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Title: Planning & Regeneration Committee - Response to Supporting Housing Delivery and Public Service Infrastructure Consultation (Permitted Development Rights)

Executive Summary

On 14 July 2020, the Planning and Regeneration Committee noted the following standing delegation, which was agreed by the London Assembly at its Annual Meeting on 1 May 2013:

That authority be delegated to Chairs of all ordinary committees and sub-committees to respond on the relevant committee or sub-committee's behalf, following consultation with the lead Members of the party Groups on the committee or sub-committee, where it is consulted on issues by organisations and there is insufficient time to consider the consultation at a committee meeting.

Following consultation with party Group Lead Members, the Chair of the Planning and Regeneration Committee sent a response to the Government's Supporting Housing Delivery and Public Service Infrastructure Consultation (Permitted Development Rights Consultation).

Decision

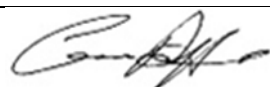
That the Chair, in consultation with the Deputy Chair, agrees the response to the Government's Supporting Housing Delivery and Public Service Infrastructure Consultation Consultation, as attached at **Appendix 1**.

Assembly Member

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature



Date

28/1/21

Printed Name

Andrew Boff AM, Chair of the Planning and Regeneration Committee

Decision by an Assembly Member under Delegated Authority

Notes:

1. *The Lead Officer should prepare this form for signature by relevant Members of the Assembly to record any instance where the Member proposes to take action under a specific delegated authority. The purpose of the form is to record the advice received from officers, and the decision made.*
2. **The 'background' section (below) should be used to include an indication as to whether the information contained in / referred to in this Form should be considered as exempt under the Freedom of Information Act 2000 (FoIA), or the Environmental Information Regulations 2004 (EIR). If so, the specimen Annexe (attached below) should be used. If this form does deal with exempt information, you must submit both parts of this form for approval together.**

Background and proposed next steps:

On 14 July 2020, the Planning and Regeneration Committee noted the following standing delegation, which was agreed by the London Assembly at its Annual Meeting on 1 May 2013:

That authority be delegated to Chairs of all ordinary committees and sub-committees to respond on the relevant committee or sub-committee's behalf, following consultation with the lead Members of the party Groups on the committee or sub-committee, where it is consulted on issues by organisations and there is insufficient time to consider the consultation at a committee meeting.

Following consultation with party Group Lead Members, the Chair of the Planning and Regeneration Committee sent a response to the Government's Supporting Housing Delivery and Public Service Infrastructure Consultation.

Confirmation that appropriate delegated authority exists for this decision

Signed by Committee Services



Date 28/01/21

Print Name: Diane Richards

Tel: 07925 353 478

Financial implications

NOT REQUIRED

Signed by Finance

N/A

Date

Print Name

N/A

Tel:

Legal implications

The Chair of the Planning and Regeneration Committee has the power to make the decision set out in this report.

Signed by Legal



Date 28/01/21

Print Name

Emma Strain, Monitoring Officer

Tel: X 4399

Additional information should be provided supported by background papers. These could include for example the business case, a project report or the results of procurement evaluation.

Supporting detail/List of Consultees:

Nicky Gavron AM (Deputy Chair of the Planning and Regeneration Committee)

Public Access to Information

Information in this form (Part 1) is subject to the FoIA, or the EIR and will be made available on the GLA Website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** this form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 – Deferral

Is the publication of Part 1 of this approval to be deferred? No

Until what date: (a date is required if deferring)

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA or EIR should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form - No

Lead Officer/Author

Signed



Date: 28.0.21

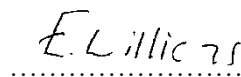
Print Name

Stephanie Griffiths

Tel: x1328

Job Title

Countersigned by
Director



Date:
28.01.2021

Print Name

Ed Williams

Tel: x4399

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Andrew Boff AM

Chair of the Planning and Regeneration Committee

Nicky Gavron AM

Deputy Chair of the Planning and Regeneration Committee

Ministry of Housing, Communities and Local Government
(Sent by email)

28 January 2021

Re. Supporting Housing Delivery and Public Service Infrastructure - Government Consultation

I am writing to you in my position as Chair on behalf of the London Assembly's cross-party Planning & Regeneration Committee with regard to the proposed changes to introduce a new national permitted development right from the new Commercial, Business and Service (Class E) use class to residential use (C3). We set out some of our concerns below and our response to questions in Part 1 of the consultation document. Our recommendations are intended to help safeguard the economy of local areas, mitigate a reduction in delivery of affordable housing, and protect conservation and heritage assets in London.

