

**Response of the Law Society to the Ministry of  
Housing, Communities and Local Government on  
Planning Reform: Supporting the high street and  
increasing the delivery of new homes**

14/01/19



## **Preface**

1. The Law Society of England and Wales ('the Society') is the independent professional body that works globally to support and represent 180,000 solicitors, promoting the highest professional standards and the rule of law. The Society represents the profession to Parliament, government and regulatory bodies, and in the public interest undertakes work in areas such as the improvement of practice standards, pro bono work, law reform, promotion of human rights, and development of practice rights internationally.
2. The Society welcomes the opportunity to respond to the Ministry of Housing, Communities and Local Government's [consultation](#)<sup>1</sup>. This response has been prepared by the Society's Planning and Environmental Law Committee (PELC). Its members engage with keeping under review, and actively promoting improvements in planning and environmental law.
3. The Society has taken a holistic approach in our response and focussed on a selection of questions under part 1: permitted development rights and use classes and question 2.5 under part 2: disposal of local authority land.

## **Executive summary**

4. The revised NPPF seeks to 'ensure the vitality of our town centres by taking a positive approach to their growth, management and adaptation'. This positive approach is best delivered through the formulation and delivery of locally-appropriate strategies, via the plan-led approach rather than nationally-determined and 'one size fits all' permitted development solutions. Change should be positively managed through the planning system which provides the ability for change to be carefully managed so as not to have unintended consequences on say, the historic environment.
5. The Society does not think there is a role for a permitted development right to provide additional self-contained homes by extending certain premises upwards. The revised NPPF already makes positive policy provision for such development, and in such a way that all the relevant issues (including heritage and design) can be considered. The existing planning application route would provide much greater clarity and certainty for appropriateness for any upward extensions.
6. The decision on whether a free-standing block could be increased should, in our view, be determined on a case by case basis and not through a blanket national PD.
7. The Society does not 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 as this would appear to be at odds with the plan led system and the ability of authorities and local communities to positively manage the appearance and operation of their local areas.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752222/Planning\\_reform\\_-\\_supporting\\_the\\_high\\_street\\_and\\_increasing\\_the\\_delivery\\_of\\_new\\_homes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752222/Planning_reform_-_supporting_the_high_street_and_increasing_the_delivery_of_new_homes.pdf)

8. The Society agrees that the economic, social or environmental well-being criteria which apply to the existing general consent should also apply to any new general consent for the disposal of land held for planning purposes.
9. The Society recognises the urgent need to increase the housing stock. Superficially therefore the proposals to extend permitted development rights to allow for the construction of, or conversion to, residential use looks attractive. However in reality we are concerned that the numbers likely to be produced through this means will be inconsequential in meeting that demand and hence it does not present an overriding reason for doing it.

## **Response**

**Question 1.1:** Do you agree that there should be a new permitted development right to allow shops (A1) financial and professional services (A2), hot food takeaways (A5), betting shops, pay day loan shop and launderettes to change to office use (B1)?

**Question 1.2:** Do you agree that there should be a new permitted development right to allow hot food takeaways (A5) to change to residential use (C3)?

10. No. As noted in the consultation document, the revised NPPF seeks to 'ensure the vitality of our town centres by taking a positive approach to their growth, management and adaptation'. This positive approach is best delivered through the formulation and delivery of locally-appropriate strategies, via the plan-led approach rather than nationally-determined and 'one size fits all' permitted development solutions. Permitted development rights certainly have their uses, but further increases in their scope, as proposed in the consultation document, will reduce the ability of local authorities to positively manage these important environments (and to meet any identified needs for specific facilities), and therefore come into conflict with wider government objectives for high streets and town centres. Change should be positively managed through the planning system which provides the ability for change to be carefully managed so as not to have unintended consequences on say, the historic environment. The extension of PD rights proposed is not considered to be appropriate.
11. If it were intended to select some but not all of these proposals then in the Society's view the most justifiable is a change from A2 (financial and professional services) to B1 (office use), bearing in mind that the character of these uses is often close to one another.

