

Shelter Consultation Response: Planning Reform Consultation

Introduction

Shelter exists to support those in housing need. Last year we published our 2019 – 2022 strategy, including a commitment to campaign for more social housing to be delivered to address our national housing emergency.

Our 2017 [New Civic Housebuilding](#) report clearly demonstrated our belief in the need for government to commit to deliver 'high quality, popular and locally affordable homes on a scale that can solve our housing shortage.'¹ Recently, we have built on this with our new report setting out an ambitious vision for the future of social housing: *Building for our future: A vision for social housing*.

Building for our future clearly identifies that to address our housing crisis, where nearly 277,000 households in England are recorded as homeless,² government should develop a 20-year programme for delivering 3.1 million more social homes. To achieve this, it is vital that our planning system and land market facilitate the delivery of high quality social housing. We are responding to this consultation with great interest as we want to ensure that government is doing all that it can to ensure that our planning system and land market deliver this objective.

Our consultation response will focus on government proposals in relation to permitted development rights (PDR), and will also cover the disposal of local authority land.

Proposals to extend permitted development rights

Government have committed to delivering 300,000 net additions each year by the mid 2020s. This new ambition builds on previous goals to deliver 250,000 new homes per year and Shelter supports the government's clear commitment to delivering more homes.

However, in recent years there has been a shift towards deregulation of the planning system through the expansion of PDR, on the assumption that this helps achieve housing targets. In Shelter's view this approach is wrong. Rather than supporting an end to our housing crisis, extending PDR risks making the problem worse by:

- Choking off the supply of social and other affordable homes, which are needed most urgently to address housing need;
- Worsening the existing overconcentration of housing supply on market sale, where market absorption barriers place fundamental limits on build out rates;
- Circumventing the planning system in ways which risk further alienating local communities from new development and undermining local support for new homes;
- Undermining the quality, size and safety of new housing;

¹Shelter (2017) *New civic housebuilding: Rediscovering our tradition of building beautiful and affordable homes*, Shelter [Online], Available: https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_new_civic_housebuilding, p. 3.

²Reynolds, L. (2018) *Research: Homelessness in Great Britain – The Numbers Behind the Story*, Shelter [Online], Available: https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/research_homelessness_in_great_britain_-_the_numbers_behind_the_story

- Limiting the resources available to provide physical, green and social infrastructure alongside new homes;
- Further reducing the resources councils have to deliver planning services (because of the loss of planning fees).

With this in mind, Shelter strongly opposes government proposals to extend PDR to cover more schemes delivering new homes. In particular, we are opposed to proposals to extend PDR to cover commercial demolitions and the subsequent replacement of those buildings with residential units.

There are four key issues that Shelter wishes to raise with PDR as part of this consultation response.

1. The social housing get-out clause

At the heart of Shelter’s opposition to extending Permitted Development Rights is the failure of PDR to make any contribution to social or affordable housing. New homes delivered through current Permitted Development Rights are exempt from providing the affordable housing that would normally come forward as part of development. The total figure for the affordable homes England has missed out on because of this is unknown. However, Shelter has estimated the loss of affordable housing from PDR conversions in urban local authorities between 2015-16 and 2017-17 at 10,340.³ England is clearly missing out on a potentially significant source of affordable housing supply.

Even if government wanted to secure affordable housing contributions for some or all PDR schemes in future, the mechanisms for achieving this are unclear. PDR schemes do not go through the normal planning process and cannot use the usual mechanism for securing affordable housing, Section 106 agreements. Government proposals to extend PDR for new homes therefore represent a new threat to social and affordable housing delivery, at a time when the need for these homes is acute and rising in many areas.

As well as choking off the supply of social and other affordable homes, which – as our recent cross-party report has shown⁴ - are needed most urgently to address housing need, the failure of PDR schemes to deliver sub-market homes also worsens the existing overconcentration of English housing supply on market sale, undermining build-out rates and so overall supply. As Sir Oliver Letwin’s 2018 independent review of build out rates found in relation to large sites,⁵ England’s development model will only supply market homes at rates which will meet existing limited demand for unaffordable market sale housing, so preventing current prices of second-hand homes from falling. By contrast, building more social and affordable housing on new developments allows housebuilders to tap into different sources of demand, building more homes faster overall. Lichfields analysis shows that large sites delivering 30%+ affordable housing have build-out rates 40% higher than those of large sites delivering only 10-19% affordable housing.⁶

³Weekes, T. (2018) *Revealed – The true scale of affordable housing lost to permitted development rights*, Shelter Blog [Online], Available: <https://blog.shelter.org.uk/2018/12/revealed-the-true-scale-of-affordable-housing-lost-to-permitted-development-rights/>

⁴ Shelter (2019) *A vision for social housing: The final report of Shelter's commission on the future of social housing*

https://england.shelter.org.uk/__data/assets/pdf_file/0005/1642613/Shelter_UK_-_A_vision_for_social_housing_full_interactive_report.pdf

⁵ [Independent review of build out: draft analysis](#), 2018, MHCLG, p.12

⁶ Nathaniel Lichfield & Partners, *Start to finish: how quickly do large-scale housing sites deliver?*, 2016, p.3 <https://lichfields.uk/media/1728/start-to-finish.pdf>

With nearly 277,000 households in England recorded as homeless⁷ and millions more struggling with poor-quality housing and high private sector rents, England cannot afford to miss out on a vital source of social and affordable homes. Far from promoting overall housing supply, extending Permitted Development Rights for new homes risks further entrenching the barriers to faster build-out, making housing development less responsive to local housing needs.

