

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

20th October 2021

Report of the Head of Planning and Development Services

**Department for Levelling Up, Housing and Communities consultation on
Supporting defence infrastructure and the future of time limited
permitted rights.**

Summary

1. On 5th September 2021 The Department for Levelling Up, Housing and Communities (formally The Ministry of Housing, Communities and Local Government (MHCLG)) published an open consultation entitled Supporting defence infrastructure and the future of time limited permitted development rights.
<https://www.gov.uk/government/consultations/supporting-defence-infrastructure-and-the-future-of-time-limited-permitted-development-rights>
2. The consultation invites submissions with regard to a series of questions concerning proposed changes to Permitted Development Rights. These focus on two key areas.
 - a) The future of time limited permitted development rights; and
 - b) The expansion of permitted development rights, specifically with regard to supporting the delivery of defence infrastructure on defence sites.
3. The deadline for submissions is 11:45pm on Sunday 14th November 2021.

Recommendation

The Executive Member is asked:

- a. Note the content of this report; and
- b. Delegate to the Head of Planning and Development Services to submit a response to the abovementioned consultation.

Reason: To allow a submission to be made to consultation in a timely manner and allowing the Council to make representations in respect of the proposed changes to permitted development rights.

Background

Permitted Development Rights

4. 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's cover a wide range of works and development 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 a residential dwelling or minor works such as the erection of a wall or fence.
5. Different land uses benefit from different PDR's. For example Householders benefit from PDR's which can allow them to make extensions and alterations to their property, whether that be a single storey rear extension or the erection of an outbuilding. PDR's allow the Council in its role as Local Highway Authority to undertake development within the Highway. It is PDR that makes provision for telecommunications providers to install things like street cabinets for broadband services.
6. Typically PDR's set out the nature or type of development that be undertaken and then prescribes a set of conditions or limitations which the development must accord with in order to allow the development to constitute permitted development. PDR's 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.

Introduction of Temporary Permitted Development Rights

7. Since March 2020 the government has introduced a number of temporary PDR's in response to the coronavirus pandemic. The intention being that these would enable businesses, local authorities, and health service bodies to react to the unprecedented situation brought about by the pandemic.
8. Some of the PDR's were introduced to help support businesses in re-opening and provide flexibility to encourage the use of outdoor spaces.

This was to allow businesses to re-open whilst allowing them to comply with social distancing measures and operate in a Covid safe manner.

9. The consultation published by The Department for Levelling Up, Housing and Communities comprises of two parts. The first seeks views on two of the temporary PDR's that were implemented, and specifically seeks evidence as to the impacts of the rights as they currently exist, and views on the future of the rights including any proposed mitigation if they were to be made permanent. The second covers the possible expansion of PDR's afforded to defence sites with a view to supporting the provision of defence infrastructure.
10. It should be noted that there were 3.no other temporary PDR's implemented in response to the coronavirus pandemic, which are not subject to this consultation. The first allowed pubs, cafes and restaurants to operate as takeaways without needing to apply to change use; this right will not be extended beyond 23rd March 2022. Operating solely as a takeaway would usually constitute a change of use, for which planning permission would be required.
11. The second right which allows for additional days for the temporary use of land for any purpose, doubling days from 28 to 56 in 2020, and subsequently 2021. This right expires on 31st December 2021 and it is not proposed to extend the additional days.
12. The third right allowed for the emergency development by local authorities or health service bodies to respond to the spread of Coronavirus. The right enables local councils and health service bodies to respond and provide facilities to limit the spread, treat, test, care for and manage the recovery of patients. This right is due to expire on 31st December 2021 and will only be extended on a temporary basis if it is necessary to do so.

Right for markets by or on behalf of local authorities

13. In June 2020 as lockdown restrictions were being eased, the government implemented a temporary PDR under Class BA of Part 12 of Schedule 2 of the General Permitted Development Order (GDPO). This enable markets to be held by or on behalf of local authorities for an unlimited number of days, including the provision of moveable structures related to this use. Previously there was a 14 day allowance per calendar year to hold a market under the temporary use of land PDR (Part 4, Class B). This right does not allow markets to be held on Sites of Special

Scientific Interest (SSSI); consideration is also being given as to whether heritage assets such as scheduled monuments should be exempt from the right.

