
***Decision Session - Executive
Member for Economy and Strategic
Planning***

27th April 2021

Report of the Director of Transport, Environment and Planning
(Portfolio of the Executive Member for Economy and Strategic Planning)

**The Housing, Communities and Local Government Committee Inquiry
into Permitted Development Rights.**

Summary

1. On 23rd March 2021 The Housing, Communities and Local Government Committee launched a new inquiry to examine the Government's approach to permitted development rights.
<https://committees.parliament.uk/work/1131/permitted-development-rights/news/153026/new-inquiry-permitted-development-rights/>
2. The Committee invites submissions on the following issues. With specific reference to permitted development in respect of large-scale development, commercial-to-residential conversions and changes of use between different types of commercial and retail premises:
 - i. What role should Permitted Development Rights (PDR) play in the planning system?
 - ii. What is the impact of PDR on the quality and quantity of new housing, including affordable and social housing?
 - iii. What is the impact of PDR on local planning authorities, developer contributions and the provision of infrastructure and services?
 - iv. Is the Government's approach to PDR consistent with its vision in the Planning White Paper?
 - v. What is the impact of PDR on the ability of local authorities to plan development and shape their local communities?
 - vi. Is the government right to argue that PDR supports business and economic growth?

- vii. What is the impact of PDR on the involvement of local communities in the planning process?
 - viii. Should the government reform PDR? If so, how?
3. The deadline for submissions is Friday 30th April 2021.

Recommendation

4. The Executive Member is asked to:
- i. Note the content of this report; and
 - ii. Delegate to the Director for Environment, Transport and Planning to submit evidence to the Housing, Communities and Local Government Committee Inquiry into Permitted Development Rights.

Background

Permitted Development Rights

5. Permitted Development Rights (PDR) allow for certain types of development to take place without requiring the benefit of formal planning permission from the Local Planning Authority (LPA). PDR can cover a vast range of works from simple changes of use where no physical building works take place, to types of development where building work does occur such as extensions and alterations to residential dwellings or minor works such as the erection of a wall or fence.
6. Different land uses benefit from different PDR. It is PDR that allows a householder to erect a garden shed, allows a farmer to erect a new agricultural building. In some instances PDR can be given to specified bodies or groups undertaking particular tasks. PDR allows the Council in its role as Local Highway Authority to undertake development within the Highway; or install lamp standards and public seating. It is PDR that makes provision for telecommunications providers to install things like street cabinets for broadband services.
7. PDR have been around in some form or another for decades. Principally they have been set down within the Town and Country Planning (General Permitted Development) (England) Order. Typically

PDR set out the nature or type of development that can be undertaken and then prescribe a set of conditions or limitations which must be adhered to allow the development to constitute permitted development. These conditions and limitations normally relate to size limitations or specifically restrict a particular right in a certain type of area such as Conservation Area, National Park or Area of Outstanding Natural Beauty (AONB).

8. PDR are set out within national legislation with slightly differing regimes existing in England, Scotland and Wales. However in all cases they transcend Local Authority boundaries.
9. In certain circumstances a Local Planning Authority can seek to restrict the extent to which particular PDR can be exercised. There are two main ways in which this can be done. Firstly via a condition attached to the granting of planning permission. A common use of this approach would be to restrict the formation of new windows in a particular elevation of a house extension to prevent instances of overlooking. The second method available is via what is called an Article 4 direction which can be used a defined geographic area to restrict or withdraw a particular PDR. An example of this in York is the Article 4 direction relating to Houses of Multiple Occupation (HMO).
10. However it should be noted that in both cases any restriction on PDR must be precisely defined and when used must be used sparingly. Conditions which remove PDR in their entirety are normally deemed to be unreasonable. In the recent Government consultations on reforms to the planning system it was apparent that future restrictions in respect Article 4 directions will likely be made which may restrict the use of such directions on large geographic areas.
11. Overtime the legislation setting out PDR has been subject to periodic change and updates. However in more recent years the pace of change has appeared to increase with the introduction of a multitude temporary measures, which are then quite often made permanent.
12. Notably there has been a much wider use of the Prior Approval process around exercising PDR. Introducing the need for applicants to apply to the LPA to determine whether Prior Approval is required. This process is perhaps best described as a 'light touch' application

process whereby a degree of public consultation and technical assessment takes place; however only very specific matters can normally be considered.