2. The inability to ensure the delivery of high-quality and safe new housing

In addition to improving the affordability of new housing development by increasing the opportunities to deliver social and other types of affordable homes, it is also vital that planning rules ensure that all new housing supply is high quality, spacious and safe. Extending PDR threatens this.

Under permitted development, local authorities cannot require design or space standards. Academic research is now beginning to evidence the problems arising from this. A report produced for the Royal Institution of Chartered Surveyors (RICS) last year identified some PDR housing developments of such poor quality that they represented an immediate health and safety risk for residents.⁸

Through the creation of its Building Better, Building Beautiful Commission the government has recognised the importance of quality and design in housebuilding. However, a further expansion of PDR runs directly counter to this aim by limiting opportunities to define and enforce standards for new housing.

3. Limited opportunities for securing contributions for physical, green and social infrastructure

The National Planning Policy Framework (NPPF) requires that new housing delivery is sustainable. New homes must come with the infrastructure, services and green spaces needed to turn houses and flats into functioning parts of a community.

However, PDR schemes are able to reduce or entirely avoid infrastructure contributions, unlike schemes which come through the full planning process. The Community Infrastructure Levy (CIL) system represents an imperfect system for securing infrastructure contributions from PDR schemes because:

- only 159 authorities have a CIL charging schedule in place;⁹ and
- housing delivered through change of use is exempt from CIL when developers can prove that a building has been in use for at least 6 months in the last 3 years.¹⁰

In these situations, infrastructure contributions could in theory be secured through Section 106 agreements. However, S106 agreements cannot be entered into on PDR schemes. As a result, far less

⁷Reynolds, L. (2018) *Research: Homelessness in Great Britain – The Numbers Behind the Story*, Shelter [Online], Available:

https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/research_homelessness_in_great_britain_-_the_numbers_behind_the_story

⁸Clifford, B., Fern, J., Livingstone, N. & Canelas, P. (2018) *Assessing the impacts of extending permitted development rights to office-to-residential change of use in England*, Available:

<https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england-rics.pdf>

⁹Carpenter, J. (2018) *CIL Watch: Who's Charging What?*, Planning Resource [Online], Available:

<https://www.planningresource.co.uk/article/1121218/cil-watch-whos-charging-what>

¹⁰MHCLG (2018) *Guidance: Community Infrastructure Levy*, Available:

<https://www.gov.uk/guidance/community-infrastructure-levy#collecting-the-levy>

of the uplift in value created by development can be captured through PDR compared to the full planning process.

This directly undermines the commitment in the NPPF to achieving sustainable development. Communities with high levels of PDR will be less likely to see benefits from new housing locally, exacerbating the problems of local opposition to new development. Evidence from the British Social Attitudes Survey shows that people are more likely to support new housing development locally when it comes with resources for schools, transport links, social homes and other community benefits.¹¹

4. Loss of planning fees for local authorities

Planning departments have seen significant cuts to their budgets in recent years, meaning they are especially reliant on planning fees.¹² The expansion of PDR threatens this source of income as PDR schemes pay reduced planning fees. A report for RICS identified that between 2013 and 2017, local authorities have already lost out on planning fees with a net present value in 2010 of around £22m on PDR schemes.¹³

Despite declining resources, planning officers' time spent on planning matters has not reduced.¹⁴ As planning departments try to service the workload generated by PDR development on the basis of reduced income from fees which does not cover the actual costs, there is a high risk that the speed and / or quality of the services they provide will suffer. Schemes going through full planning may be effectively subsidising those using PDR in many areas, creating skewed incentives for developers to prefer schemes eligible to use PDR - whether or not these truly represent the best option to deliver new homes.

Shelter regularly hears from land promoters, housebuilders, public and third sector organisations and community groups frustrated by their experience of working with poorly-resourced planning departments. At a time when there is considerable consensus around the need for planning departments' resources to *increase*, the government should not be extending a system which chokes off those resources.

For the reasons outlined above, the expansion of Permitted Development Rights represents a real threat to overall housing delivery, and a particular risk to future opportunities to deliver social rent: the tenure of housing that will seriously begin to address our housing and homelessness crisis if delivered at scale.

Recommendation: Government should not go ahead with their proposals to extend PDR for new homes.

¹¹ MHCLG (2018) *Public attitudes to housebuilding: Findings from the 2017 British Social Attitudes survey*, Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714160/Public_attitudes_to_house_building_BSA_2017.pdf

¹² Calver, T. & Wainwright, D. (2018) *How cuts changed council spending, in seven charts*

¹³ Bibby, P., Brindley, P., McLean, A., Henneberry, J., Tubridy D. & Dunning, R. (2018) *The exercise of permitted development rights in England since 2010*, RICS [Online], Available: <https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/the-exercise-of-permitted-development-rights-in-england-rics.pdf>

¹⁴ Ibid

Instead, government should devote resources to planning reforms that will help our planning system play a stronger, more proactive, and certain role in facilitating the delivery of the social housing and infrastructure we need.