14. This change was put in place to support communities hold outdoor markets and encourage the use of outdoor public spaces, both to support health initiatives and the reopening of the high street. The PDR does not remove the need to get a license to hold a market.
15. The right was initially in place until 23rd March 2021 and was subsequently extended to 23rd March 2022. Within this consultation it is now proposed to make this PDR permanent. The consultation poses the following questions:

Q.1.a. Do you agree that the right allowing markets to be held by or on behalf of local authorities for an unlimited number of days per year (Part 12, Class BA) should be made permanent?

16. The planning process is required to ensure that there are the relevant assessments in place to safeguard that the markets are acceptable in terms of their impact. This may be through a limiting the number of days or ensure that the prior approval process allows for these considerations.

Q.1.b. Do you have any evidence as to any benefits and impacts as a result of introducing this right for markets, or have views of the future impacts were the right made permanent?

17. CYC planning department are not aware of any uptake of this PDR in York and therefore no benefits or impacts can be reported.

Q.1.c. Do you think there should be a limit on the number of days that this can be used for in a calendar year?

18. This would need to take into account if the area proposed was of a special character for example a conservation area of within proximity to Listed Buildings.

Q.1.d. Do you have views on whether there should be additional restrictions on the use of this right to mitigate against potential impacts of making this permanent, including proximity to scheduled monuments?

19. It is not considered that the proposals would be appropriate however additional restrictions would be required in order to preserve the historic character and setting such as Conservation Areas and Listed Buildings. The restrictions would need to be stringent to ensure that minimal damage could be done.

Right for the provision of moveable structures

20. In April 2021 a temporary right was introduced under Class BB of Part 4 of Schedule 2 of the GPDO. The right allows for the provision of moveable structures within the curtilage of a pub, café, restaurant, or historic visitor attraction. This includes allowing moveable structures for the first time in the ground of listed buildings, helping to support the hospitality and tourism sectors. The right is currently in place until 1st January 2022.

21. The purpose of the right was to support greater use of outdoor spaces, for example enable additional covered seating or through the use of outdoor spaces for ticket sales.

22. The right was introduced on a temporary basis and as a result is relatively unrestrictive as to the types of structures that can put up and for how long. The consultation is interested in understanding whether there is evidence of any impacts from the use of the right so far. It is also seeking views on whether it would be beneficial to introduce a height limit or size limit on moveable structures allowed under the right to mitigate against impacts were the right to be made permanent.

23. The consultation suggests a height limit of 4m in line with the height limit of the PDR for buildings incidental to the use of a dwellinghouse and a suggested size limit of 50% of the footprint of the existing building on site. The consultation is also interested in seeking views on whether there should be a limit on the number days that such a right could be used per calendar year – with a proposed limit being 56 days. Views are also sought on whether the limit should be longer than 56 days, or whether there should be a limit at all, in the curtilage of non-listed buildings as this could have important economic benefits.

24. The consultation highlights that alongside the mitigation being proposed, the statutory nuisance framework provides an enforcement mechanism for local authorities to deal with noise where there are unacceptable impacts.

Q.2.a. Do you agree that the right allowing for the provision of movable structures (Part 4, Class BB) should be made permanent?

25. No. When originally introduced the measures were intended as being a way of assisting businesses, particularly those in the hospitality sector to quickly adapt their business to allow them to operate in a Covid safe manner and comply with social distancing regulations. Whilst such measures were no doubt of assistance to these sectors, there has been a very wide range of structures that have been introduced to sites. Many of these have a temporary type appearance. In addition to this there have been instances where the positioning of structures has been less than sympathetic to the character and setting of the host building or indeed the wider streetscene and built environment in general.

Q.2.b. Do you have any evidence of benefits and impacts as a result of the introduction of the right for moveable structures (Part 4, Class BB) , or have views on potential future impacts were the right to be made permanent?

