



# The City of London Law Society

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## Response to DCLG consultation “Improving Permitted Development”

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The City of London Law Society (“CLLS”) represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of Improving Permitted Development has been prepared by the CLLS Planning and Environmental Law Committee.

### General

We are generally supportive of the proposals, subject to a number of suggested amendments that are set out in our response to the consultation questions below. Our general comments are as follows:

- Bringing Permitted Development Rights (PDRs) for commercial uses more in line with those existing for non-commercial uses seems fair and reasonable and would contribute to the objective of easing the burden of handling planning applications of this nature.
- Most of the proposals are sufficiently clear to give certainty and a more standard application of conditions would increase the consistency of the proposals. We have suggested a number of changes that would achieve this.
- The proposals are likely to have a number of commercial implications that are not addressed in the draft Order. For example, where many small to medium sized businesses take advantage of the new PDRs, this gives rise to potential intensification of uses as a result of cumulative effects of changes.
- Such intensification may have implications for matters such as reduced local car parking on individual premises (where construction occurs on areas currently used for car parking), noise (from installation of equipment) and traffic generation arising from cumulative take-up of the procedures. At present, such material considerations are assessed as part of the procedure for deciding such applications. However, there is no such provision for managing the consequences of PDRs, other than imposing a blanket Article 4 Direction.
- The proposals must be readily and effectively enforceable (which may reduce the resource "savings" anticipated) and the simplified application of standard conditions would assist this.
- Consideration should be given to the need for different levels of control where neighbours are residential rather than other commercial occupiers.

- The prior approval mechanism may not be effectively implemented or enforceable.
- We have concerns over the proposed changes to Article 4 procedures.

## **1. What are your comments on the proposals for shops?**

Comments on Part 42 Class A.1 of the draft Order:

- Restriction (d) refers to proximity to communal car parking, but the reasons for this is not clear. Proximity to residential property should be included in this condition as such extensions could have a substantial impact on residential amenity – as drafted in Restriction B.1(b) of Part 42.
- Restriction (f) addresses listed buildings but should include Conservation Areas;
- Restriction (h) should be clarified to confirm that this covers both delivery vehicles and customer parking.
- The Condition A.2 relating to matching materials should be extended to a requirement for matching design in order to ensure that design appearance and standards are maintained.

Part 42 Class B

- Trolley Stores should be subject to a restriction protecting listed buildings, as drafted for PDRs for shopfronts, but extended to include Conservation Areas.
- There should be a materials condition applied to this PDR.

## **2. What are your comments on the proposals for offices?**

Comments on Part 41 Class A.1 of the draft Order:

- Restriction (e) should include Conservation Areas.
- Restrictions (c) and (d) should be extended to include proximity and visibility to residential neighbours.

## **3. What are your comments on the proposals for institutions?**

Comments on Part 32 Class A of the draft Order:

- Restrictions (d) and (g)(i) should be extended to areas with residential neighbours in order to prevent significant overshadowing and reduction of amenity.
- Restriction (j) should include Conservation Areas.
- Condition A.2 should include a requirement for appropriate matching design to match the existing building to ensure quality and appearance are maintained.

## **4. What are your comments on the proposals for schools?**

Comments on Part 32 Class A of the draft Order:

- Restrictions (d) and (g)(i) should be extended to areas with residential neighbours in order to prevent significant overshadowing and reduction of amenity.
- Restriction (j) should include Conservation Areas.

- Restriction (e) should also apply to land which, prior to the development, is used for car parking.
- Condition A.2 should include a requirement for appropriate matching design to match the existing building to ensure quality and appearance are maintained.

## **5. What are your comments on the proposals for industry and warehousing?**

Comments on Part 8 Class A of the draft Order:

- A restriction protecting listed buildings and their setting and Conservation Areas should be imposed.
- Condition A.2 (b) restricts use overnight other than for the purposes of employment. This would not permit bona fide recreational use of the premises for those employees at the premises who may be entitled to make use of such facilities outside the hours of their employment. Whilst this is no doubt a policy driven restriction on uses for warehouses, it may impinge on normal and reasonable activities.

Comments on Part 8 Class B of the draft Order:

- Restriction A.1(a) permits development where it is for additional or replacement machinery. This does not envisage any other potential uses (e.g. packing centres or other ancillary works).
- Restrictions on proximity to boundaries, highways and other sensitive users, listed buildings, conservation areas etc. should also be included as for the other classes of development.
- Restrictions in intensification and its consequential effects (e.g. increased noise, traffic etc.) where the property is near to sensitive users (schools, hospitals, residential dwellings) should be imposed.
- Noise factors should be referenced to existing (pre-development) noise levels. The cumulative effects of several occupiers taking advantage of these PDRs is not controlled and should be.
- Condition B.1(a) is too broad: will an industrial owner have the same appreciation of what "materially affects the external appearance" of a building as a planning officer?
- Condition B.1(b) is not clear – is this 15m above ground level and 15m above the existing building, or 15m above the ground or equal or less than the height of anything replaced. This condition also permits additional or replacement machinery to be housed in a taller building than currently exists. This does not reflect the overall tenor of the PDRs throughout which is to limit extensions or new buildings to a height which is no higher than existing buildings. The condition for industrial buildings is inconsistent with this approach.

