

25 SEPTEMBER 2023

## **PR8-23 | PERMITTED DEVELOPMENT RIGHTS**

### **Introduction**

We are writing in response to the government's latest consultation on permitted development rights.

The National Association of Local Councils (NALC) is the national membership body that works with the 43 county associations of local councils to represent and support England's 10,000 local (parish and town) councils.

Local councils and their 100,000 councillors are the first tier of local government, closest to the people, and play an essential part in delivering hyper local services, building strong communities, and strengthening social fabric.

Local councils cover two thirds of England and a third of the population and invest over £3 billion per year to improve and strengthen communities.

### **Summary**

- NALC does not support an across-the-board extension of permitted development rights (PDRs) in the planning system. Policies on PDRs should be the prerogative of local authorities (LAs) in their Local Plans. We recognise the importance of PDRs in the planning system, but we consider that any changes to the delicate balance between PDRs and the planning application process should be approached with great care. The widespread changes proposed in this consultation are risky, with the prospect of unintended consequences.
- Permitted development rights are undemocratic in principle. As an example, we have heard from Oswestry Town Council that high speed fibre broadband is to be installed using overhead cables suspended on telegraph style poles and done so under "Permitted Development" regulations with no planning permissions required. Aside from being aesthetically unpleasing, as local leaders the town council feels that this falls outside of any democratic or accountability framework. This implies that there is essentially nothing that residents can do to object/support to or inform such an installation.
- NALC supports that Assets of Community Value be subject to the removal of PDRs by imposing an Article 4 direction. An article 4 direction is made

by the local planning authority. It restricts the scope of PDRs either in relation to an area or site, or a development anywhere in the authority's area.

- PDRs should play a minimal role in the planning system because every place is different and the circumstances surrounding it are different. However, if the government is determined to introduce the use of at least some of them, this should solely be restricted to use of those rights which will help communities support their local economy. There are significant issues to be addressed within the building industry itself, which are constraining the delivery of more housing, and the solution to this is not necessarily achieved by loosening the planning system.
- Removing the right of LAs to make decisions on planning applications and that of local councils to comment on them constitutes a further loss of democratic input.
- In addition, we feel that the government should have ensured it consulted in a more structured and user-friendly way with relevant stakeholders on all the various planning aspects of its Levelling Up and Regeneration Bill. Issuing up to 20 separate consultations in 2023, in addition to the overarching one earlier in 2023 on the National Planning Policy Framework, is inefficient, time consuming and swamps organisations who may have limited resources with an abundance of overly technical planning questions.

### **Overarching policy statement**

NALC's overarching planning policy positions are as below:

1. NALC has signed up to the proposition that there is a climate emergency and will therefore, as a general principle, promote and support moves and policies which help to mitigate it. For instance, NALC supports the need for Local Plans and large developments to be subject to environmental appraisals and it supports energy efficient homes and more trees.
2. NALC will support a planning system which incorporates a significant role for local councils. It will not support any diminution of local councils' statutory right to comment on planning issues at all stages of their evolution, whether they be development planning matters or spatial planning policies.

3. NALC will support a soundly based planning system which represents the most reliable tool for the sustainable allocation of land, and which represents the three pillars of sustainability equally, i.e., social, economic, and environmental factors.
4. NALC will support changes to the planning system which it perceives will strengthen the system and the voice of democracy and lead to better quality, appropriately sited developments. It will not support planning changes which it perceives will work in the opposite direction.
5. NALC would support a very much strengthened version of the 'duty to co-operate' between neighbouring local authorities or an alternative policy which made it compulsory for neighbouring LAs to work in close co-operation with each other on spatial planning.
6. NALC does not support an across-the-board extension of permitted development rights in the planning system. Policies on permitted development rights should be the prerogative of LAs in their Local Plans or Neighbourhood Planning Groups.
7. NALC supports the recommendations of the Building Better, Building Beautiful Commission.
8. NALC recognises the need for more affordable housing and would welcome initiatives that would enable LAs and local councils to deliver some. In addition, NALC would like to see more housing delivered that is suitable for the disabled and those with mobility impairments and a range of different types of tenures facilitated.
9. NALC wants to see a fair Community infrastructure levy (CIL) system which gives local councils a voice and benefits them financially so that they in turn can deliver more for their local communities.
10. NALC has concerns about housing tests based on standard methodologies/ algorithms. It wants to see a planning system which recognises that every planning application and every location is different.

