

# Changes to various Permitted Development Rights: consultation

A response by the TCPA to the consultation by the Department for Levelling Up, Housing and Communities  
April 2024

## 1 Introduction

### 1.1 About the TCPA

The Town and Country Planning Association's (TCPA's) vision is for homes, places and communities in which everyone can thrive. Our mission is to challenge, inspire and support people to create healthy, sustainable and resilient places that are fair for everyone.

Informed by the Garden City Principles, the TCPA's strategic priorities are to:

- Work to secure a good home for everyone, in inclusive, resilient and prosperous communities which support people to live healthier lives.
- Empower people to have real influence over decisions about their environments and to secure social justice within and between communities.
- Support new and transform existing places to be adaptable to current and future challenges, including the climate crisis.

The TCPA is a charity and company limited by guarantee.

### 1.2 About this response

The TCPA has chosen to respond to some specific questions in the current DLUHC consultation<sup>1</sup>. We also set out an overarching comment which we hope the Government will consider.

#### Overarching comment

The TCPA recognises the urgent need for more good quality and affordable homes. However, the TCPA is concerned that the further incremental expansion of Permitted Development Rights (PDR) is undermining local authorities' attempts to masterplan and promote healthy homes and communities and deliver effective regeneration.

Existing PDR rules are failing to ensure good quality homes and places that enable healthy outcomes for people and communities<sup>2</sup>. We know that the poor health consequences associated

<sup>1</sup> Consultation link: [Changes to various permitted development rights: consultation \(UK Gov, 2024\)](#)

<sup>2</sup> See: [Permitted development, housing and health: a review of national policy and regulations \(TCPA 2024\)](#); [Emerging problematics of deregulating the urban: The case of permitted development in England \(FERM et al, 2021\)](#); Also [committees.parliament.uk/writtenevidence/26255/pdf/](#) (TCPA, 2020).

with poor quality homes have knock-on costs to society and the economy, harming productivity and prosperity<sup>3</sup>.

We and others have produced a wealth of evidence that underpins our concerns about the quality of homes produced through PDR. In 2020, the TCPA published, in collaboration with the Regional and Urban Planning Studies group at the London School of Economics and Political Science, a report called *No Place for Place-Making*<sup>4</sup>. The report highlights that Permitted Development consistently undermines councils' efforts to plan for healthy and safe places by:

- Removing buildings and areas from councils' influence, and therefore preventing local authorities from securing and coordinating development in sustainable, safe areas.
- Depriving local authorities from securing funding through Section 106 agreements that would have been used to deliver greenspaces, community facilities, infrastructure and affordable housing; and
- Undermining local democracy and the ability of local authorities to safeguard employment land/sites.

Our latest review of national policies and regulations regarding homes produced through PDR was undertaken as part of a project led by UCL's Bartlett School of Planning and funded by the National Institute for Health and Care Research<sup>5</sup>. The report identifies apparent loopholes in Building Regulations regarding material change of use, which mean that structural safety, accessibility, risk of falls, resistance to moisture, and overheating regulatory requirements are not assured in dwellings and flats built through conversions. It also found that PDR conversions to residential use are not adequately addressing eleven out of twelve Healthy Homes principles.

We are concerned that despite this evidence, the government has done little to address these concerns. Frequent incremental changes to national planning policy which focus on de-regulation, rather than addressing fundamental supply and delivery mechanisms, serve to further complicate the process. These changes will not result in the holistic shift that is needed to deliver the right quantity and quality of homes in the right places that the nation so urgently needs. We encourage the government to consider the report, *Our Shared Future: A TCPA White Paper for Homes and Communities*<sup>6</sup>, which sets out the foundations for a long-term solution to the housing challenge.

## 2 Response to specific questions

The following section sets out responses to some of the consultation questions. Our particular concerns relate to the following issues:

- **Householder development** – allowing further flexibilities for householder extensions will potentially increase the loss of private green infrastructure and incur loss of daylight, impacting on neighbours 'rights of light';

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<sup>3</sup> Garrett et al (2023) *The cost of poor housing to the NHS - BRE Group*; and *Valuing health: why prioritising population health is essential to prosperity* (BMA, 2022)

<sup>4</sup> *No Place for Placemaking* (TCPA, 2020) [https://www.tcpa.org.uk/wp-content/uploads/2024/02/No\\_place\\_for\\_placemaking\\_final.pdf](https://www.tcpa.org.uk/wp-content/uploads/2024/02/No_place_for_placemaking_final.pdf)