Local authority land disposals

We welcome government's proposals to amend the rules governing local authority land disposals. Should these proposals be taken forward with no undervalue threshold applied, they will give councils more flexibility to use their land to pursue economic, social and environmental objectives, including meeting local need for social and affordable housing, which is now acute across much of the country. Combined with new freedoms for local authorities with Housing Revenue Accounts to borrow to build housing, these proposals will enhance opportunities for councils to play their full part in driving up overall housing supply by diversifying output.

Where councils are able to write economic, social or environmental objectives into the value of land they own, they will be able to promote schemes with a higher quantum of social and affordable housing, as well as homes aimed at specific groups such as older and disabled people. This will give councils more flexibility to build homes to meet local need, address gaps in market housing provision and boost overall supply through genuinely additional new homes.

However, we would caution that giving councils the *ability* to use land they already own to address the gaps in market housing provision (as well as to pursue other economic, social and environmental objectives), does not guarantee that land will actually be used in these ways. To see local authority land used to best effect, we recommend further reform of the rules governing its disposal, to require councils to use their land to promote local economic, social and environmental objectives, and to ensure that these objectives are written into land values.

Responses to consultation questions

PART 1. PERMITTED DEVELOPMENT RIGHTS AND USE CLASSES

Changing hot food takeaways to residential use

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)? Please give your reasons.

No.

Firstly, there is no mechanism for securing the affordable housing contributions that would otherwise normally be expected from conversions where more than ten homes are created. Shelter has estimated the loss of affordable housing from PDR conversions in urban local authorities between 2015-16 and 2017-17 at 10,340.¹⁵ We should not allow more development to have a get-out clause from making any affordable or social housing contribution at a time when the need for new sub-market homes is acute and rising across most of the country.

¹⁵Weekes, T. (2018) *Revealed – The true scale of affordable housing lost to permitted development rights*, Shelter Blog [Online], Available: <https://blog.shelter.org.uk/2018/12/revealed-the-true-scale-of-affordable-housing-lost-to-permitted-development-rights/>

Secondly, we have significant concerns around the quality and safety of housing that might be delivered if conversions of hot food takeaways to homes were allowed under PDR. Hot food takeaways and homes serve different functions, and as such hot food takeaways would require substantial alterations to design and internal infrastructure to make them appropriate residential units.

Without a planning process to set and enforce standards, there is a risk that conversions will fail to deliver safe and decent homes. As with office-to-residential conversions coming through the permitted development system,¹⁶ conversions of hot food takeaways into residential use risk creating homes that are so poorly designed and of such bad quality that they pose significant health, well-being and safety risks for future occupants.

Thirdly, the change of use that is taking place requires the provision of supporting infrastructure to accommodate extra local residents. However, as discussed in our introduction statement, there is a real risk that there will be no mechanism for securing contributions for infrastructure as the conversions may not be liable for CIL and there is no opportunity to enter into Section 106 agreements. Housing must come alongside the provision of required infrastructure so that housing delivery sustainably contributes to the development of a place. Extending PDR jeopardises this.

Recommendation: Government should not extend PDR to allow hot food takeaways (A5) to change to residential use (C3). Instead, government should ensure that this type of conversion only goes through full planning so that local authorities have the power to ensure that they are positively contributing to the delivery of social housing and government’s wider planning objectives.

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?

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

We will be tackling these two questions together. Our response to both is no.

Shelter recognises the role that higher density development can play in helping to boost housing supply. But, we firmly believe that upward extensions which create new homes should continue to only be approved through the full planning system. Our overarching concerns are with what expansion of PDR could mean for capturing rising land values to secure affordable housing and infrastructure provision, and for housing quality.

1. Reduced ability to capture rising land values.

Research conducted in Vancouver indicates that introducing higher density development in neighbourhoods without additional measures to capture rising land values risks producing land and

¹⁶Clifford, B., Fern, J., Livingstone, N. & Canelas, P. (2018) *Assessing the impacts of extending permitted development rights to office-to-residential change of use in England*, Available: <https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england-rics.pdf>

house price inflation.¹⁷¹⁸ It is reasonable to expect that this would also be the impact of higher density development in English neighbourhoods, as the development potential afforded by PDR would be factored into land and house prices.

CIL, Section 106 or another tool for capturing rising values could mitigate this risk. However, as these mechanisms are currently ineffective for capturing planning gain on PDR schemes, further extending PDR in this way could have the unintended consequence of making homes which are currently relatively affordable in a given area suddenly radically more expensive on the midst of a housing affordability crisis.

2. Poor quality development

Shelter is already concerned that some of the new homes being created through existing PDRs are poorly-designed, small and even unsafe. We are pleased to see recognition of the need to improve quality outcomes in any new PDR for upwards extensions.

The proposal that PDR upward extensions should meet local design codes is important as it would mean that local authorities would retain some oversight for ensuring acceptable levels of quality and that extensions fit well within the local environment. Local design codes would also provide certainty for developers over the design standards that they are expected to meet, reducing barriers to entry for new housebuilders. We support these broad principles.