### **Consultation questions**

NALC's responses to the main consultation questions applicable to local councils in the consultation document are below:

**Design codes:**

**Q.1 Do you agree that prior approvals for design or external appearance in existing permitted development rights should be replaced by consideration of design codes where they are in place locally?**

**a) Yes**

**b) No**

**c) Don't know**

Yes. NALC has been a long-time supporter of the concept of design codes. Therefore, by extension it is wholly appropriate that they should apply to all development whether they are through permitted development rights or through a formal application process. Where design codes are in place locally, they should replace prior approvals for design or external appearance in existing permitted development rights giving more consistency and clarity to the process.

**Impact assessments**

**Q.2 Do you think that any of the proposed changes to permitted development rights in relation to design codes could impact on: a) businesses b) local planning authorities c) communities?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons. It would be helpful if you could specify whether your comments relate to a) business, b) local planning authorities, or c) communities, or a combination.**

Yes. The proposed changes in relation to design codes should deliver more clarity and consistency in the implementation of permitted development rights, which will be beneficial for all stakeholders. Where LPAs and communities, through neighbourhood planning, have prepared a local design code this will establish the key design parameters for all developments whether through a full planning application or through permitted development rights. This will be particularly beneficial to both LPAs and communities as they will know what to expect from new housing that is coming forward through permitted development rights. However, this is again in the context that in principle NALC is not in favour of the

in-principle extension of permitted development rights within the planning system more than they need to be rolled-out.

### **Supporting housing delivery through change of use permitted development rights**

#### **Commercial Business and Service uses to dwellinghouses (Class MA of Part 3)**

**Q.3 Do you agree that the permitted development right for the change of use from the Commercial, Business and Service use class (Use Class E) to residential (Class MA of Part 3), should be amended to either:**

- a) Double the floorspace that can change use to 3,000 square metres**
- b) Remove the limit on the amount of floorspace that can change use**
- c) No change**
- d) Don't know**

No change. NALC is not in favour of this type of change of use being governed by permitted development rights from the Commercial, Business and Service use class (Use Class E) to residential (Class MA of Part 3). Regarding the specific proposal to increase or remove floorspace limits, such an increase could have a significant impact on an area that should be properly considered through a full planning application.

#### **Vacancy requirement**

**Q.4 Do you agree that the permitted development right (Class MA of Part 3) should be amended to remove the requirement that the premises must be vacant for at least three continuous months immediately prior to the date of the application for prior approval?**

- a) Yes**
- b) No**
- c) Don't know**

#### **Please give your reasons.**

No. We are not in favour of the removal of the requirement that premises should be vacant for a reasonable time before change of use under permitted development rights. We believe the current period of three continuous months is

reasonable and, in the absence of any evidence in the consultation document, we do not understand the statement that this could result in property being left vacant for longer periods. The democratic local planning system (not permitted development right Class MA of Part 3) could be used to remove the vacancy requirement if there are individual cases where this is an issue.

### **Article 2(3) land**

**Q.5 Do you think that the permitted development right (Class MA of Part 3) should apply in other excluded article 2(3) land?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

No. We are against the extension of permitted development right Class MA of Part 3 applying in other excluded article 2(3) land. This proposal is totally inconsistent with the need to preserve and protect sensitive and exceptional landscapes. We are supportive of the objective to help town centres and high streets within National Parks or Areas of Outstanding National Beauty, respond more effectively to changes in consumer behaviour but in many cases these changes are driven by the preponderance of second homes and holiday lets. The extension of permitted development rights to the change of use to Class MA of Part 3 properties is more likely to reinforce these trends and further weaken important local communities. It is important that any changes are effectively managed, and this can only be achieved through the democratic local planning system.

