern for the Council is the absence of measures to improve the environmental sustainability of dwellings. Considering the amount of new land that will qualify for this PDR, to not have provisions for the implementation of positive environmental measures, such as the incorporation of renewable energy technologies, could have an impact on the government's ability to meet its environmental objectives.

For the reasons set above, Hillingdon Council cannot support this proposed PDR in its current format and would like to see the amendments highlighted above. However, if it is implemented, the Council strongly believes that there should be a size limit on buildings that qualify for this PDR. This size limit should be equal to the national definition of major housing development, which is 10 units or 370 sqm if the minimum national space standards are applied. Having a size limit in place will ensure major sites are fully considered under the development plan and in the context of economic, environmental and social objectives. Where major sites are approved for residential use, they will still be able to contribute towards vital supporting infrastructure, affordable housing and climate change mitigation.

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.

N/A

Q2.2 Do you agree that the right should apply in conservation areas?
Please give your reasons.

The Council does not support the application of this right in conservation areas.

As duly noted under paragraph 19, many of the uses under Class E are found along high streets and within town centres, many of which are designated conservation areas. High streets and town centres are key contributors to the identity of a historic settlement and create a sense of place. In most instances, these places are the reason why the settlement exists in the first place. They are fundamental contributors to the significance of many conservation areas and allow a wide range of individuals from different backgrounds to interact with the historic environment.

The preservation or enhancement of designated conservation areas is recognised under the Planning (Listed Building and Conservation Areas) Act 1990, the proposed right would diminish the existing protection of such places. The Council has a legal duty to have regard to the preserving or enhancing the character and appearance of Conservation Areas and it is not clear from the consultation documents how this could be achieved through the permitted development process. Whilst it is acknowledged that in some instances a conversion to residential may meet the statutory tests, this could only be fully assessed through the full planning application process.

In addition, whilst the right would not apply to Listed Buildings, many can be found within conservation areas. The proposed right would not consider the potential impact of the setting of Listed Buildings which can be connected to the significance of conservation areas. The preservation of setting is recognised under the Planning (Listed Building and Conservation Areas) Act 1990.

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.

For the reasons set out in Q.2.2, the Council does not support the application of the proposed PDR to conservation areas. However, if the PDR is implemented, it is important to be able to establish the principle of such an alteration where it will inevitably result in harm to conservation areas. Introducing this condition to the prior approval process would prevent unwelcomed alterations to the built fabric, prevent the loss of historic shop fronts which are currently protected under the conservation areas designation and other features of interest.

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.

The Council does not think that the range of matters set out in paragraph 21 of the consultation document are sufficient to fully consider a scheme and deliver high quality development.

As mentioned in response to Q1, Hillingdon Council is not supportive of this new permitted development right as the Council believes its introduction is short sighted and will lead to the dismantling of town centres and local high streets and will curtail the Council's ability to strategically plan land uses and growth. However, if this new PDR is adopted, the Council has concerns about the prior approvals listed in paragraph 21.

Given the impact this new PDR could have, the Council believes that the prior approvals set out in paragraph 21 of the consultation document will not be enough to ensure good quality and well considered development. Many of the other PDRs which relate to the former Use Classes A1, A2, B1(a, b and c) which this new PDR consolidates contain other conditions on development which contribute towards improving the quality of development. Specifically, these are the conditions outlined in *Classes M, O and PA of Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015*.

In addition to the prior approval criteria listed in paragraph 21 of the consultation document, the following prior approvals criteria should also be considered as part of the new PDR:

- The size of dwellings – dwellings must meet the national space standards as a minimum.
- Household waste and recycling provisions.
- The impact of the change of use on the adequate provision of services of the sort that may be provided by a building falling within Class E where there is a reasonable prospect of the building being used to provide such services.
- The impact of the change of use, where the building is located in a primary or key local shopping area, on the sustainability of that shopping area.
- The design or external appearance of the building.
- Where the authority considers the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those services (which includes, where the development relates to part of a building, services provided from any other part of the building), whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.

Development should also not be permitted under prior approval if:

- The building is occupied and providing an essential local service;
- The gross floor space of the existing building exceeds 370sqm.

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

See Answer to Question 3.1

**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.**

There should be a fee per dwellinghouse, however the 50 home cap should be removed. Each individual home proposed under the new permitted development right will need to be assessed against the prior approval criteria which should include the provision of adequate natural light, dwellings sizes, waste management, transport considerations, etc. As there will be specific costs per dwelling for local authorities assessing a scheme, these should be accounted for in the fees applicants pay.