26. It is recognised that the temporary structures were of assistance to businesses at a time where their ability to operate as they would do normally was heavily restricted by movement restrictions and social distancing measures. There is the concern there is a potential for some of these structures to have a detrimental impact on the surrounding area in a number of ways including both the impact on amenity and visually and there is a need for these to be fully assessed in order to ascertain their acceptability.

Q.2.c. Do you think the right for movable structures (Part 4, Class BB) should be limited to 56 days per calendar year?

27. If the right were to be retained a time limit could be considered to be an appropriate mitigation measure. However the obvious risk with this is that the recording of the 56 day period could be problematic and therefore give rise to difficulties in monitoring such development and ultimately enforcing such regulations. Thus placing a greater burden upon Local Planning Authorities.

Q.2.d. Do you think that the right for movable structures (Part 4, Class BB) could be greater than 56 days, or allowed for an unlimited number of days, in the curtilage of non-listed buildings?

28. No, if the right is to be retained it must be time limited. The temporary measures have seen a very wide range of structures introduced to sites. Some of which have had no regard for factors which would normally be considered as part of the planning process; such as visual impact, amenity impact upon neighbours and adjoining land uses. To allow their presence on a site to be unlimited would be tantamount to it being a permanent structure.

Q.2.e. Do you agree that there should be a height limit for the movable structures of 4 metres?

29. If the right is to be retained a height limit should be introduced. The suggested limit is drawn from the existing Householder PDR's. It would perhaps also be prudent to include an enhanced height restriction in cases where development occurs within a set distance of the site boundary. This will provide enhanced protections to adjoining properties, which in some cases could be residential.

Q.2.f. Do you agree that there should be a size threshold on the moveable structures allowing them to be up to 50% of the footprint of the existing building on site?

30. It is right that there should be a size threshold on the size of movable structures allowed. However a 50% limit based on the footprint of the existing building on site would be problematic. Firstly it allows for the permitted size of structure to grow as and when the building grows (perhaps as a result of an extension). A limit based on the footprint at the time of the legislation coming into force may be preferable as it would provide for a defined starting point to be established. Therefore ultimately providing an upper limit to any PDR development. An alternative may be a size limit based on the available curtilage space as this would then provide an alignment with the overall amount of space that is available at the site and therefore introduce a parameter which respects the scale and extent of any existing outside space.

Q.2.g. Do you have any evidence of the impacts specifically on heritage assets, including listed buildings as a result of the introduction of the right for moveable structures (Part 4, Class BB). Do you have any views on potential future impacts on heritage assets were the right to be made permanent?

31. Given the very real potential for harm to be caused to heritage assets were the right to be made permanent it would perhaps be preferable for

the right to be withdrawn from Listed Buildings and Article 2(3) land so as to allow matters such as Listed Buildings and Conservation Areas to be suitably protected. Otherwise it would nullify the provisions of other Acts.

Q.2.h. Do you have views on whether there should be any other additional restrictions on the use of this right (Part 4, Class BB) to mitigate against potential impacts of making this permanent?

32. There should be restrictions on the permitted location of such development. In the interests of safeguarding visual amenity and highway safety. For example such structures should not be permitted when they are forward of the principle elevation or on land that fronts a highway. There have been instances where structures have been installed at a premises which completely obscures the frontage of the site and they occupy a very prominent position adjacent to a main route into the city.

Public Sector Equality Duty and Impact Assessments

33. The consultation then seeks opinion upon whether any of the proposed changes could give rise to impacts on people who share a protected characteristic.

Q.3. Do you think that any of the proposed changes in relation to the future of the time limited permitted development rights could impact on: a) businesses, b) local authorities, c) communities.

34. The proposals have the potential to impact businesses involved in sectors who may benefit from the PDR's, although such impacts may be positive. It is likely that local authorities and communities would be adversely impacted upon by these measures. Local authorities would likely be subject to increased burdens around monitoring and enforcing these measures both in planning terms but also under other regulatory frameworks such as Environmental Health. Local Authorities would also lose the ability to regulate such development by way of planning condition. Communities will likely be adversely impacted as a result of the continued deregulation of the planning system. They would lose the opportunity to consider development proposals which may directly affect them.