## **Prior approval – conservation areas**

**Q.6 Do you think the prior approval that allows for the local consideration of the impacts of the change of use of the ground floor in conservation areas on the character or sustainability of the conservation is working well in practice?**

a) Yes

b) No

c) Don't know

**Please give your reasons.**

**If no, please explain why you don't think the prior approval works in practice?**

No. Maintaining the character or sustainability of a conservation area is a vital part of ensuring that it is fit for purpose and in that context a consideration of the change of use of ground floor commercial property is important. Any weaknesses in the prior approval process are, in our view, down to the fact that this is a too simplistic approach and does not take account of all the material considerations that would be considered in a full planning application.

## **Hotels, boarding houses and guest houses (Use Class C1) to dwellinghouses**

**Q.7 Do you agree that permitted development rights should support the change of use of hotels, boarding houses or guest houses (Use Class C1) to dwellinghouses?**

a) Yes

b) No

c) Don't know

**Please give your reasons.**

No. We do not agree that permitted development rights should support the change of use of hotels, boarding houses, or guest houses (Use Class C1) to dwellinghouses. A LPA is best placed to assess the short and long term needs for more housing in areas of high housing need. In such cases and where hotels should be re-purposed to this end, the democratic local planning system and not an expansion to the Commercial, Business and Service uses to dwellinghouse right (Class MA of Part 3) or creation of a new right, should be used.

**Q.8 Are there any safeguards or specific matters that should be considered if the change of use of hotels, boarding houses or guest houses (Use Class C1) to dwellinghouses was supported through permitted development rights?**

a) Yes

b) No

c) Don't know

**Please give your reasons.**

**If yes, please specify.**

Yes. Ideally the change of use of hotels, boarding houses or guest houses (Use Class C1) to dwellinghouses would be supported through the democratic local planning system and not through permitted development rights. However, if the government is determined to support an extension of Use Class C1 using permitted development rights, certain elements of relevant developments will require specific safeguards or require additional consideration by the local planning authority through the prior approval process. We agree that it will be necessary to allow for local consideration of the impacts the change of use could have on the local tourism economy.

**Impact assessments**

**Q.9 Do you think that any of the proposed changes in relation to the Class MA permitted development right could impact on: a) businesses b) local planning authorities c) communities?**

a) Yes

b) No

c) Don't know

**Please give your reasons. It would be helpful if you could specify whether your comments relate to a) business, b) local planning authorities, or c) communities, or a combination.**

Yes. We believe that whilst the socio-economic issues need to be addressed this should be done through local democratic means. Any extension of permitted development rights to change Commercial Business and Service uses to dwellinghouses (Class MA of Part 3), is an artificial distortion of the democratic

processes. Using the permitted development right route to resolve these issues would also bypass local residents and ignore their democratic right through local councils and LPAs to express their views on change of use developments.

**Q.10 Do you think that changes to Class MA will lead to the delivery of new homes that would not have been brought forward under a planning application?**

- a) Yes
- b) No
- c) Don't know

**If so, please give your reasons.**

Don't know. There should be no reason why the changes to Class MA would lead to the delivery of more new houses coming forward under permitted development rights than would have been brought forward under a planning application unless these are associated with developments which have material considerations that would have resulted in an application being refused.

**Betting offices and pay day loan shops etc. to dwellinghouses (Class M of Part 3) and arcades etc. to dwellinghouses (Class N of Part 3)**

**Floorspace limits**

**Q. 11 Do you agree that the right for the change of use from hot food takeaways, betting offices, pay day loan shops and launderettes (Class M of Part 3) is amended to:**

- a) Double the floorspace that can change use to 300 square metres
- b) Remove the limit on the amount of floorspace that can change use
- c) No change
- d) Don't know

**Please give your reasons.**

Remove the limit on the amount of floorspace that can change use. We do not object to the extension of the floorspace limits for the long-standing permitted development right for the change of use from hot food takeaways, betting offices and pay day loan shops (Class M of Part 3). As indicated in our answer to Q12 we also support the removal of these rights from launderettes.