However, we are deeply concerned about the reduced timeframe local authorities have for ensuring standards are met and quality and safety are assured under PDR. We have heard from local planning officers who are genuinely concerned that planning departments do not have enough time to make considered decisions about design issues on PDR schemes. The full planning process gives local authorities time to ensure that upwards extensions result in high-quality, sustainable homes.

Many proposals to build upwards, even if the height of the building is 4 storeys or less, will have amenity impacts such as overshadowing. These should be properly assessed by planning officers to make sure the impacts are acceptable in planning terms.

We recommend that developments to create new housing continue to benefit from the oversight afforded by full planning. In the event that upwards extensions are removed from full planning, any new route for approving the creation of new dwellings in this way should ensure that local authorities have the time and resources needed to set and enforce quality standards and manage amenity impacts.

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?

No.

Firstly, it would not be possible to secure affordable housing contributions from this type of development. PDR does not need to comply with local affordable housing policy and local authorities

¹⁷St. Denis, J. (2018) *Politicians set sights on housing speculation, not supply, at UBCM summit*, The Star Vancouver [Online], Available: <https://www.thestar.com/vancouver/2018/09/10/politicians-set-sights-on-housing-speculation-not-supply-at-summit.html>

¹⁸Lee-Young, J. (2018) *Allowing duplexes in Vancouver will increase land values, at least a little*, Vancouver Sun [Online], Available: <https://vancouversun.com/business/local-business/allowing-duplexes-will-increase-land-values-at-least-a-little>

cannot enter into Section 106 agreements with developers for these schemes. This proposal would have the impact of greatly extending the social housing get-out clause inherent within the PDR system.

Secondly, there would be reduced means for capturing uplifts in value for the public benefit. As discussed in our response to questions 1.9 and 1.10, urban densification through upward extensions carries the risk of inflating land values and the price of housing unless effective mechanisms are in place to capture planning gain. Such mechanisms do not exist within the current PDR system.

The NPPF states that housing schemes coming forward should be sustainable. The best chance of this happening for upward extensions of free-standing blocks of flats is if this comes through the full planning system where there is a greater possibility to capture uplifts in value and to use this value capture to help provide the necessary infrastructure to support greater housing delivery.

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

No.

Our responses to questions 1.9 and 1.14 outline why we do not believe PDR should be extended to allow upward extension for the creation of new residential units.

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

No.

Our responses to questions 1.9 and 1.14 outline why we do not believe PDR should be extended to allow upward extension for the creation of new residential units.

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

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

Our answer to both questions is 'no'.

We believe that any proposal to extend upwards to create new homes should allow local authorities to consider the extent of works proposed. Any upward extensions to create new homes will require infrastructure works to ensure that the building remains safe and is accessible after the extensions have been completed.

We agree that all of the matters set out in paragraphs 1.25 to 1.27 are vital considerations when assessing whether any upward extension is acceptable.

However, we are concerned that having local authorities consider these issues under a prior approval process would not give planning departments the time that they need to properly assess the nature and impacts of works proposed.

Recommendation: Government should revise plans to extend PDR to cover upward extensions. Instead, government should ensure that this type of development continues to go through the full planning system so that upward extensions can:

- where possible provide affordable housing contributions, including for social housing;
- meet high quality and design standards;
- have the best chance of capturing uplifts in value for infrastructure; and
- avoid unacceptable amenity impacts.

Making permanent the current time-limited PDR for change of use from storage or distribution to residential

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.

Our primary concern with the extension of the PDR system is that communities are missing out on the delivery of potential affordable housing. Since 2015/16,¹⁹ there have been 379 homes delivered through this time-limited type of PDR conversion.. Making this time-limited PDR permanent will make permanent the temporary social housing get-out clause already active in this class of development.

Secondly, we are concerned that this proposal will extend the existing problem of PDR conversions resulting in poor quality and unsafe homes. Under permitted development, local authorities cannot require design or space standards. A 2018 RICS study of 568 residential buildings converted using PDRs found that national space standards were met in just 30% of the homes created.²⁰ More worryingly, the research found emerging evidence of safety concerns, commenting of PDR in Croydon: ‘Some developments were of such poor quality there were health and safety issues and people were being put off from coming into neighbouring properties.’²¹

Thirdly, this proposal will extend another negative feature of the existing PDR system: homes delivered in locations and on sites that are wholly unsuitable places to live, especially given the absence of effective mechanisms - e.g. CIL and S106 - for securing infrastructure contributions. The Raynsford Review of Planning received significant evidence which demonstrated that the expansion of PDR over the last several years has led to ‘the creation of homes in areas such as industrial estates which are often isolated and lack basic social facilities’.²²

As we increase overall housing supply to make up for years of under-delivery, government must put in place safeguards to ensure new homes are delivered as part of sustainable places to live. Making permanent this time-limited PDR would permanently remove the ability of local authorities to ensure

¹⁹This is when change of use from storage to residential through PDR was recorded as a separate category within government’s net addition figures.