Q.4. Do you think that any of the proposed changes in relation to the future of the time-limited permitted development rights could rise to any impacts on people who share a protected characteristic?

35. No, not in the sense of the PDR's themselves. It would however be necessary to ensure that any such developments suitably comply with Building Regulations with regard to matters such as access for all.

Supporting Defence Infrastructure

36. The second strand of the published consultation considers the provision of Defence Infrastructure. The intention behind these proposed measures is to support the plan to invest and transform the existing defence estate. The scale, nature and location of the estate needs to be better aligned to current and future Armed Forces' size and composition.

37. Within the context of York the sites that would likely benefit from these proposed new PDR's would be Imphal Barracks in Fulford and Queen Elizabeth Barracks in Strensall.

38. The consultation proposed 2.no new PDR's to allow the Ministry of Defence (MOD) to develop new and regenerate existing buildings on the Defence Estate, within the confines of Defence bases. The new build and regeneration activities will enable the MOD to modernise and better utilise their estate; without the need to seek planning permission for specific projects, but in line with predetermined limits.

39. The proposed new PDR's are:

- a) Enable Defence to erect, extend, or alter its single living accommodation and its supporting infrastructure by up to 25% of the floor space of the total current single living accommodation buildings and ancillary supporting infrastructure on a Defence site at the time the legislation is brought into force.
- b) To enable Defence to erect, extend or alter its work and training facilities/space by up to 35% of the total floor space of the current workspace and training buildings on a Defence site at the time the legislation is brought into force.

40. The provision of 25% is based upon analysis of the current requirement now for new single living accommodation (where serving personnel live on base) – whilst this will not enable Defence to build the totality of its requirements it will allow a difference to be made and allow faster construction of smaller to medium size developments.

41. The provision of 35% is in recognition of the greater size many of our non-accommodation buildings such as workspace, messing facilities which provide meals and gyms.

42. The consultation states that the majority of Defence sites are sizable and in locations where it is anticipated new development would have a minimal impact on local communities. Development would also be in accordance with existing security parameters which dictate the location of defence buildings away from view.
43. The PDR's will not apply to service families housing, which will still be subject to the existing requirement for planning permission.
44. The proposed limitations would consist of:
 - a) The PDR's would be subject to Prior Approval with the Local Authority in relation to siting and scale of the building where the proposed footprint exceeds 4,000m².
 - b) PDR's would be limited by height to 12 metres. The height parameter recognises that, particularly in relation to single living accommodation and where extending the footprint of a proposed building is problematic due to restrictions on the size/location it is something necessary to build higher.
 - c) Where a proposed building would exceed existing building heights of building types at the location and be visible from the public highway, the development will be situated a minimum of 25 metres away from the perimeter to minimise visual impact and will be subject to prior approval from the LPA regarding exterior appearance.
 - d) In relation to existing buildings the, the new extension will be limited to the height of the existing building.
 - e) The location of any new build or extension would no closer than 15 metres of the site perimeter.
 - f) Where the building will exceed the existing building heights at a site, it will be no closer than 25 metres to the site perimeter.
 - g) The PDR's will not apply to land which is or forms part of a Site of Special Scientific Interest (SSSI), to Listed Buildings and their curtilage, Scheduled Monuments, or to Article 2 (3) land.
45. In addition to these limitation the MOD is and would continue to be, bound by statutory controls and policy commitments. These include Conservation of Habitats and Species Regulations, Countryside and Rights of Way Act (Sites of Special Scientific Interest) and Natural Environment and Rural Communities Act. Statutory controls include screening for environmental impact assessment (which if a proposal triggers an impact assessment then PDR's cannot be used).

46. The consultation seeks responses on the following questions:

Q.5. Do you agree that new rights should be created that will enable MOD to develop more single living accommodation within the perimeter of their sites up to 25% of the existing floor space for single living accommodation at a Defence site to support service personnel?