**Question 1.4:** Do you agree that the permitted development right for the temporary change of use of the premises listed in paragraph 1.9 should allow change to a public library, exhibition hall, museum, clinic or health centre?

12. It may be beneficial to have these on a temporary basis as they tend to be appropriate town centre uses. They are therefore likely to support town centre vitality and retain its character; and their temporary provision is likely to enable further

consideration as to whether, from a local perspective, it could provide the basis for longer-term provision.

**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?

13. No. The revised NPPF already makes positive policy provision for such development, and in such a way that all the relevant issues (including heritage and design) can be considered. As there are ways that upward extension can already be delivered – planning application or local or neighbourhood development order, then it would not seem appropriate to have a permitted development right on a national scale. In highlighting the issue in the consultation document, it appears to recognise that there are a number of issues that would need to be considered, and a blanket provision, with no opportunity for local circumstances to be taken into account, and the potential for the plan led system to be undermined by the introduction of a PD right would appear to be inappropriate. There may be opportunities through other means to encourage local authorities and developers to work together on schemes which might provide for additional housing, and the existing planning application route would provide much greater clarity and certainty for appropriateness for any upward extensions. It is noted that Article 2(3) land, listed buildings (and their curtilage), and scheduled monuments are excluded, but it does not appear to take into account conservation areas, or indeed the general quality and character of the built environment. Any control over design introduced via design codes; restriction of number of storeys above ground level or prior approval mechanisms is unlikely to be able to make the necessary provisions for decision makers to fully take into account matters such as the historic environment when determining the issue and could result in unintended consequences to the historic environment and a failure to achieve sustainable development.

**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?

14. No. There may have been specific reasons for a certain height of a building – plan policy, structural, economic, historic environment – and a blanket PD right which enables the height to be increased would appear to completely undermine the planning system upon which the initial grant of permission being made. The decision on whether a free-standing block could be increased should, in our view, be determined on a case by case basis and not through a blanket national PD.

**Question 1.20:** Should a permitted development right also allow for the upward extension of a dwelling for the enlargement of an existing home?

15. No. It is our understanding that proposed PD is for the creation of a new residential unit(s) and usually the enlargement of an existing home is to accommodate the needs of the existing home owner. In our view, it would be unlikely that the ability to

extend upwards by the homeowner would result in a new unit, but rather would be used by the existing homeowner for their own enjoyment.

**Question 1.21:** Do you agree that the permitted development right for public call boxes (telephone kiosks) should be removed?

16. Yes. This proposal may result in a benefit to the environment through reduction in unnecessary street clutter.

**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?

17. No. This would appear to be at odds with the plan led system and the ability of authorities and local communities to positively manage the appearance and operation of their local areas. It may well result in the loss of employment land, hinder the ability to manage the quality of the resultant residential environment, and negatively impact on the historic environment (as little/no assessment will have been undertaken on the nature of the asset proposed for demolition or on the potential for buried archaeology to have been taken into account). There would be a number of issues that would need to be considered – i.e. traffic; economy; heritage; and it is unclear how these could be appropriately dealt with by a blanket PD right. It would also appear to undermine the concept of sustainable development through demolition of a building that might still be capable of its original intended use. Given the complexity of the issues that would need to be taken into account and the risk to the built environment, the plan led system and wider NPPF objectives, it does not appear to be appropriate.

**Question 2.5:** Do you agree that the economic, social or environmental well-being criteria which apply to the existing general consent should also apply to any new general consent for the disposal of land held for planning purposes?

18. Yes. These are appropriate and important criteria for the disposal of land. Consideration may also need to be given as to whether the land being disposed of had any particular designation – for example, if the land being disposed of was open space, whether the disposal would have unintended consequences of reducing the amenity of nearby residents due to its disposal, and then a further reduction in amenity through being built upon. It would be appropriate to ensure suitable management provisions were put in place to reduce the risk of unintended consequences.

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