**Q.12 Do you agree that the existing right (Class M of Part 3) is amended to no longer apply to launderettes?**

- a) Yes
- b) No
- c) Don't know

**Please give your reasons**

Yes. We agree that launderettes can provide a valuable community service in certain areas. So, we agree with the government's proposal that the existing right (Class M of Part 3) no longer applies to launderettes and that so doing would allow for local consideration of any proposed change of use through a full planning application.

**Article 2(3) land**

**Q.16 Do you think that the permitted development right for the change of use from hot food takeaways, betting offices, pay day loan shops and launderette (Class M of Part 3) should apply in other article 2(3) land?**

- a) Yes
- b) No
- c) Don't know

**Please give your reasons.**

No. We are against any extension of the permitted development right for the change of use applying in other excluded article 2(3) land. We are not convinced that extension of this permitted development right would not impact upon the appearance of relevant buildings in built up areas within National Parks or Areas of Outstanding National Beauty, for instance. The democratic local planning system should be used to create the required flexibilities the government alleges are required to correct the apparent lack of housing delivery in such areas.

**Q.17 Do you think that the permitted development right for the change of use of amusement arcade or centre, or casino (Class N of Part 3) should apply in other excluded article 2(3) land?**

- a) Yes

**b) No**

**c) Don't know**

**Please give your reasons.**

No. As we replied to the previous question, we are against any extension of the permitted development right for the change of use applying in other excluded article 2(3) land. We are not convinced that extension of this permitted development right would not impact upon the appearance of relevant buildings in built up areas within National Parks or Areas of Outstanding National Beauty, for instance. The democratic local planning system should be used to create the required flexibilities the government alleges are required to correct the apparent lack of housing delivery in such areas.

#### **Impact assessments**

**Q.18 Do you think that any of the proposed changes in relation to the Class M and N permitted development rights could impact on: a) businesses b) local planning authorities c) communities?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons. It would be helpful if you could specify whether your comments relate to a) business, b) local planning authorities, or c) communities, or a combination.**

Yes. We believe that whilst the socio-economic issues need to be addressed this should be done through local democratic means. Any extension of permitted development rights to Class M and N, is an artificial distortion of the democratic processes. Using the permitted development right route to resolve these issues would also bypass local residents and ignore their democratic right through local councils and local planning authorities to express their views on change of use developments.

**Q.19 Do you think that changes to Class M and N will lead to the delivery of new homes that would not have been brought forward under a planning application?**

**a) Yes**

**b) No**

**c) Don't know**

**If so, please give your reasons.**

Don't know. There should be no reason why the changes to Class M and N would lead to the delivery of more new houses coming forward under permitted development rights than would have been brought forward under a planning application unless these are associated with developments which have material considerations that would have resulted in an application being refused.

**Commercial, Business and Service, betting office or pay day loan shop to mixed use residential (Class G of Part 3)**

**Number of flats that can be delivered**

**Q.21 Do you agree that the number of flats that may be delivered under the right (Class G of Part 3) is doubled from two to four?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

Yes. We have no objection with the number of flats being doubled from 2 to 4 for mixed residential above existing uses. However, we think in principle that the democratic local planning system and not permitted development right Class G of Part 3 should be used to achieve this end, to help free up more necessary flexibility for increasing much needed housing.

**Consequential changes to the permitted development right that allows the change of use from a mixed use to Commercial Business and Service use or betting office or pay day loan shop right (Class H of Part 3)**

**Q.22 Do you agree that the permitted development right (Class H of Part 3) is amended to align with any changes made to the uses to which Class G of Part 3 applies?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

Don't know. If the principle of the extension of either permitted development right Class H of Part 3, or Class G of Part 3 is accepted, this proposal is acceptable. However, we do think it is right that protections are retained so that a commercial business and service mixed use building cannot change use to a betting office or pay day loan shop.

**Impact assessments**

**Q.23 Do you think that any of the proposed changes in relation to the Class G and H permitted development rights could impact on: a) businesses b) local planning authorities c) communities?**

a) Yes

b) No

c) Don't know

**Please give your reasons. It would be helpful if you could specify whether your comments relate to a) business, b) local planning authorities, or c) communities, or a combination.**

Yes. We believe that whilst the issues related to class G and H need to be addressed this should be done through the established local democratic processes not through an extension of permitted development rights. Using the permitted development right route to resolve these issues would also bypass local residents and ignore their democratic right through local councils and LPAs to express their views on change of use developments.