13. Amongst more recent changes to the PDR regime has been the introduction of measures which facilitate the change of use of various existing uses to residential. The government has maintained that these changes were intended to increase the supply homes with the aim of contributing to addressing the national housing shortage.
14. Perhaps the most well-known of this type of PDR is the Office to Residential change of use. This particular right was first introduced in 2013 as a temporary measure however these have subsequently been made permanent. Other measures allow for the conversion of Agricultural buildings to residential dwellings and Business premises (such as warehouses, used for storage and distribution) to residential dwellings.

What role should PDR play in the planning system?

15. PDR are a well-established feature of the planning system. Many of the PDR which exist facilitate development which is typically of relatively small scale and wouldn't under normal circumstance give rise to concerns which would warrant the more detailed assessment of a formal planning application. Or provides rights to particular groups or statutory undertakers to facilitate works they undertake on a day to day basis in delivering and maintaining their networks and infrastructure.
16. Fundamentally PDR provides certain freedoms to various individuals, bodies or groups to undertaken specific developments, subject to them being in compliance with precisely defined limitations.
17. The nature of PDR is such that it would be impossible for it to be a perfect system. PDR generally do not have the ability to take account of the situation on the ground they cannot make calls of individual judgement. There will therefore be instances where quirks occur which within the context of PDR are legally correct and permitted but in practice may create a somewhat undesirable situation in practice –

such as ground floor windows immediately adjacent to boundaries or overly large outbuildings within a residential garden.

18. Historically, perhaps with the exception of some development on Agricultural Holdings and some telecoms development; where prior approval notifications have been part of the process – PDR existed and were capable of being exercised by individuals or groups who benefited from the rights prescribed to them; without them having any obligation to notify the Local Planning Authority. For example, a homeowner could research what the permitted development allowances allow, satisfy themselves that they would be able to comply with them and then decide to erect a shed or greenhouse in their garden.
19. Subsequent amendments and expansions to the PDR regime have seen the much wider use of the Prior Approval process whereby developers seeking to exercise particular PDR are required to notify the LPA prior to commencing development.
20. The vastly expanded use of the Prior Approval process and the prescribing, within legislation, of what matters can be considered by the LPA have introduced matters of judgement into the PDR regime. The introduction of matters of judgement by their very nature then introduces the potential for inconsistency to arise, both at a local level within an individual LPA or even at a national level in instances where decisions are being made by Planning Inspectors.
21. It could therefore be argued that this goes beyond the traditional role of PDR within planning system. In some instances the now vastly expanded PDR, particularly those which facilitate Office to Residential conversions, bring forward what can at times be development of an extremely significant scale – many which would be deemed to a Major application if considered in the context of a formal planning application. These developments bring impacts with them, particularly upon local communities – but they do not require planning permission.

What is the impact of PDR on the quality and quantity of new housing, including affordable and social housing?

22. PDR has facilitated the provision of new housing in some shape or form since 2013. Subsequent amendments have broadened the existing uses from which new housing can be created from.
23. Having regard to the quality of the new housing that PDR has provided. There have been well documented stories in the national media of flats with no windows, or the resulting 'housing' being described as being like an open prison. Whilst these issues have not been reported in developments that have occurred in York, the fact remains that the PDR did technically allow this to occur. Perhaps not by design but by omissions and flaws within the legislation; which were there then exploited by some developers.
24. Flats without windows occurred because, at the time, there was nothing in the PDR which allowed LPAs to prevent such development from occurring, as such considerations were not one of the matters that the LPA could adjudicate on.
25. Further amendments to the PDR should mean that issues such as these do not occur in the future. In cases where PDR would result in the creation of a new dwellinghouse the dwelling must not have an internal floor area of less than 37m² and that the dwelling must comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015. Measures have also been added which require the provision of adequate natural light in all habitable rooms of the dwellinghouse. However it is apparent that these amendments, whilst clearly necessary, have been reactionary in order to deal with flaws in the original drafting of legislation.
26. These amendments should assist with ensuring new dwellings created via PDR do at least meet a minimum requirement in terms of accommodation standards. However one likely issue that will still be prevalent is the type of dwelling that will be delivered.
27. The basic principle of the PDR's which relate to the creation of dwellinghouses is that they are delivered as a result of the conversion of building from an existing use. The resulting dwellings will therefore in all likelihood retain some characteristics of their original use,

particularly in terms of visual appearance. Office buildings will still appear like offices.