²⁰See Clifford, B., Fern, J., Livingstone, N. & Canelas, P. (2018) *Assessing the impacts of extending permitted development rights to office-to-residential change of use in England*, p.10 Available: <https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england-rics.pdf>

²¹ *Ibid.*, p.40

²²Town and Country Planning Association (2018) *Planning 2020 – Final Report of the Raynsford Review of Planning in England*, Town and Country Planning Association [Online], Available: <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd>, p. 51.

that conversions of storage or distribution to residential provide good quality homes including a share of affordable housing.

Recommendation: Government should end the time-limited PDR for change of use from storage or distribution to residential. Instead, government should ensure that this type of conversion is subject to full planning so that local authorities have the power to ensure that they are positively contributing to meeting social housing need and government’s planning objectives.

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?

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?

We will be responding to these two consultation questions together.

We do not support extending PDR to cover demolition of commercial buildings and redevelopment as residential.

We have several key reservations about extending PDR to cover commercial building demolitions and their redevelopment as housing, even with a developer contributions system:

1. No mechanism for guaranteeing social housing delivery

Our primary opposition to the proposal is that it will extend the social housing get-out clause inherent in PDR. We cannot see any workable way to ensure that PDR could be adapted to guarantee that social housing is delivered as part of demolition and rebuilding schemes taking place through this system.

Shelter research shows that between 2015/16 and 2017/18 urban authorities in England have lost out on 10,340 potential affordable homes, including much-needed social-rent homes, as a result of residential schemes coming through PDR rather than full planning.²³ The proposals to extend PDR to demolitions risks extending this problem. This is unacceptable at a time when 277,000 households are recorded as homeless in England.²⁴

Question 1.27 clearly demonstrates concern over this problem by asking how PDR could work in a way that could retain developer contributions. However, there are fundamental flaws with using PDR to deliver new residential developments which mean that it will be impossible to secure the type of developer contributions required that will guarantee much-needed social housing delivery. These include:

²³Weekes, T. (2018) *Revealed – The true scale of affordable housing lost to permitted development rights*, Shelter Blog [Online], Available: <https://blog.shelter.org.uk/2018/12/revealed-the-true-scale-of-affordable-housing-lost-to-permitted-development-rights/>

²⁴Reynolds, L. (2018) *Research: Homelessness in Great Britain – The Numbers Behind the Story*, Shelter [Online], Available: https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/research_homelessness_in_great_britain_-_the_numbers_behind_the_story

- developers do not need to comply with local affordable housing policy; and
- local authorities cannot enter into S106 agreements with developers for PDR schemes.

This means that there are no existing mechanisms to guarantee on-site affordable housing delivery from developers.

One potential method for securing affordable housing contributions might be to require developers to comply with a levy system like CIL. Although this method could achieve financial contributions for affordable housing from developers, it is likely to represent a slow, inefficient and relatively ineffective way of delivering affordable homes. The commuted sums experience is instructive in this regard.

Under full planning, developers can agree to pay a commuted sum to local authorities rather than/alongside providing on-site affordable housing. We have used Freedom of Information requests to gather evidence on how commuted sums are being used. The responses suggest many local authorities have a poor track record of spending commuted sums, and a particularly poor track record of using this money to build new affordable housing. Information provided by Oxford City Council revealed that the council received £1,252,536 in commuted sums between 2012–13 and 2016–17 but had built no affordable homes with this money. In fact, not one pound of it had been spent at the time of enquiry.

While we do not have a full picture of the barriers to delivering affordable housing using commuted sums, recent surveys with social housing providers have listed the availability of land as a – often *the* – leading constraint.²⁵ On-site delivery of affordable housing as part of mixed developments overcomes this barrier, and often represents the fastest, most effective option for delivering homes for those who cannot afford the market.²⁶

In addition, on-site delivery is crucial for meeting the government’s objective to create mixed and balanced communities, as set out in the NPPF. Increasing the role of financial contributions in affordable housing supply at the expense of on-site delivery will result in more schemes which do not contain a mix of housing tenures, creating unbalanced communities.

We believe social and other types of affordable housing secured through developer contributions should continue to be delivered on-site as part of mixed developments, except where local housing need can be met more effectively by building homes elsewhere. In this case, we recommend that wherever possible alternative ‘donor’ sites are identified and used to deliver affordable homes. There is a continued role for financial contributions in affordable housing delivery, but it should be marginal and should not be the normal way of raising developer contributions for any class of development.

The best way of providing affordable housing to meet urgent need for it across the country is to get it built as part of mixed developments. Should the government go forward with proposals to create a PDR for demolitions of commercial buildings, we strongly recommend that a mechanism is created to ensure on-site delivery of developer contributions in line with local affordable housing policies. As no such mechanism currently exists, we recommend that commercial demolitions continue to go through full planning, where Section 106 agreements can be used to secure on-site delivery.