47. No. Typically MOD sites are extremely large and as a result already contain large or numerous buildings. As a result the potential scale of additional buildings created via PDR could be very large.

Q.6. Do you agree that new rights should be created that will enable MOD to develop other types of workspace up to 35% of the existing floor space within the perimeter of their sites?

48. No. For the same reasons outlined in Q.5.

Q.7. Do you agree that supporting the redevelopment of Defence assets and Defence bases will provide an opportunity for new jobs in regions across the UK and will underpin Defence's active role in communities across the UK?

49. Yes, however the same could be achieved via existing planning processes. This benefit would not be imperative upon the introduction of a new PDR.

Q.8. Do you agree that permitted development rights should be applied to the wide range of buildings needed by the MOD?

50. Many existing land uses benefit from some form of PDR. It would not be unreasonable for Defence sites to also benefit from some form of PDR however this must be tempered via the use of sensible size controls and limitations.

Q.9. Do you agree that a greater percentage should apply for workspace provision?

51. No opinion on this particular element given the concerns raised in response to Q.5.

Q.10. Do you think restricting the location of development to 15m from the perimeter of the military site is sufficient or would a greater distance be better?

52. Potentially however the suitability of such a separation distance will be dependent upon the size and scale of the building being developed.

Q.11. Do you think there is scope to raise the 4000m² footprint trigger for prior approval on the very largest operational military sites.

53. No because a 4000m² is already extremely large.

Q.12. Do you agree that locating taller buildings together would be a good idea?

54. Yes, however there are other factors which would also need to be considered such as proximity to site perimeter and therefore possible neighbours. A more stringent distance from the site perimeter may be appropriate for the tallest of buildings.

Q.13. Do you think that exercise of the permitted development rights in flood risk zones should be subject to prior consultation?

55. Yes. Given the possible scale of development that could arise from PDRs and the fact that some of this could be living accommodation it is imperative that flood risk be considered fully.

Q.14. Do you think that the exercise of permitted development rights in relation to sites with land contamination should be subject to prior consultation?

56. Yes. Given the nature of Defence sites and the very real potential for land contamination to exist this should be subject to prior consultation. This is because such issues could be a risk to the wider public and environment and transcend the boundaries of the actual Defence site.

Q.15. Do you think it is appropriate that only SSSI, Article 2(3) land, listed buildings and Scheduled Monuments should be excluded from the permitted development rights?

57. Yes. Although consideration should also be given to including Green Belt land as the proposed scale development that could be achieved under these PDR's is very large and they would have the potential to harm the openness of the Green Belt.

58. This element of the consultation then closes by asking the same Public Sector Equality Duty and Impact Assessments as set out earlier in this report.

Q.16. Do you think that any of the proposed changes in relation to permitted development rights for defence could impact on: a) businesses, b) local authorities, c) communities.

59. Businesses are unlikely to be impacted by these changes. However Local Authorities and Communities will, again, be adversely impacted as a result of further deregulation of the planning system. Local communities will not be able to shape development. Local authorities will not be able to properly regulate development and properly manage it in line with their own local spatial visions.

Q.17. Do you think that any of the proposed changes in relation to permitted development rights for defence could give rise to any impacts on people who share a protected characteristic?

60. Not known.

Consultation

2. That by considering the response to consultation at a public decision session allows a level of public scrutiny and comment that would not otherwise happen.

Options

Option A

The Executive Member is asked:

- Note the content of this report; and
- Delegate to the Head of Planning and Development Services to submit a response to the abovementioned consultation.
- Add any comments they wish officers to be mindful of when responding

Option B

To not respond to the Government Consultation

Council Plan

3. The following Council priorities are relevant:
- Good health and wellbeing
 - Well paid jobs and an inclusive economy
 - A greener and cleaner city
 - An open and effective council.

Implications

- **Financial** There are no financial implications
- **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** There are no other implications

Risk Management

4. There are no known risks

Contact Details

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Report **Date** 11/10/2021
Approved

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes

None

List of Abbreviations Used in this Report