28. Similarly certain existing uses create a particular type or format of building which then only really lends itself to a particular type of residential conversion. For example, office buildings, when built would typically be designed to maximise the amount of office space created, perhaps at the expense of outdoor space; the amount of built form on a site or plot would be maximised. Subsequently this creates a building that is perhaps better suited to creating flat/apartment type dwellings; where higher volumes of units can be achieved. Rarely do such schemes deliver dwellings which are perhaps arranged over 2-3 storeys and have amenities such as private gardens; nor do they typically deliver what may be considered to be traditional family homes.
29. As outlined earlier in this report. PDRs which allow for the creation of residential units have been a feature of the planning system in one form or another since 2013. In that time the LPA has received in excess of 140 applications which seek to exercise such PDR.
30. Cumulatively these applications have resulted in at least 1781 units being permitted. The biggest proportion of which came from the Office to Residential PDR (1740 units) – early submissions of these prior approvals didn't explicitly require the number of units being created to be stated and information requirements were little more than a completed application form; therefore it is not possible to determine how many units some of the early submissions intended to deliver.
31. It is not known exactly how many of these total consented units have actually been delivered and made a contribution to the overall housing stock within the city. An important distinction to make is that any PDR which allow for the creation of dwellings does not necessarily deliver new dwellings. All the PDR does is create a stock of units which have consent, or the possibility of being built. Approvals need to be implemented in order to deliver housing stock.
32. One very important factor to stress with the PDR that create new dwellings is that none of the schemes proposed or consented will deliver any affordable or social housing to the city. There is no

mechanism within the PDR by which any affordable or social housing can be secured. The only way in which this could occur would be if an individual developer made a conscious decision to provide such housing within their particular development by way of some sort of philanthropic gesture.

33. Considering the issue of affordable and social housing provision more closely; of the Office to Residential conversion prior approval applications have been received around 50% of these were schemes where 10 or more dwellings were proposed. Had these dwellings been proposed as part of a formal application these developments would have been classed as Major applications and would have been expected to make a contribution towards the provision of affordable housing, either on site as physical dwellings or by way of a commuted sum to be used towards the provision of affordable housing elsewhere in the city. The true number of affordable housing units that the city may have missed out on will always be difficult to accurately quantify. It is not uncommon for the provision of affordable housing to be heavily skewed by issues of viability.

Is the government's approach to PDR consistent with its vision in the Planning White Paper?

34. The government published the planning white paper 'Planning for the Future' in August 2020. The paper, amongst other things, proposed 'radical reform unlike anything we have seen since the Second World War'. 'One that is simpler, clearer and quicker to navigate, from the ground up, a whole new planning system for England'. 'That actively encourages sustainable, beautiful, safe and useful development rather than obstructing it'.
35. At this stage there is still a lot of the technical and legal detail of the proposed reforms that are simply unknown to be able to confidentially conclude whether the government approach to PDR is consistent with the vision it sets out within the white paper.
36. The White Paper dealt with three pillars:
- i. Pillar One – planning for development

- ii. Pillar Two – Planning for beautiful and sustainable places
- iii. Pillar Three – Planning for Infrastructure and connected places

37. Considering Pillar One; the white paper states: ‘The starting point for an effective planning system is to establish a clear and predictable basis for the pattern of development and form of development in an area (Para 2.1).

38. PDR to a great extent, particularly in the context of those rights which create dwelling units, fails to achieve this aim. PDR by its nature is somewhat unpredictable; in that it awards a right to a particular land use or existing operation which can be exercised at will. There from the perspective of a local planning authority it makes it harder to carry out longer term more strategic planning. Instead it will likely precipitate more piecemeal and sporadic development.