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

The fee of £96 per dwellinghouse is roughly 1/5th of the national planning application fee per dwellinghouse of £462. The Council estimates that the work undertaken by the local authority in assessing schemes under this new PDR would be approximately 1/3rd of the work undertaken per dwellinghouse under a full planning application. The Council believes the prior approval fee should reflect this and that the fee should be higher at around £152 per dwellinghouse, with no maximum fee cap applied.

**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.**

No.

**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.**

As indicated above, Hillingdon Council consider it could have a negative impact on the vitality on businesses and communities, unless some core commercial areas are afforded protection and a size limit is imposed. These impacts have been covered in the responses to questions 1, 3.1, 3.2, 4.1 and 4.2 however to summarise:

- Local authorities will lose their ability to meet the needs of commercial, business and community services through their Local Plans.
- Communities and businesses could suffer from the loss of Class E units on the high street and result in a reduction in footfall for remaining businesses.
- Businesses will also need to compete with residential prices when agreeing rents, creating an additional cost which will lead to the displacement of units.
- Communities, businesses and local authorities will all suffer from a loss of contributions towards supporting infrastructure.
- Communities will be impacted by a significant reduction in affordable homes being built.

- Several issues which would normally be considered through the development plan will be side-stepped. This includes ensuring new developments are designed positively to achieve environmental, social and economic objectives.

**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 Council believe that there are some equality implications that may result from this proposed PDR. Given the number and variety of uses that fall within Class E, there are many existing businesses and services whose premises will be at risk of change of use to residential use.

The potential loss of local shops and facilities could have a disproportionate impact on elderly people and people with mobility issues who rely on these facilities. This same group of people are likely to be disproportionately affected by the potential closure of local health facilities such as GP surgeries, opticians and dentists.

Nurseries and day care facilities also fall within Class E and the potential loss of these uses will have a disproportionate impact on parents and their children, who may have to travel further to secure childcare. Planning for these uses at a local authority level is also impacted.

The increased likelihood of the loss of offices, light industrial, retail and leisure uses under this new PDR will have a significant impact on the working age population.

Charities and local organisations who raise income through high street shops could be displaced impacting on funding, which could have a knock-on impact on support given to groups with protected characteristics.

Paragraph 21 does not list a prior approval condition which requires homes to meet Building Regulations M4(2) or M4(3) which will ensure the homes built are accessible. This will disproportionately affect people who require accessible dwellings or wheelchair user dwellings.

This PDR will also significantly reduce the amount of affordable housing delivered in the borough, which will disproportionately affect low to middle income families.

PART 2 - Supporting public service infrastructure through the planning system

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.

The Council has not received any applications under the existing Part 7 Class M and therefore does not have any historical evidence to inform this consultation.

However, the alteration from 25% of the original school, college, university or hospital buildings to 25% of the current buildings has the potential to be significant. Some of these facilities have already been subject to a significant number of ad hoc extensions. The overall scale of the development which would be allowed under the altered permitted development right would be much larger than current 250 sqm cap (which itself was originally only 100 sqm). For example, the current buildings on Hillingdon Hospital are estimated to amount to 55,000 sqm. Under the new amended right, that would allow for 13,750 sqm of two storey extensions to be added onto the site without any planning considerations being permitted.

Obviously, this level of development cannot be allowed without scrutiny into basic planning considerations, such as design, transport and environmental implications. This could have potentially disastrous impacts on the local amenity of those who live and work near to schools, colleges, universities and hospitals. Allowing development to take place in this manner risks creating a poor legacy of public service infrastructure and further public money being required later to rectify initial poor design. It would not be acceptable to prevent local communities from expressing their views on development of this scale. The permitted development right should remain capped at 250 sqm.

Many of these buildings are located within or adjacent to the Green Belt. The absence of any restrictions relating to the Green Belt within the permitted development right is contrary to the Government's existing commitments to protecting the Green Belt and preventing urban sprawl.

The uses cited are all classified as 'more vulnerable' uses in terms of flood risk. The removal of the local planning authority's ability to manage flood risk within the permitted development right has the potential to result in these vulnerable uses being extended into areas of higher flood risk, without any requirement to ensure that the site is safe for its users and does not increase flood risk elsewhere.

It should also be noted that many of these public buildings are heritage assets or located within conservation areas. To simply limit the design considerations of such large extensions to materials only in these particularly sensitive locations would be erroneous. The permitted development right should not apply in Conservations Areas or within the curtilage of a Listed Building, regardless of the scale of development.

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.

Under the existing permitted development right, the extension to 6 metres would be logical to facilitate 3 metre storeys which can provide a better experience for users of public service infrastructure. However, if the restrictions are to be removed in the manner suggested within Q7.1, then any extension to the height would simply exacerbate the problems outlined above.

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

Please specify.

No.

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

Please give your reasons.

N/A.

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

Please specify.