²⁵ See: Savills Research, *The Savills Housing Sector Survey 2018*, 2018, p.9 <https://pdf.euro.savills.co.uk/uk/residential---other/the-savills-housing-sector-survey-2018.pdf>; J. Morphet and B. Clifford, *Local authority direct provision of housing*, National Planning Forum and Royal Town and Country Planning Institute, 2017, p. 52 and p.55 <https://www.rtpi.org.uk/media/2619006/Local-authority-direct-provision-of-housing.pdf>

²⁶ [Independent review of build out: draft analysis](#), 2018, MHCLG, p.12

2. Reduced opportunities for securing infrastructure contributions from uplifts in value

The proposal to extend PDR to cover demolition and replacement also risks reducing the opportunities to secure contributions towards the infrastructure that these new homes need. Under PDR, this class of development would not be able to get infrastructure contributions via Section 106 agreements. The only other route is for developers to make CIL contributions. But, as explained in our introduction, there are two situations where these schemes would not need to make any CIL payments.

Firstly, if the scheme is taking place in a location where a local authority does not have a CIL charging schedule. As just 159 local authorities have a CIL charging schedule in place there is a risk that there will be a substantial number of areas where commercial demolitions and redevelopment as housing would not be required to make infrastructure contributions.

Secondly, the specificity of CIL rules mean that developers will only need to pay CIL on floorspace that is additional to floorspace that has been demolished if developers can prove that the old building has been in lawful use for 6 months within the past three years.²⁷ Where developers can prove that the commercial site has been in use for 6-months prior to the change of use they would be exempted from making any CIL payment. In relation to office-to-residential PDR schemes, Shelter has heard anecdotal evidence of otherwise vacant buildings being used by just one person for 6 months to ensure this exemption from CIL – something that could also happen in an extended PDR system.

As a result of the restricted application of CIL and absence of Section 106 agreements on PDR schemes, local authorities are less likely to capture some of the significant value uplifts that would arise from demolishing commercial buildings and rebuilding them as residential. Ultimately, this means that local authorities would be less likely to gain contributions for the provision of infrastructure that would support sustainable development on these schemes. This would build on the existing situation identified by RICS, where many office-to-residential conversion schemes have gone through the permitted development system making no CIL contributions at all.²⁸

This is also an important concern given that the government intention of extending PDR to allow demolition and replacement is to enable the 'full potential of a building or site to be realised'.²⁹ To achieve this, it is necessary that new developments make appropriate contributions to local infrastructure provision, something that cannot be ensured through PDR.

3. Delivery of housing on unsuitable sites

Extending PDR to allow demolition and replacement may also undermine Local Plans by enabling development on sites which local authorities, for good reason, have not designated for housing. For example, there is a real risk that extending PDR to commercial demolitions will lead to housing being delivered on industrial parks that local authorities, following the assessments required as part of a local planning making process, have sought to protect as employment space and/or have deemed as unsuitable for housing. RICS has noted that in Leeds 14% of implemented PDR office-to-residential

²⁷MHCLG (2018) *Guidance: Community Infrastructure Levy*, Available:

<https://www.gov.uk/guidance/community-infrastructure-levy#collecting-the-levy>

²⁸Clifford, B., Fern, J., Livingstone, N. & Canelas, P. (2018) *Assessing the impacts of extending permitted development rights to office-to-residential change of use in England*, Available:

<https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england-rics.pdf>

²⁹MHCLG (2018) *Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes*, Available: <https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes>, p. 20.

schemes have taken place on industrial estates, with planners in Leeds being concerned with amenity issues on the schemes.³⁰

This risks people being housed in unsuitable locations.³¹ In the same vein, the proposal risks undermining the overall local planning process. It may result in PDR schemes coming forward which undermine local long-term housing and economic development strategies that local authorities have put in place after detailed, rigorous processes of community engagement and evidence-gathering.

4. No opportunity to scrutinise design of developments

In bypassing the full planning process, PDR removes the opportunity for local authorities and local communities to scrutinise the design of new developments. This means that there will be new, potentially large and high-density housing schemes that have no local authority oversight for ensuring that internal design is of a high enough standard to ensure that inhabitants' health, well-being and safety is not under threat as a result of living in the development. There will also be no opportunity for local authorities to scrutinise external design plans to ensure that they respond to local character and design standards, which is a stated requirement within paragraph 110c of the NPPF.

Many existing PDR conversions have been built to poor standards as a result of planning authorities not being able to scrutinise developers' design plans. For example, an evaluation of PDR produced for RICS highlighted that at Green Dragon House — an office-to-residential conversion in Croydon — 0 out of 111 units met national space standards.³² This report also identified PDR office-to-residential schemes with 'serious concerns about issues like overcrowding, noise, health and safety (particularly fire safety).'³³

There is a real risk is that a lack of local authority oversight over developers' internal and external design plans will result in commercial demolitions and rebuild schemes that pose similar health and safety risks to residents, and which fail to reflect the local character of the area.

Everyone has the right to be housed in a decent and safe home, and housing schemes should be designed with the need to fit in with existing communities in mind. Only if commercial demolitions and rebuild come through full local planning can we have the processes in place for ensuring that new housing supply meets these planning objectives.

5. No local community involvement

An established principle in paragraph 40 of the NPPF is that developers should engage with the local community over development plans. However, PDR threatens democratic accountability in housing development by removing the primary mechanism through which local communities are engaged over development plans: statutory consultation. There is no statutory opportunity within PDR for communities to scrutinise a developers' housing plans and suggest amendments to make sure that plans are respond to the needs of the local community.