39. Furthermore in cases where a particular PDR does not allow for minor operational development and only relates to a change of use; a development would find themselves having to make the prior approval application and a separate formal planning application for an exterior works such as alterations to exterior appearance or window and door positioning’s.

40. PDR by their nature are quite binary. A development will either comply with the relevant PDR or it will not. This has the potential to create a more predictable system, however some may argue that this would only be to the benefit of the developer, land owner or applicant.

41. Moving to Pillar Two – Planning for beautiful and sustainable places. PDR applies across all geographic areas. Usually some additional restrictions apply in cases of land or buildings with particular landscape designations such as AONBs or National Park and in areas identified as being of some form of heritage significance such as Listed Buildings and Conservation Areas.

42. PDR do not generally have a design consideration element within them. For example Householder PDR usually requires that works are completed in materials which match those used in the host dwelling. Or in the case of change of use PDR there is not normally scope for

minor operational development. Therefore at best they can only maintain the current situation in terms of visual appearance, general design and character.

43. Finally, Pillar three – planning for infrastructure and connected places. The white paper acknowledges that new development brings with it new demand for public services and infrastructure. However at present the only method by which a developer contribution can be secured from development that is PDR is via the Community Infrastructure Levy (CIL), which requires the local authority to have an adopted CIL charging schedule, which includes provision to charge for PDR development.
44. In the absence of a local authority having an adopted CIL charging schedule there is at present no scope for PDR development to make a contribution towards the additional demand that would be placed upon public services. This means that new developments do not contribute towards the impacts they bring to a particular locality.
45. The success of such developments, particular those which would otherwise constitute large scale residential developments rely solely upon their location. Such developments in more urbanised or populous centres will already be in close proximity to existing amenities and transport networks; allowing them to readily access these facilities without any particular undue burden. This will not be the case in less densely populated areas.
46. Overall then it could be argued that the current approach to PDR does not align with the visions set out within the White paper.

What is the impact of PDR on the ability of local authorities to plan development and shape their local communities?

47. PDR which allow for minor development to take place, such as modest extensions or alterations to an existing building overall do not have a particular impact upon the ability of local authorities to plan development.

48. The aspect of PDR which undoubtedly does have an impact upon the ability of local authorities are those PDRs which allow for the creation of dwellings on a potentially large scale.
49. As part of the plan making process a local authority will consider external factors such as anticipated growth over the plan period. This will then inform the amount of housing, the amount of business space that will be required to accommodate economic growth to provide jobs. As well as identifying where additional infrastructure may need to be delivered, such as new rail stations, highway upgrades, transport interchanges. All of these are then balanced against the various protectionist type considerations that must be weighed into the balance such as heritage or ecological considerations and constraints.
50. The result of this holistic plan making approach is usually an outcome which, based on anticipated growth, ultimately seeks to provide the infrastructure to deliver the aspirations set out within an adopted plan. In simple terms a local authority sets out the amount of housing or jobs it aspires to deliver and then sets out where these will be delivered across their area.
51. PDR which brings about large scale development such as those which allow multiple units to be created jeopardises this. Over a plan period there will always be an element of development that occurs which is unplanned or takes place on windfall sites. Those are the sites which were not originally included in an adopted plan but for whatever reason have been brought forward for development. Such development can make an important contribution to housing stock or general economic development.
52. However the clear risk is that PDR, in allowing the principle of development, facilitates development occurring in places which it was not intended to when the plan making process was being undertaken.

Is the government right to argue that PDR supports business and economic growth?

53. The argument that PDR supports business and economic growth is somewhat simplistic. The real situation is far more nuanced and

arguably needs to consider the type of support and economic growth it delivers and whether that is good growth or indeed desirable growth.