<sup>5</sup> *Permitted development, housing and health: a review of national policy and regulations* (TCPA, 2024)

<sup>6</sup> *Our Shared Future: A TCPA White Paper for Homes and Communities*. (TCPA, 2024). [https://www.tcpa.org.uk/wp-content/uploads/2024/01/TCPA-White-Paper-OUR-SHARED-FUTURE\\_160124.pdf](https://www.tcpa.org.uk/wp-content/uploads/2024/01/TCPA-White-Paper-OUR-SHARED-FUTURE_160124.pdf)

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- **Building upwards** - changing the age limit of buildings that can have floors added to them raises potential structural safety concerns for older buildings, highlighting the need to require safety checks; it also poses potential harm to cultural heritage and design character; and
- **Demolition and rebuild** - expanding the scope of buildings permitted to be demolished raises concerns about the standards of rebuilding (as they will not need to obtain a full planning application), the loss of contributions to affordable housing and local amenities through section 106 agreements, and the loss of embodied carbon from relatively new buildings.

## 2.1 Changes to the permitted development rights for householder development

### 2.1.1 Smaller single-storey rear extension

*Q.1 Do you agree that the maximum depth permitted for smaller single-storey rear extensions on detached homes should be increased from 4 metres to 5 metres?*

No. Although one metre might seem like a marginal change, cumulatively this proposal raises concerns about the further potential loss of private domestic gardens and urban green infrastructure. Between 2001 and 2016, urban green space in England declined from 63% to 56%. Green infrastructure, including private GI provides multiple functions that promote health and wellbeing, from urban cooling, wildlife habitats, run-off amelioration, mitigation of climate impacts, air quality promotion, and aesthetic benefits<sup>7</sup>.

In addition, the proposal raises concerns regarding the overshadowing and impact on to neighbours' rights of light (residential or otherwise), which can still occur in relation to detached homes<sup>8</sup>. The health impact of loss of daylight is well evidenced, such as regarding impact on visual performance and safety from accidents, as well regulating melatonin production and alleviating depression<sup>9</sup>.

*Q.2 Do you agree that the maximum depth permitted for smaller single-storey rear extensions on all other homes that are not detached should be increased from 3 metres to 4 metres?*

No – as per Q.1, this proposal raises concerns about the potential loss of green infrastructure, as well as potential increased overshadowing and impact on neighbours' rights of light.

### 2.1.2 Two-storey rear extension

*Q.3 Do you agree that the maximum depth permitted for two-storey rear extensions should be increased from 3 metres to 4 metres?*

No – this proposal raises concerns about additional overshadowing and impact on to neighbours' rights of light.

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<sup>7</sup> [The role of perceived public and private green space in subjective health and wellbeing during and after the first peak of the COVID-19 outbreak - ScienceDirect](#); and [UK natural capital - Office for National Statistics \(ons.gov.uk\)](#) (ONS, 2018)

<sup>8</sup> [Site Layout Planning for Natural light \(BRE Group, 2022\)](#)

<sup>9</sup> See: [Lighting in the Home and Health: A Systematic Review](#) (Osibona et al, 2021)

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*Q.5 Are there any circumstances where it would not be appropriate to allow extensions up to the rear boundary where the adjacent use is non-residential?*

Yes – people who occupy public buildings, such as schools, health care facilities and other community-related uses can be negatively impacted by loss of daylight, as well as by the loss of neighbouring green infrastructure (for example cooling impact of green infrastructure, mitigation of air pollution effects).

Furthermore, loss of daylight will impact people in non-residential buildings. Evidence suggests that worker productivity and mental health is impacted by access to daylight<sup>10</sup>, therefore the implications of overshadowing to ‘rights of light’ should be considered<sup>11</sup>.

*Q.6 Do you agree that the existing limitation that the permitted development right does not apply if, as a result of the works, the total area of ground covered by buildings within the curtilage of the house (other than the original house) would exceed 50% of the total area of the curtilage (excluding the ground area of the original house) should be removed?*

No – removal of the existing limitation would have significant impacts in terms of overshadowing on neighbouring properties and land, which should be avoided, as outlined by BRE guidance on *Site Layout Planning for Natural Light*<sup>12</sup>.

*Q.7 Should the permitted development right be amended so that where a two-storey rear extension is not visible from the street, the highest part of the alternation can be as high as the highest part of the existing roof (excluding any chimney)?*

No – such extensions can still carry an overshadowing impact on neighbouring residents and building occupants who are adjacent and opposite the rear of the building, impacting their rights of light.