Extending PDR to cover commercial demolitions would remove opportunities for local communities to scrutinise another class of residential development. This would run counter to government's

³¹ See Town and Country Planning Association (2018) *Planning 2020 – Final Report of the Raynsford Review of Planning in England*, Town and Country Planning Association [Online], Available: <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd>, p. 51.

³²Ibid

³³Ibid, p. 53

localism agenda where local communities should be empowered to play significant roles in the planning and development of places.

Recommendation: Government should not extend PDR to cover commercial demolitions and redevelopment as residential. If PDR are applied to this class of development, then this will enable developments that:

- will not guarantee social housing delivery;
- will be less likely to provide infrastructure contributions to help make the housing scheme sustainable;
- will lead to poor quality and unsafe located housing;
- may lead to the delivery of unsuitably located housing; and
- will remove local communities from the planning and development process

Instead government should ensure that our planning (and land) system is as equipped as possible to guarantee that commercial demolitions and redevelopment as residential lead to the provision of good quality and safe social housing that is responding to the needs and aspirations of local communities.

Impact Assessment

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

Our responses have detailed, at length, what we think the likely impacts will be of government's housing-related proposals for extending PDR. We will also briefly summarise below our chief concerns about the likely impacts of proposals for extending PDR.

- i. Allow greater change of use to support high streets to adapt and diversify**
- ii. Introducing a new right to extend existing buildings upwards to create additional new homes**
- v. Making permanent the right for the change of use from storage to residential**

For the above proposals, our concerns can be summarised as follows:

- There will be no mechanism for guaranteeing the delivery of social housing units from PDR;
- There is no sufficient process which enable local authorities to safeguard against PDR schemes supplying poor quality, small, and unsafe housing;
- There are reduced mechanisms for securing infrastructure contributions that will contribute to making new housing supply sustainable;
- Local authorities will receive heavily reduced planning fees at a time when local planning departments have seen budgets reduced cuts;
- Local communities will be side-lined from the planning process.

We are therefore concerned that the overall impact of this proposal will be to exacerbate, rather than solve, our current housing crisis. We are also concerned that another impact of government's proposals will be to further disempower local authorities and communities within planning.

Recommendation: If government is committed to addressing our housing crisis and is to a localism agenda, then it must take stock of these likely impacts by halting plans to extend PDR for new

homes. Instead, government should ensure that these schemes continue to go through full planning

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? What evidence do you have on these matters? Is there anything that could be done to mitigate any impact identified?

The public sector equality duty in the *Equality Act 2010* clearly states that ‘the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons’ disabilities.’³⁴ Government proposals to extend PDR threaten the ability of local authorities to meet this duty. As PDR schemes do not go through full local planning, there is no opportunity for local authorities to scrutinise a scheme’s design proposals to make sure that the design takes serious account of the needs of disabled people. This risks closing off a new generation of housing supply from disabled persons. For example, the conversion of Newbury House, Ilford into housing has led to the provision of units as small as 13 square metres,³⁵ which raises serious concerns about whether the flats in this building are wheelchair accessible. To mitigate against problems such as this, government should ensure that the types of new housing development that are the subject of this consultation continue to be required to go through full planning.

An additional equalities concern relates to our knowledge that some housing schemes coming through the PDR route are being used by local authorities as temporary accommodation. As we have already discussed at length in this consultation response, PDR schemes are leading to the provision of at times poor quality, tiny and unsafe housing which are in grossly inappropriate locations. We are concerned that groups with protected characteristics who are overrepresented in homelessness statistics, such as BAME groups,³⁶ will be disproportionately subjected to the negative impacts of being housed in PDR schemes. If government wants to mitigate against this risk, then they should halt their plans to extend PDR for new homes. This way we will minimise the risk of poor quality, small, unsafe and inappropriate housing schemes coming forward that may come to be used as temporary accommodation.

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?

c.

³⁴*Equality Act 2010*, Section 149, Available: <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

³⁵Jones, R. (2018) *As small as 13 sq metres: are these the worst new flats in Britain?*, The Guardian [Online], Available: <https://www.theguardian.com/money/2018/aug/25/flats-block-converting-offices-living-space>

³⁶MHCLG (2018) *Statutory Homelessness*, Available: <https://www.ethnicity-facts-figures.service.gov.uk/housing/homelessness/statutory-homelessness/latest>

Shelter recommends that the threshold for the existing general consent is removed completely so that local authorities can dispose of land held for non-housing purposes at any “undervalue” without seeking consent from the Secretary of State.

We have heard from local authorities, planning consultants and legal experts that the current threshold system leads to delays and additional costs in the process of disposing of land. The problem is not with the threshold value of £2 million itself, but rather with the complexities of assessing whether or not Section 123 applies and of quantifying the extent of any “undervalue”. The system can work efficiently for simple disposals, but can become complex, ambiguous and slow where there is a development agreement or promotion agreement in place on local authority land. For example, if a council wishes to grant an option that will generate a contractual profit share rather than an up-front share of disposal proceeds, it can become difficult to quantify the extent of any “undervalue”. If the current £2 million threshold is increased rather than removed, there is a risk that disposals of land for non-housing purposes will continue to be held up by such administrative barriers, and a further risk that local authorities may be disincentivised from considering and using new and innovative delivery models, including joint ventures.