54. PDR will, by virtue of facilitating development, support business and economic growth to a degree. For example it will support a building company tasked with implementing the conversion. The subsequent dwellings will then become housing stock which will either be sold to individuals or rented out – all of which will support businesses and economic growth in this particular context. It will create economic activity.
55. Conversely PDR allows things such as Offices, retail space and agricultural buildings to be lost and converted to residential dwellings. Therefore there is a degree of economic activity lost as a result of the PDR. These are spaces that are occupied by businesses which make an economic output, employ people, creating a flow or a cycle of economic activity. Therefore PDR wouldn't help support an independent business such as a retailer if their landlord had decided to pursue a scheme to convert their premises to residential units.
56. Overall, given that large PDR schemes do not provide any contributions towards infrastructure in the city the overall net effect is likely tilted towards such schemes having a more negative impact upon businesses and economic growth.
57. The forthcoming expanded PDR (Class MA) which covers the conversion from Class E (commercial, business and services) to residential has the potential to bring a wider range of commercial uses into the scope of being able to be converted to residential units. This is expected to come into force on 21st August 2021.
58. Whilst the new Class MA PDR does include some limitations in the size of floor space that can be converted (1500m²) and a vacancy test (premises must have been vacant for a period of 3 continuous months). There clearly remains a distinct risk, particularly to town centres that large commercial spaces could become prime for conversion.
59. These potential risks are potentially heightened within the context of any sort of recovery from the Coronavirus pandemic, owing to the

documented changes in shopping and working habits and uncertainty around the nature of any recovery.

60. There are concerns with regard to the forthcoming PDR that such changes may be counterproductive to the high street recovery and that the changes only incentivise property owners to push businesses out of premises in order for them to realise the rewards associated with residential property.
61. It is considered unlikely that such PDRs would be of overall benefit to the vibrancy and vitality of the high street; sentiments which are set out in a joint letter to Prime Minister from the Royal Town Planning Institute (RTPI), Royal Institute of British Architects (RIBA), Chartered Institute of Building (CIOB) and Royal Institution of Chartered Surveyors (RICS) - <https://www.rtpi.org.uk/media/8196/01042021-final-jis-letter-to-the-prime-minister.pdf>

What is the impact of PDR on the involvement of local communities in the planning process?

62. In the vast majority of people their involvement in the planning process is usually as a result of either being an applicant proposing a development or as a result of being invited to the process as a result of development being proposed within their local area and it being advertised to them via a site notice or neighbour notification letter.
63. Generally local communities would expect to be able to participate in the planning process and make any representations that they wish to. All of which contribute to the wider democratic process of the planning system. It is often the case an application or development proposal which is being proposed within their community is the most pressing issue to them at that time and in their eyes all matters are up for discussion whether they be good, bad or indifferent.
64. The complication to this that PDR brings is the way in which it can tie the hands of various stakeholders. The LPA can only consider certain prescribed matters, in some instances these do not include obvious things such as possible harm to the amenity of existing residents or properties. PDR also generally removes the basic question of whether a development proposal is acceptable in principle in a particular

location. Communities lose the ability to raise what may well be valid concerns or issues in any other circumstance. PDR erodes the democratic process of planning system.

65. These can be serious issues. A proposed development may cause serious concerns to a local community. However it could be the case that in certain circumstances the LPA can do very little to either mitigate those concerns simply because the PDR does not allow them to. The result of this is that LPA appear to communities favour the developer. Whereas the reality is that it is PDR which favours the developer and not necessarily the communities in which development occurs or the LPA being tasked with making a decision.

Should the government reform PDR? If so, how?

66. Historically PDR has existed to facilitate smaller scale development which in the majority of cases have a small scale impact or facilitate development which would be incidental to a wider use. Their ability to allow development by statutory undertakers or infrastructure network providers (highways authorities, telecommunications providers, rail operators etc.) assists with the day to day operation and provision of these networks. These are key functions that many would agree should be maintained.

67. Nonetheless over more recent years, and particularly so in the last year to year and half it has become apparent that the general direction of travel is one of deregulation via the expansion of the PDR regime. This is moving the planning process towards a scenario whereby increasingly larger and larger schemes of development are falling into the PDR regime and as a result significantly weakening the ability of LPA and communities to have a proper say in shaping developments and their communities.