*Q.10 Are there any limitations that should apply to a permitted development right for wrap around L-shaped extensions to limit potential impacts?*

Yes – consideration of changes to overshadowing for adjacent neighbours’ rights of light from allowing a wrap around extension should be considered and, at a minimum, made a condition of prior approval.

### **2.1.3 Additions to the roof (including roof extensions)**

*Q.15 Do you agree that the permitted development right, Class B of Part 1, should apply to flats?*

No – according to the manual to building regulations (Table A2) where a material change of use has been made to a dwelling or flat, structural safety regulations A1-A3 do not apply<sup>13</sup>. We are therefore concerned about the lack of proper structural safety checks, and risks to residents,

<sup>10</sup> See: [Impact of indoor environment quality on Occupant Productivity and Wellbeing in Office Buildings \(Paevere, 2008\)](#); also [Lighting in the Home and Health: A Systematic Review \(Osibona et al, 2021\)](#)

<sup>11</sup> [Site Layout Planning for Natural light – \(BRE Group, 2022\)](#)

<sup>12</sup> Op cit

<sup>13</sup> [Manual to the Building Regulations – \(UK Gov, 2020\)](#)

associated with the application of this PDR to roofs in buildings that have undergone a material change of use to residential purposes.

*Q.24 Do you think that any of the proposed changes in relation to the Class A, B C and E of Part 1 permitted development rights could impact on: a) businesses b) local planning authorities c) communities?*

Yes – the proposed changes should consider the potential impact of loss of green space (and associated benefits regarding urban cooling, run off amelioration, air quality, aesthetic benefits etc), as well as the loss of daylight and ‘rights of light’ for a) businesses, b) local planning authorities and c) public and community buildings.

## 2.2 Changes to the permitted development rights for building upwards

### 2.2.1 The upward extension of buildings

*Q.25 Do you agree that the limitation restricting upwards extensions on buildings built before 1 July 1948 should be removed entirely or amended to an alternative date (e.g. 1930)?*

No – according to the manual to building regulations (Table A2) where a material change of use has been made to a dwelling or flat, structural safety regulations A1-A3 do not apply<sup>14</sup>. We are therefore seeking clarity that proper structural safety checks will apply to this PDR allowing upward extension to roofs on buildings that predate 1948, particularly in relation to those buildings that may have undergone a material change of use to residential purposes without structural safety checks previously.

In addition, we are concerned about the potential harm of this proposal to local cultural heritage and character of place. As stated in the National Model Design Code, ‘development should always take account of heritage assets within or close to the site as defined in the NPPF’<sup>15</sup>.

*Q.26 Do you think that the prior approvals for the building upwards permitted development rights could be streamlined or simplified?*

No – the safety and health of existing and future residents must be paramount and therefore the protections under building requirements and quality requirements under the full planning process should apply.

### 2.2.2 Construction of new dwellinghouses on a freestanding block of flats

*Q.27 Do you have any views on the operation of the permitted development right that allows for the construction of new dwellinghouses on a freestanding block of flats (Class A of Part 20)?*

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<sup>14</sup> [Manual to the Building Regulations – \(UK Gov, 2020\)](#)

<sup>15</sup> [National Model Design Code: part 2 - guidance notes \(html accessible version\) \(UK GOV, 2021\)](#)

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We are profoundly concerned by reports that we have received from councils, such as in Harrow and Newham, regarding the structural and utility safety afforded to existing residents, who are still living in blocks when additional floors are added. For example, residents in one block in Harrow experienced water leaks throughout the building after additional floors were added to the PDR property – causing cold, damp and unsafe conditions for residents, including for children with respiratory conditions<sup>16</sup>.

We call for an immediate pause on this PDR until a full and independent review of the structural and utility safety of such additions has been undertaken, with a view to establishing additional protections before any further application. Additional protections should include a requirement for an independent third-party check of the building condition, post construction and prior to residents moving into the new dwelling house.

*Q.28 Do you agree that the existing limitations associated with the permitted development right for building upwards on a freestanding block of flats (Class A of Part 20) incorporates sufficient mitigation to limit impacts on leaseholders?*

No – see our response to Q.27

### **2.2.3 Impact assessment**

*Q.29 Do you think that any of the proposed changes in relation to the Class AA of Part 1 and Class A, AA, AB, AC and AD of Part 20 permitted development rights could impact on: a) businesses b) local planning authorities c) communities?*

Yes – the proposals to extend upwards on older building will have implications for the cultural heritage and character of places, which will be detrimental to local businesses, authorities and communities whose health and wellbeing depend on the attractiveness of their town centres, highstreets and neighbourhoods.