From 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (UCO) came into effect. One of the primary functions of this statutory instrument was to introduce a new Use Class E which contains Commercial, Business and Service uses. This new use class includes uses generally but not exclusively found on the High Streets and Town Centres such as shops, offices, banks, restaurants, cafes, gyms, creches, health service facilities and buildings in light industrial use.

This consultation proposes the introduction of a new permitted development right (PDR) that would allow a change of use from the new Commercial, Business and Service (Class E) to become residential (C3). This PDR would replace the following PDRs currently in place such as for offices

(Class O), retail (Class M) and light industrial (Class PA-expired in September 2020) to residential, but also include a suite of uses that previously did not have a PDR attached.

The Committee and the wider Assembly have had longstanding concerns about various expansions of PDR, on many grounds, but above all because they bypass the planning system. The Assembly has passed a range of motions on this, particularly in opposition to the continuation of the office-to-residential PDR.¹ The Committee most recently expressed its view on PDRs in letters to the Secretary of State, dated 17 April 2020² and 24 August 2020.³ The Committee's stance was informed following in-depth stakeholder engagement from academics, policy experts, planning leads from local authorities and industry. We are concerned that many of the issues we have noted previously will extend to the new Class E PDR, if it is implemented, and that it could also have a range of new unintended negative consequences resulting from the change of scale, and reduced limitations, and expanded range of uses that would be included in this PDR compared to previous ones.

As a Committee, we understand that this consultation has the goal of supporting the delivery of new homes, while also providing greater flexibility and to promote the future sustainability of high streets and town centres. However, while we note these intentions, we are concerned that this new PDR may have adverse consequences on the economy of local high streets and town centres of all classifications across London, from international to neighbourhood centres. London needs many buildings to remain in commercial, business and service use in order to provide jobs for Londoners, to serve local residents and to increase the quality of life of local citizens. By allowing these to become residential with minimal limitations, we risk losing commercial space forever, and with that, countless small and medium size businesses and jobs.

Further, creating more competition for remaining commercial, business and service building uses will drive up rent and make it harder for small and medium size businesses to remain viable. We have been told that in areas with a mix of uses, the appeal of the area may drop if the diversity of uses on offer drops. We are also concerned that this PDR could result in businesses being evicted from properties if landlords decide to sell their land and properties to residential developers.

We are not opposed to mixed-use and residential-led development, but this should be done through the planning system so that proper consideration can be given to access and infrastructure needs and the needs of local communities. The Publication London Plan policies SD6 and SD7 allow for this. We believe that the development management system is essential in order to achieve lifetime neighbourhoods, one of the benefits of doing this is to reduce pollution from car use and increase active travel. The Committee believes that this permitted development right could negate the progress we have made in London on this front by reducing boroughs ability to plan their local areas sustainably.

The Committee also feels that it will not produce the right housing in the right locations. We've been following the impact of the existing office-to-residential permitted development rights (PDR)

¹ London Assembly motions: [24 October 2012](#); [5 November 2014](#); [8 September 2015](#); [4 November 2015](#)

² Planning Committee, 17 April 2020 <https://www.london.gov.uk/about-us/london-assembly/london-assembly-publications/permitted-development-rights>

³ Planning & Regeneration Committee, 24 August 2020 <https://www.london.gov.uk/about-us/london-assembly/london-assembly-publications/letter-local-planning-changes-following-covid>

in London for many years and have raised concerns before about the low-quality housing this has facilitated.

We acknowledge that the Covid-19 pandemic has shifted a lot of working to the home place in some sectors, so there may be some relinquishing of office space, although it is too early to tell if this is a permanent shift, and if so, to what extent. However, with more working from home, Londoners will need social and health infrastructures, and local amenities more than ever before. We still need to create sustainable jobs in sustainable locations, and reducing the space where this can happen will only be of detriment to the economy.

We note that there are two National Planning Policy Framework (NPPF) chapters that promote the vitality of town centres (chapter 7), and healthy and safe communities (chapter 8). It is widely recognised that town centres and local highstreets are under threat, and rather than promoting their renewal, the committee believes that this PDR could endanger the critical mass of social and economic activity, and their interdependence and contradict these objectives in the NPPF.

Finally, we believe that these proposals, and the greater reliance on prior approval rather than full planning applications, makes planning more rigid, adds greater complexity, and undermines the input of local authorities and local residents.

Below, we set out our specific concerns and recommendations by thematic area in response to the Consultation.

Absence of size limits

In response to Question 1: 'Do you agree that there should be no size limit on the buildings that could benefit from the new permitted development right to change use from Commercial, Business and Service (Class E) to residential (C3)?'