**Q.24 Do you think that changes to Class G will lead to the delivery of new homes that would not have been brought forward under a planning application?**

a) Yes

b) No

c) Don't know

**If so, please give your reasons.**

Don't know. There should be no reason why the changes to Class G would lead to the delivery of more new houses coming forward under permitted development rights than would have been brought forward under a planning application unless these are associated with developments which have material considerations that would have resulted in an application being refused.

### **Agricultural buildings to dwellinghouses (Class Q of Part 3)**

#### **Size limits and maximum numbers of homes delivered**

**Q.25 Do you agree that the smaller and larger home size limits within the agricultural buildings to dwellinghouses right (Class Q of Part 3) should be replaced with a single maximum floorspace limit of either:**

- a) 100 square metres per dwellinghouse**
- b) 150 square metres per dwellinghouse**
- c) No change**
- d) Don't know**

Don't know. We believe the primary objective for the conversion of agricultural buildings to houses should be to deliver more homes for rural communities and not to deliver more second homes or holiday lets. We would propose that any conversion of agricultural buildings to homes should be limited such that occupancy is solely as the primary home. We believe any changes to the number and size of new agricultural building conversions should be driven by rural housing need and that any new dwellings should not be available as either second homes for holiday lets for an extended period.

This proposal does however illustrate the challenges of trying to rely on permitted development rights to deliver more homes rather than using the planning system. We do not have any views on the proposed size limits.

**Q.26 Do you agree that an overall limit on the amount of floorspace that can change use, set at 1,000 square metres, should be introduced for the agricultural buildings to dwellinghouses right (Class Q of Part 3)?**

- a) Yes**
- b) No**
- c) Don't know**

**Please give your reasons.**

Don't know. As indicated in our response to Q25 we believe the limits should be governed by local rural housing need and delivered through the planning system. We do not have a strong view on the specific changes.

**Q.27 Do you agree that the 5 home limit within the agricultural buildings to dwellinghouses right (Class Q of Part 3) should be increased to allow up to a total of 10 homes to be delivered within an agricultural unit?**

a) Yes

b) No

c) Don't know

**Please give your reasons.**

No. This proposal perfectly illustrates why PDRs are not an appropriate way to deliver changes such as this. There are a significant number of material considerations that would be considered in a planning application if a proposal to convert an agricultural building into up to 10 homes was being considered. These would include location; for example, whether it was within or on the edge of an existing village or at a remote location away from other settlements. The relationship with the highway system as a result of increased traffic movements would also be a material consideration along with access to public transport.

The proposals to increase the home limit to 10 for agricultural buildings that directly adjoin the public highway may be acceptable. As indicated in our response to Q36 we are concerned about the highway access for agricultural conversions, and we have particular concerns for what at the upper limit would become a major development.

**Rear extensions**

**Q.28 Do you agree that the permitted development right for the change of use from agricultural buildings to residential use (Class Q of Part 3) should be amended to allow for an extension to be erected as part of the change of use on previously developed land?**

a) Yes

b) No

**c) Don't know**

**Please give your reasons.**

Yes. This would seem to be one of the least contentious of the proposed extensions of PDRs for agricultural building and as such we would not oppose this proposal.

**Q.29 Do you agree that a prior approval be introduced, allowing for the consideration of the impacts of an extension on the amenity of neighbouring premises, including overlooking, privacy and light?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

Don't know. If a permitted development right is granted for rear extensions this must include prior approval for the consideration of the impact of the proposal on neighbouring premises.

**Minimum building size**

**Q.30 Do you agree that buildings should have an existing floorspace of at least 37 square metres to benefit from the right?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

Yes. We would agree with the proposal for a minimum floorspace.