The rationale behind these amendments is stated to be the need for further flexibility. This is understood for hospitals and the need to adapt quickly to changing circumstances with short timescales (such as during a pandemic). However, it is unclear under what unforeseen circumstances a school, college or university would need to rapidly circumvent the planning system.

The planning system offers an important societal benefit itself in ensuring public service infrastructure creates minimal harm to local amenity and is well designed from the outset. This reduces the need for additional public money to be spent retrofitting poor design in the future.

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.

Yes. As noted in the response to Q7.1, the scale of the development that could be permitted under this change is significant. Allowing such a large quantum of development to circumvent the planning system means that harm, which would otherwise be mitigated, will have a significant negative impact on businesses and local communities.

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.

Yes. By their very nature, these buildings have been designed for specific users and will be used more frequently by people who share a protected characteristic. For example, those between the ages of 18-30 are more likely to be impacted by a poorly designed university building than those in other age groups.

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.

N/A

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

N/A

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.

The Council agrees that it would be sensible to limit these to major developments only. This will reduce the number of applications that the local planning authority need to consider under the new process, making it easier to prioritise them.

**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.**

Yes.

**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.**

No. Reducing the determination period from 13 weeks to 10 weeks is significant. The Government must understand that prioritising the determination of public service developments will ultimately have a knock-on impact to the speed of determining other types of development (including housing).

There also does not seem to be any analysis into why substantive public service development are often taken longer than the statutory 13-week timetable. If applicants do not submit the right information to enable decisions to be made within 10 weeks, there will be no material difference in decision-making timescales.

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

The Council disagrees. Whilst local engagement should take place prior to submission, reducing the time period local communities have to submit formal written views on planning applications from 21 days to 14 days would be unfair. Local communities and individuals already must work to short timescales to understand and find time to respond to planning applications. There can also be a lag between an application being validated and the member of the public being informed. Removing a week from the consultation period would both reduce the number of responses received and their quality. This would be contrary to the Government's recent commitment in the White Paper to giving people a greater say over what gets built in their community.

**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 anticipates making a decision?
Please give your reasons.**

The Council disagrees. The paper suggests this would be done so that the Secretary of State could 'support and monitor' progress, however it is not clear what this would entail and how the Secretary of State would get involved with the process prior to the local planning

authority making their determination. Without justification, this is just an added layer of work for the case officer to undertake.

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.

Yes. The Council would already engage with colleges, universities and hospitals who sought to resolve key planning issues before applications are submitted.

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.

No.

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.

Paragraph 46 of the NPPF (2019) already outlines that applicants should consider the potential for voluntary planning performance agreement where it might achieve a faster and more effective application process. The Government could encourage public bodies to utilise this service, so that adequate resources are in place to facilitate faster decision-making.

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.

Reducing the time period local communities have to respond to planning applications from 21 days to 14 days would likely have an impact on those who already struggle to find the time to engage with the planning system. The recent White Paper stated that the Government will increase access and engagement for all groups to the planning system, noting that it disproportionately encourages engagement from people from a narrow set of demographic groups. It is difficult to see how narrowing the time period local communities have to respond to planning applications would not undermine this goal.

PART 3 - Consolidation and simplification of existing permitted development rights

**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.**

The approach to categories 1 and 2 is sound.

The approach to category 3 is unacceptable. Many local planning authorities have established Article 4 directions in relation to Class O of the GDPO in order to protect local amenity and the well-being of certain areas. There needs to be transitional arrangements put in place to ensure these Article 4 directions are carried forward to the new Class E to Class C3 permitted development right by default. Without such transitional arrangements, the Government are unnecessarily asking planning departments to go through the rigmarole of re-establishing existing Article 4 directions. There will also be an unnecessary period where the protection of local amenity cannot take place.

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

Please see comments above regarding transitional arrangements for Article 4 Directions.

**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.**

There are existing Sui Generis uses that are defined as such so that the harm they cause can be refused or mitigated. These include uses such as betting shops and pay day loan shops. Noting that the aim of defining these uses as Sui Generis is to restrict or mitigate their existence, it would be illogical to restrict them from changing to more acceptable commercial, business and service uses.

However, there would not be support for extended permitted development rights for Sui Generis uses that are defined as such so they can be specifically protected and supported. This includes Sui Generis uses such as theatres, cinemas and pubs.

**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.**

Paragraph 76 does not provide an approach to Category 4, it merely suggests that it requires detailed consideration. As noted above, it would be logical to encourage existing Sui Generis uses that are typically harmful to change to uses that are less harmful. A set of rights allowing these to change to Use Classes E, F1 and F2 would therefore be supported, however it would also require existing limitations and conditions to be carried over from Classes C, J and JA.

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

No.