The Committee **does not agree** that there should be no size limit on the buildings that could change use from Class E to residential (C3) under this PDR.

While developers have had a PDR right to changes of use from retail, offices and light industrial, this has been subject to size limits of 150 sq m for retail and 500 sq m light industry. We are concerned about the impact of a PDR for converting larger shops and light industrial buildings into residential flats or houses, without going through the planning system, as this could extend the negative consequences this will yield for high streets and town centres, large scale retail and commercial districts, industrial clusters and locations. We believe this could not only hollow out these locations, but also leave the new occupants of these developments without essential services in the area. As recognised by the consultation document, while the absence of a size limit could result in the provision of a significant number of new residential units, we believe it also has the potential to undermine the self-determination of local authorities, and their ability to maintain a balance between new housing stock and employment opportunities and the broader sustainability of high streets and town centres. Moreover, we have seen that a lack of size limit on office to residential PDR has meant that many evictions have taken place where landlords feel they can make more money by selling a large premise to residential developers. We are concerned that the absence of a size limit on Class E to C3 may have the same consequences.

This committee believes that the greater the scale of conversions, the greater the need for proper planning controls and scrutiny in relation to these points. Large developments need planning, and often master planning, to prevent houses and flats from being converted in unsuitable locations. By opening the opportunity to convert any size building without going through the planning system, there will be unintended implications for social infrastructure, transport accessibility, servicing and delivery.

The retail offer of many sectors depends on a diversity of supply chain which includes both big general stores and small specialist outlets. This extended PDR would risk damaging the diversity and ecosystem of retail outlets in a range of sector.

Allowing large out-of-town retail and industrial spaces to become residential may be a positive way to achieve higher housing numbers, but it needs to be master planned to ensure there are adequate provisions of schools, transport links, medical facilities, shops and more. This new removal of size limits on retail will mean that large retail units will now qualify to become residential. Our concerns about this will be answered in reference to questions 2.1-2.3, however permitting department stores in international, metropolitan and major centres to become residential doesn't acknowledge that there are delivery, noise and servicing considerations that may make residential unsuitable. We acknowledge that some prior approval considerations attempt to deal with these, but see answers 3.1-3.2 for more details.

The Committee is committed to protecting light industrial spaces to support London's economy and SMEs. Many jobs, and all the benefits of those jobs, rely on these small businesses, a fact which should be of particular importance as we seek to recover from the economic impacts of the pandemic, and as the Federation of Small Businesses told us, once they are gone, they are gone forever.

Conservation areas

In response to Question 2.1 'Do you agree that the right should not apply in areas of outstanding natural beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, and World Heritage Sites?', 2.2 'Do you agree that the right should apply in conservation areas?' and 2.3 'Do you agree that, in conservation areas only, the right should allow for prior approval of the impact of the loss of ground floor use to residential?'

The Committee does agree that the PDR should not apply in areas of outstanding natural beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, and World Heritage Sites.

However, the Committee does not agree that this PDR right should apply in conservation areas. Conservation areas exist to protect special architecture, historic interest or character of a place. This Committee believes that allowing any of the Class E uses to convert to housing in one of these areas without being properly planned would undermine the goal of conserving it, and ultimately reduce its conservation value. This is particularly true in London which has a high number of areas of historical and architectural interest, which are also vital to maintaining character, value and tourism appeal. The character and distinctiveness of conservation areas is a crucial feature of London. This

committee believes that **if the Class E to residential PDR is to be implemented, conservation areas should be exempted.**

We recognise that, per the consultation document, the proposed right would allow for prior approval of the impact of the loss of the ground floor use to residential in conservation areas, however we do not think this would provide the same level of protection that the full planning process provides. Many of London's high streets and town centres are in conservation areas, and the committee does not believe that this prior approval is sufficient in protecting the economy of those high streets and town centres. Retail and commercial uses on highstreets, town centres and commercial districts are co-dependent on one another, shops and restaurants may be purposefully planned to be near each other to benefit one another, and benefit the ecosystem of the high street. By eliminating these with unplanned residential development, the value of the businesses left will be diminished and the appeal and foot-fall of the area will be reduced.

Likewise, in many of London's retail and commercial districts, which are also in conservation areas, the benefits of the retail space extend both above and below the ground floor, meaning that these floors are also used for retail or businesses. A cluster of department stores that convert their upper floors into residential could diminish the value of the area and be of detriment to London's economy as well as the status of the town centre classification.

The committee is not opposed to mixed-use and residential-led development. Indeed, the Publication London Plan policies SD6 and SD7 allow for this. However, it believes that it is necessary for this development to be carefully planned to prevent housing in unsuitable or unsustainable locations. We believe local planning authorities know best how to manage their areas to ensure that the balance between Class E uses and delivering new housing is maintained.