68. The incremental expansion in the use of the prior approval process and the broadening of the matters that can be considered and assessed as part of an application make the prior approval process increasingly more like a traditional planning application. However the primary difference being the cost to the applicant. This places a far greater burden upon LPAs. The costs of advertising and processing such prior approval applications are similar to those of a planning

application however in many cases the statutory prior approval fee will not cover these costs. This will ultimately be unsustainable for local authorities.

69. The expansion of the PDR regime is detrimental to communities. It removes the ability of LPAs to secure affordable and social housing contributions, actions that will help address issues of housing supply. It is also arguable it places a greater burden upon local authorities as there are fewer opportunities to properly and meaningfully shape and plan development. Or indeed secure the supporting infrastructure that is often needed to allow developments to flourish.
70. Such measures only boost the economy for the developer by making the processes and requirements around facilitating a development cheaper and easier. This is only to the benefit of the developer and is a clear departure from the principle that the party who is likely to gain the most from a development shoulders the greater risk or burden to achieve that.
71. The expansion of the PDR regime under the guise of delivering more housing does not mean that more housing is built. Getting more housing built requires developers to implement the permissions and consents they have.
72. The pace of change in the PDR regime over recent years does not allow for the results, intended or otherwise to be properly assessed and considered. It also has the potential to cause confusion to all stakeholders and makes the system more opaque – a feature that the government identifies as an existing issue within their white paper.

Conclusion

73. As can be seen from the information above there are significant and far reaching implications from the PDR regime. There are a number of concerns regarding the impact of PDR however specifically the impact on the city centre, the quality of housing and the Planning Authorities ability to secure affordable housing contributions.

74. The concerns City of York Council have with regard to the impact of PDR was discussed at Full Council in March this year. The following was specifically outlined:

- recognise the importance of the planning process in achieving balance between residential and commercial development and in ensuring communities derive benefit from such development through developer contributions.
- recognise York as a vibrant city centre needing a strong business and commercial heart for the city to maintain its competitiveness. The significant loss of office space through office-to-residential conversions following the Government's extension of permitted development rights (PDRs) in 2013;
- the critical importance and democratic role of the local planning authority in determining where conversions are appropriate and where they are not - a power lost through PDRs; the current loss of community benefit through developer contributions such as open space and affordable housing provision in cases of office to residential conversions.

75. It was resolved at the meeting that the Council would explore options for pursuing Article 4 Direction powers to suspend Permitted Development Rights (under The Town and Country Planning (General Permitted Development) (England) Order 2015) on conversions that continue to threaten the viability of York's economy through the loss of both retail and office space. The above motion and agreement illustrates City of York's resolve with regard to the impact PDR has had and continues to do.

76. In conclusion it is considered that PDR for major schemes is not an effective way of bringing development forward in a well-planned and cohesive manner that responds to local context.

Consultation

No formal consultation has taken place.

Council Plan

77. The following Council priorities are relevant:

- Good health and wellbeing
- A greener and cleaner city
- An open and effective council Planning Authority to proactively shape development within the city. Whilst the proposals to expand the permitted development rights in respect of the creation of dwellinghouses has the potential to increase the delivery of dwellinghouses, but this is by no means guaranteed. The measures will do nothing to address or provide affordable housing.

Implications

- **Financial** Further deregulation of the planning process by broadening the levels of development which deemed to be permitted development, and therefore do not require planning permission, will lead to a reduction in the number of planning applications the Council receives. This will have an impact upon income from application fees in Development Services.
- **Human Resources (HR)** There are no HR implications
- **Equalities** There are no equalities implications
- **Legal** There are no legal implications
- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications
- **Property** There are no property implications
- **Other** The broadening of permitted development rights and the use of the prior approval process, where only very specific matters can be considered in assessing a set of proposals, may further limit the democratic element of the planning process. Whereby interested third parties and elected members have less of an input into decision making.

Risk Management

78. There are no known risks

Contact Details

Author:

Chief Officer Responsible for the report:

Author's name

Becky Eades
Head of Development Services
Tel: 01904 552814

James Gilchrist

Director of Transport, Environment and
Planning

**Report
Approved**

**Date
19.04
2021**

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes**List of Abbreviations Used in this Report**

PDR – Permitted Development Rights

NPPF – National Planning Policy Framework

LPA – Local Planning Authority