**Article 2(3) land**

**Q.31 Do you think that the permitted development right for the change of use from agricultural buildings to residential use (Part 3 Class Q) should be amended to apply in other article 2(3) land?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

No. We would very strongly oppose the extension of permitted development rights for the conversion of agricultural buildings to Article 2(3) land. We fully accept that people who live in these areas need houses for local communities to thrive, but we do not believe that bypassing the existing planning system is the way to achieve that. A major factor in the unavailability of suitable and affordable housing in these areas is not the planning system, but the proliferation of second homes and holiday lets.

**Agricultural buildings not solely in agricultural use**

**Former agricultural buildings no longer on an agricultural unit**

**Highways access**

**Q.36 Do you agree that any existing building must already have an existing suitable access to a public highway to benefit from the right?**

**a) Yes**

**b) No**

**c) Don't know**

**Please give your reasons.**

Yes, this is particularly important issue and suitable access to the public highway needs to be clearly defined. Many agricultural buildings are accessed by farm tracks that are suitable for agricultural vehicles and are important for farm operation but do not have ready access to the public highway by an existing metalled road. We believe the definition of an existing suitable access should be limited by the distance from the public highway. These existing farm tracks are frequently public footpaths or bridleways and any changes to the public's rights of access should require a full planning application.

## **Works permitted**

### **Enabling the change of use of other rural buildings to residential**

**Q.39 Do you agree that permitted development rights should support the change of use of buildings in other predominantly rural uses to residential?**

- a) Yes
- b) No
- c) Don't know

**Please give your reasons.**

**If yes, please specify which uses.**

Don't know. We accept that there may be a strong case for allowing the change of use of some buildings in other predominantly rural uses to residential property, but there are equally other cases where change of use is inappropriate. This is best dealt with through the existing planning system.

## **Impact assessments**

**Agricultural buildings to a flexible commercial use ("agricultural diversification") (Class R of Part 3)**

### **Types of uses to which the right applies**

**Q.44 Do you agree that the right be amended to allow for buildings and land within its curtilage to be used for outdoor sports, recreation or fitness?**

- a) Yes
- b) No
- c) Don't know

**Please give your reasons.**

No, we do not support the proposed changes that will allow an extension of permitted development rights for outdoor sport and recreation especially for land. The example of paintballing, which is referred to as an example of outdoor sport and recreation that could benefit from the extension of this right, is an excellent example of the challenges that can occur if this right is amended. Many of the

areas to which this would apply will have existing public rights of way passing through the land and the proposed amendments could severely constrain community access to these areas. The current planning application system is the best process through which the needs of the landowner and the wider community can be balanced.

### **Agricultural development on units of 5 hectares or more (Class A of Part 6)**

**Q.52 Do you agree that we remove the flexibility for extensions and the erection of new buildings where there is a designated scheduled monument?**

- a) Yes
- b) No
- c) Don't know

**Please give your reasons.**

Yes, we fully support the removal of permitted development rights from areas where there is a designated scheduled monument.

### **Markets - temporary use of land (Class B of Part 4)**

**Q.61 Do you agree that the permitted development right for the temporary use of land should be amended so that markets can operate either:**

- a) 28 days per calendar year (in line with other uses permitted under the right)
- b) A different number of days per calendar year
- c) No change
- d) Don't know

**Please give your reasons. If you have chosen a different number of days per calendar year, please specify what number of days the right should provide for?**

28 days per calendar year (in line with other uses permitted under the right). We would not oppose the extension of the permitted development rights so that markets can operate for 28 days per year in line with other uses that are currently permitted.

### **Diversification of farm incomes**

**Q.83 What new permitted development rights, or amendments to existing permitted development rights, would streamline and simplify the process? If referring to an existing permitted development right, please be as specific as possible.**

**A.83** Making it easier to convert farm buildings into dwellings is going to make it even less attractive to convert those same buildings into for instance workspace and small-scale production. Residential property value will almost always yield a larger profit than economic activity. We also support farm diversification. People living on the periphery of rural settlements should also be always consulted regarding conversion of farm buildings in their areas.

For further information on this response contact Chris Borg, NALC policy manager via email at [chris.borg@nalc.gov.uk](mailto:chris.borg@nalc.gov.uk) or [policycomms@nalc.gov.uk](mailto:policycomms@nalc.gov.uk) .

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