In response to Question 3.1 'Do you agree that in managing the impact of the proposal, the matters set out in paragraph 21 of the consultation document should be considered in a prior approval?' and 3.2 'Are there any other planning matters that should be considered?'

The Committee believes that these proposals, and the greater reliance on prior approval rather than full planning applications, takes planning policy and development management out of the democratic control of local authorities, and put it into the hands of the law. Not only does this make planning more rigid, but it adds greater complexity to planning issues that are more easily interpreted in local plan policy.

We believe local authorities are best placed to make these decisions, in consultation with local residents. However, **if the Class E to residential PDR is to be implemented, prior approval criteria should be further strengthened to consider the economic impacts of any proposal, and deadlines for prior approval applications should be flexible enough to allow for planning committee determination where necessary.**

We do however recognise and welcome that any new conversions will be expected to meet national space standards.

Reduction in funding for councils

In response to Question 4.1 'Do you agree that the proposed new permitted development right to change use from Commercial, Business and Service (Class E) to residential should attract a fee per dwellinghouse?' and 4.2 'If you agree there should be a fee per dwellinghouse, should this be set at £96 per dwellinghouse?'

We are concerned by the underlying assumptions and economic impact of a reduction in the volume of planning applications. Point 28 in the Public Sector Equality Duty Assessment and impact assessment section of the consultation document states: 'Local planning authorities would benefit from a reduced volume of planning applications, offset by a reduction in fees'. However, prior approval applications for PDR schemes still have an impact on local authority resources, which is not generally reflected in the fees they are able to charge. The Committee heard from a local authority planner, in a public Committee meeting on 14 July 2020, that PDRs complicate the planning system, and prior approvals require assessment of many of the same factors as full planning permission.⁴ We heard that prior approvals require the same level of work, yet the local authority is prevented from inputting into the scheme and adding value in the same way as full planning permission. **The fee of £96 per dwelling house set out in the consultation document should be reviewed to ensure it accurately compensates local planning authorities for resources required to determine prior approval.** The Committee is also concerned that this fee incentivises a disproportionate number of small units, studio and 1 bed flats. Fees should be paid on a square meter basis.

Following a recent investigation into the impact of the COVID-19 crisis on local planning authorities in London, this Committee wrote to the Secretary of State with a range of recommendations.⁵ We would like to reiterate that, as the Government plans for economic recovery, it should recognise the critical role of planning departments in realising the ambitions laid out in 'Build Build Build'. Government should ensure that local authorities are appropriately resourced to facilitate the delivery of ambitious, high-quality development. Planning authorities will be key to economic recovery post-pandemic.

In response to Question 6.1 'Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could impact on businesses, communities, or local planning authorities?'

The Committee reiterates concerns that the proposed right for the change of use from Class E to residential could negatively impact on business, communities and local planning for authorities. The impact on business has been largely covered in response to the other questions, and in the introduction. We answer here our concerns about these proposals on communities and local planning authorities, as well as outlining recommended safeguards were the proposals to be implemented.

The Committee recognises that change of use PDR is intended to allow for the creation of more residential dwellings. However, any increase in residential land under the scheme comes as a direct result of losing office, industrial and commercial space.

⁴ [Transcript](#), 14 July 2020

⁵ <https://www.london.gov.uk/about-us/london-assembly/london-assembly-publications/letter-local-planning-changes-following-covid>

Although the intention would be for vacant premises to go through change of use, we are concerned that where landlords can make more money selling their premises to residential developers (as is the case in London), there will be significant evictions of businesses, which will impact the local economy. We have already seen this with office-to-residential conversions, with this Committee hearing evidence of significant impacts on commercial centres due to the loss of office space, with organisations struggling to find space to occupy, and even existing commercial tenants being evicted.⁶ The committee has heard from the Federation of Small Businesses that if these proposals are to go ahead, a building should be vacant for at least 18 months and there should be robust evidence of marketing it, before it can be considered for conversion to residential.

Limited scope for Section 106 and Community Infrastructure Levy contributions

In particular, of significance to London is the impact of PDRs on affordable housing and developer contributions to social infrastructure. In relation to existing office-to-residential conversions, a report in 2018 from the Royal Institution of Chartered Surveyors sampled five London boroughs and found that developers were not paying the Community Infrastructure Levy (although theoretically CIL liable, most PDR developments in the RICS study had been able to avoid this through claiming partial occupancy of the office space before conversion) leading to £4.1 million less income across the sampled local authorities. Developers were also not required to pay Section 106 contributions, leading to a potential loss of income of £10.8 million and 1,667 affordable housing units across sampled authorities.⁷

We are concerned a similar, and potentially even worse situation would occur under the proposed Class E to residential PDR, as more buildings would be able to convert to residential under this PDR and therefore London would miss out on vital affordable homes contributions and lead to poor quality housing as buildings as many of the larger buildings are unlikely to be suitable for conversion.