We understand the existing threshold system is intended to ensure that local authorities provide value for money from land disposals. We believe this objective can be met through the general requirement for local authorities to provide value for money and satisfy their external auditors. We believe the proposal to extend the economic, social or environmental well-being criteria from the existing general consent regime to the new proposed general consent regime will further support good decision-making in land disposals, removing the need for a threshold for general consent.

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? Please give your reasons.

Yes.

We welcome government’s proposals to issue a new general consent for the disposal of local authority land held for planning purposes. If government takes forward this proposal with no threshold - so that local authorities can dispose of land at any “undervalue” without seeking consent from the Secretary of State - this will streamline the process for land disposals. More land should therefore become available for housing more quickly.

Question 2.4: If yes, do you think any new general consent should apply to: a. disposals at an undervalue of £2 million or less?; b. disposals at an undervalue of £5 million or less?; c. disposals at an undervalue of £10 million or less?; d. disposals at some other undervalue threshold? (please state level); e. all disposals regardless of the undervalue? Please give your reasons.

e.

Shelter recommends that any new general consent should apply to all disposals with no undervalue threshold.

We have heard from local authorities, planning consultants and legal experts that the current threshold system for the existing general consent regime leads to delays and additional costs in the process of disposing of local authority land, and may disincentivise the use of new and innovative delivery models where any “undervalue” cannot easily be assessed. Please see our response to

question 2.1 for further detail on why we believe general consents for local authority land disposals should not use undervalue thresholds.

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?

Yes. We believe the economic, social or environmental well-being criteria which apply to the existing general consent should also apply to any new general consent. This will support good decision-making in how local authority land is used, by ensuring that local authorities have clear policy objectives for “undervalue” disposals, which can then be written into land values.

Question 2.6: Do you have any additional comments about the current system governing disposals of land at an undervalue by local authorities and our proposals to amend it?

We welcome government’s proposals to amend the rules governing local authority land disposals. Should these proposals be taken forward with the threshold removed, they will give councils more flexibility to use their land to pursue economic, social and environmental objectives, including meeting local need for social and affordable housing, which is now acute across much of the country. Combined with new freedoms for local authorities with Housing Revenue Accounts to borrow to build housing, these proposals will enhance opportunities for councils to play their full part in driving up overall housing supply by diversifying output.

As the recent independent review of build out rates led by Oliver Letwin found in relation to large sites, the homogeneity of UK housing output – and above all over-concentration on market sale homes – places fundamental constraints on build out rates, and so on overall supply.³⁷ Building more social rent and other affordable housing on new developments would allow housebuilders to tap into different sources of demand, building more homes faster overall.

However, most land enters housing development having been traded on the assumption that it will be used to maximise delivery of market sale homes with prices similar to those in the second-hand market in a given area.³⁸ A housebuilder which then tried to use such land for a more diverse housing scheme would struggle to make back the money on their initial land investment, faced with lower and / or less immediate sales receipts.

Increasing opportunities for land to enter development at lower values is therefore critical to diversifying housing output. Where councils are able to write economic, social or environmental objectives into the value of land they own, they will be able to promote schemes with a higher quantum of social and affordable housing, as well as homes aimed at specific groups such as older and disabled people. This will give councils more flexibility to build homes to meet local need, address gaps in market housing provision and boost overall supply through genuinely additional new homes.

However, we would caution that giving councils the *ability* to use land they already own to address the gaps in market housing provision (as well as to pursue other economic, social and environmental objectives), does not guarantee that land will actually be used in these ways. To see local authority land used to best effect, we recommend further reform of the rules governing its disposal, to require councils to use their land to promote local economic, social and environmental objectives, and to

³⁷ [Independent review of build out: draft analysis](#), 2018, MHCLG, p.12

³⁸ *Ibid.*, p.14

ensure that these objectives are written into land values. This could include the use of separate policies for social and affordable housing delivery on land released from local authority ownership.

Question 2.7: Do you consider that the current £10m threshold contained in the general consent governing disposals by the Greater London Authority remains appropriate? Please give your reasons.

Shelter recommends that the threshold for the existing general consent is removed completely so that the Greater London Authority can dispose of land held for housing or regeneration purposes at any “undervalue” without seeking consent from the Secretary of State. This will streamline the process for land disposals so that more GLA land becomes available for housing more quickly.

Please see our response to question 2.1 for further detail on why we believe general consents for land disposals should not use undervalue thresholds.

Question 2.8: If you consider the current threshold is no longer appropriate, or that the limit should be removed completely, please specify what you think the alternative should be and give reasons.

We understand the existing threshold system is intended to ensure the Greater London Authority provides value for money from disposals of land for housing and regeneration purposes. We believe this objective can be met through the general fiduciary duty on the GLA to use public funds prudently and in a manner which affords value for money. The requirement for the GLA to demonstrate that any disposal “undervalue” supports economic, social or environmental objectives will also continue to support good decision-making in GLA land disposals, removing the need for a threshold for general consent.