## **2.3 Changes to the permitted development right for demolition and rebuild (under Class ZA of Part 20)**

*Q.30 Do you agree that the limitation restricting the permitted development right to buildings built on or before 31 December 1989 should be removed?*

No – First, we are concerned that cutting the age limit of buildings that are permitted to be demolished undermines the standards of rebuilding that will be applied, especially if change of use to residential use occurs as a part of the rebuild, as they will not need to obtain a full planning application and meet local planning policies. In particular, we are concerned they will not need to meet local plan policies regarding the suitability of the residential location and may miss certain building regulations that would normally apply, including regarding overheating, resistance of moisture, accessibility.

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<sup>16</sup> [Harrow Council legal action over Krissh House mouldy flats \(Harrow Times, 2024\)](#); and [Medical charity raises concerns over expanded permitted development rights \(Inside Housing, 2024\)](#)

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Second, we are concerned that the developers involved in the re-builds (and potential change of use) will not be required to make vital contributions to affordable housing and local amenities that would usually be negotiated through section 106 agreements.

Third, we are concerned about the loss of embodied carbon that will result from the demolition of relatively new buildings. We argue that a whole lifecycle carbon assessment should be applied to buildings before demolition should be considered. As the Environment Audit Committee points out and recommends:

‘There is no Government policy requiring the assessment or control of embodied carbon emissions from buildings. As a result, no progress has been made in reducing these emissions within the built environment. This inaction remains despite the built environment making up 25 per cent of the UK’s total greenhouse gas emissions and the UK’s Nationally Determined Contribution, made at COP26, committing the UK to achieve a 68% reduction in the UK’s carbon emissions by 2030. This is only eight years away. This is an extremely short time frame within which to start assessing and substantially reducing embodied carbon emissions. The first step must be a requirement to undertake whole-life carbon assessments for buildings so the industry can start measuring and then controlling for this carbon’<sup>17</sup>.

*Q.31 If the permitted development right is amended to allow newer buildings to be demolished, are there any other matters that should be considered?*

We do not think this right should be amended or further applied, as outlined in response to Q30.

*Q.32 Do you agree that the permitted development right should be amended to introduce a limit on the maximum age of the original building that can be demolished?*

The PDR should not be applied to any buildings without a full whole lifecycle assessment, an assessment of impact to local plan policies, including regarding suitability of location, impacts to affordable housing, local amenities, as well as to character and heritage.

*Q.33 Do you agree that the Class ZA rebuild footprint for buildings that were originally in use as offices, research and development and industrial processes should be allowed to benefit from the Class A, Part 7 permitted development right at the time of redevelopment only?*

No - we do not think Class ZA rebuild footprint for buildings that were originally offices etc should benefit from Class A, Part 7 PDR, due to the potential concerns regarding i) impacts to neighbouring homes and residents (overshadowing, loss of green space); ii) suitability of the location if the demolition project (with extended footprint) involves change of use to residential use; iii) loss of developer contributions to community amenity via section 106 agreements.

*Q.34 Do you think that prior approvals for the demolition and rebuild permitted development right could be streamlined or simplified?*

No – as outlined in response to Q.30 and Q.33 we do not think that demolition and rebuild should be permitted, outside the strategic and democratic local planning process.

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<sup>17</sup> Building to net zero: costing carbon in construction – (Environmental Audit Committee, 2022)

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## **Impact assessment**

*Q.35 Do you think that any of the proposed changes in relation to the Class ZA of Part 20 permitted development right could impact on: a) businesses b) local planning authorities c) communities?*

Yes. We are concerned these proposals will negatively impact: local planning authorities – undermining the democratic local planning process that is vital for placemaking and through loss of section 106 contributions; and communities, due to the potential harms to placemaking and loss of contributions to local amenities through developer contributions.

## **Public Sector Equality Duty**

*Q.53 Do you think that the changes proposed in this consultation could give rise to any impacts on people who share a protected characteristic (Age; Disability; Gender Reassignment; Marriage or Civil Partnership; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation)?*

Yes – Demolition and rebuilding under PDR rules means that the new building does not need to reflect local plan policy requirements regarding building regulations approved document M4(2) or M4(3). Poor accessibility provisions will have detrimental impact for families with babies and young children, and for elderly people (regarding the protected characteristics of age, pregnancy and maternity) and for people with disabilities (regarding the protected characteristic of disability). This PDR amendment should therefore be removed or at a minimum ensure M4(2) applies as a condition of prior approval.

## **Contacts**

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