The committee is concerned that a number of developments, which may otherwise have needed or benefited from a Section 106 agreement, will now appear without one. S106 benefits communities across London as they can provide social infrastructure to mitigate the localised impacts of specific developments, where such needs may not be met by CIL alone. For example, social infrastructure may include community centres, creative workspaces, local employment and training, public access to the development, improving local roads. The absence of S106 for ever-greater developments would mean that the concerns of local residents may not be addressed.

While there is scant reference to affordable housing and social infrastructure in the consultation document, the Committee would like to emphasise the necessity of building affordable homes and social infrastructure and the need to increase the number of affordable homes built through permitted development. **If the proposals are to be implemented, any developments delivered under the scheme where 10 or more units are being built should be required to deliver**

⁶ <https://www.london.gov.uk/about-us/london-assembly/london-assembly-publications/permitted-development-rights>

⁷ RICS, [Assessing the impacts of extending permitted development rights to office-to-residential change of use in England](#), 2018

affordable homes,⁸ subject to CIL and where appropriate Section 106, and should count towards housing targets.

Furthermore, as outlined under questions 4.1 and 4.2, the Committee does not feel that the fee, set at £96 per dwelling house is sufficient, particularly as the committee has heard that these applications often require just as much resources as a full planning application.

Lifetime neighbourhoods

The Committee feels that this PDR has the potential to undermine the sustainability and resilience of neighbourhoods. Many of the uses impacted by this PDR are crucial neighbourhood assets such as health centres, GP surgeries, medical services such as pharmacies, nurseries, gyms and essential local shops, on which communities, and people of all ages, depend. Allowing these local amenities to become residential would undermine the government's own stated goal to encourage active travel through design of places,⁹ this PDR would also negate efforts that have been made to lower pollution by reducing short distance car journeys, and increase the distance people have to travel to reach these key health and social infrastructure services and businesses. Moreover, many of the health services and nurseries are in residential streets and are at particular risk of being converted. The Planning and Regeneration Committee agrees with this Public Health England document, which emphasises the role of planning in promoting active travel, but this will not be achievable if local authorities cannot plan their areas properly. As such, **we believe that if this PDR were to go ahead, these crucial neighbourhood services such as health centres and nurseries should be exempt.**

Article 4 directions.

The Committee would also like to reiterate the importance of Article 4 directions in protecting key assets, as this consultation is silent on them. If the proposals are implemented, the Committee firmly believes that current Article 4 directions should be continued and extended to cover Class E to C3 PDR, and that boroughs should be able to take out new ones. Although Article 4 directions are expensive and time consuming for local authorities, they provide an essential and necessary recourse to protect areas where PDR could be especially detrimental. As well as time, the committee heard at a meeting in 2019 that Article 4 directions have financial implications on local authorities, who require resources for gathering evidence to support Article 4 directions, as well as using officer time to complete these directions. The process for achieving Article 4 exemptions could be reviewed and improved to ensure it is a feasible way for local authorities to continue to protect shops, offices and other uses from inappropriate conversion, and that there is sufficient time for local authorities to enact new Article 4 exemptions before the proposed rights become active. The existing Article 4 exemptions have been essential for protecting areas in London from existing PDR. **We strongly recommend that the existing exemption for the London Central Activities Zone should continue to apply to any new PDR right for Class E to residential conversions.**

⁸ In line with paragraph 64 of the National Planning Policy Framework, and policy H4 of the Publication London Plan

⁹ Working Together to Promote Active Travel A briefing for local authorities- p15

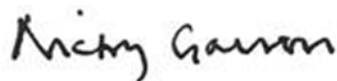
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523460/Working_Together_to_Promote_Active_Travel_A_briefing_for_local_authorities.pdf

Furthermore, if there is no general exemption for conservation areas as outlined above, there should be expedited arrangements for boroughs to be able to apply Article 4 directions to individual conservation areas before the PDR scheme commences.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Boff', written in a cursive style.

Andrew Boff AM
Chair of the Planning and Regeneration Committee

A handwritten signature in black ink, appearing to read 'Nicky Gavron', written in a cursive style.

Nicky Gavron AM
Deputy Chair of the Planning and Regeneration Committee