## **6. Should the proposals be expanded to include air conditioning units?**

- This would potentially conflict with climate related policies and the Supplement to PPS1 requiring such matters to be taken into consideration in planning matters; see comments to q.7 below.
- However, PDR's for air conditioning are justifiable in principle, despite the relative inefficiency in energy terms as permitting A/C units to be installed would potentially increase the efficiency and extend the use of existing building stock and its refurbishment, which is more sustainable than the wholesale demolition and rebuilding of such stock.

- The cumulative effects of noise where many small and medium businesses take up A/C, particularly where the neighbours are residential rather than other commercial occupiers should be addressed.
- The restriction in Part 2 Class D, D.1 (c) should be amended – for residential, care homes and similar properties the effect of A/C unit noise is likely to be more intrusive than for offices or other commercial buildings. However, there is no protection for commercial neighbouring properties.
- The restriction in Part 2 Class D, D.1 (g) should be extended to any other wall of a property that is not visible from the highway and that fulfills the other criteria as to noise/distance etc.

**7. Given Government objectives on climate change mitigation and adaptation, what impact do you think expanding permitted development rights to include air conditioning units would have on:**

**a. The take up of air conditioning units;**

The proposals would be likely to increase take-up as an easy/cheap option for cooling, and as a result of there no longer being any need to make an application for these works.

**b. The energy efficiency and carbon footprints of buildings;**

A/C is known to be a significant energy user and easing the way to installation of more units would potentially conflict with and reduce effectiveness of efforts to cut carbon footprints of buildings. However, the installation of A/C units could extend the lifetimes of existing buildings which would be a carbon-saving over their replacement.

**c. The ability of residents and businesses to meet future carbon budgets;**

This is outside the scope of PDR's. Residents and businesses would be able to choose low or high carbon options. However, costs (including of obtaining planning) would be likely to play a role in such decision making. Any encouragement (either procedural or financial) of high carbon options would be likely to reduce the likelihood that individuals or businesses will meet energy efficiency targets. Carbon Reduction Commitment qualifying entities would need to consider the cost and availability of Carbon allowances to run such units.

**and**

**d. The impact upon alternative means of dealing with extreme temperatures, e.g. passive cooling.**

It may reduce the up-take of alternatives to traditional A/C units unless pricing mechanisms were in place to encourage the uptake of alternatives. It may perhaps be more appropriate to permit passive/other low carbon cooling options (which would otherwise require planning consent) as a PDR rather than, or as well as, traditional air conditioning units.

**8. In the event that air conditioning units were to be made permitted development, do you agree with the limitations proposed above? If not, what would you suggest? Are there any other issues that should be considered?**

See comments above; need to ensure that allowing A/C under PDR does not conflict with or negate the increasingly pervasive policy stance that UK is taking with respect to energy saving and low carbon developments. It might be more

appropriate to make alternative forms of cooling available under PDRs rather than, or as well as, energy-hungry AC units.

**9. What are your views on the proposed prior approval regime described above?**

CLLS consultation response to household PDRs indicated that prior approval system has a record of poor implementation and that this was not considered to be an appropriate means of dealing with planning matters. The same argument would apply in this case.

**10. What are your comments on the proposals for shopfronts?**

Comments on Part 42 Class C

- Restriction C.1 (c) refers to World Heritage Sites. Should this restriction be applied to all the proposed developments in the draft Order?
- Condition C.2 (a) should be extended to include the materials proposed to be used. This would control the replacement of traditional windows with UPVC and other materials that may not be suitable for particular areas.

**11. What are your comments on the proposals for ATMs?**

Comments on Part 42 Class D

- There seems to be no justification for limiting the PDR for ATMs to offices, shops etc. Should they not be permitted in hospitals, schools, colleges, universities and similar institutions?

**12. Do you agree that shops, offices and institutions should be allowed to lay up 50 square metres of permeable hard-surfacing as permitted development?**

- Yes. This is consistent with current concerns about surface water flooding and drainage and consistent across different use classes.
- There may need to be guidance to ensure that what materials are laid are properly permeable.

**13. Do you agree that industry's current permitted development right to lay an unlimited amount of hard-surfacing should be amended so that industry should be able to lay an unlimited amount of hard-surfacing provided provision is made for surface-water to drain to a permeable area (unless there is a risk of contamination in which case hard-surfacing would have to be impermeable)?**

Yes.

- It does not seem reasonable to permit some users to extend unlimited areas of impermeable hard standing when other uses cannot.
- Surface water drainage is a major cause of flooding. Consultation is currently in progress in respect of flood risk management and planning and the

Government should ensure that these proposals do not conflict with these policies.

- The PDR could allow permeable surfaces but require approval for laying impermeable surfacing, particularly in areas considered to be at higher risk of surface water or other flood risk. Many industrial areas are located in higher risk zones, and the impacts to business etc. need to be protected.
- Where impermeable surfaces are required to control contamination risks, this should be limited to what is required to control such risks and not used as a general reason for extending impermeable hard standing.
- With regard to Part 8 class D permitted deposit of waste, there is insufficient protection against the impact on local amenity, safety, visual impacts etc. as a result of permitting deposits of waste. Large accumulations of waste permitted in this way should not be permitted development as these could have potentially significant impacts on the appearance, health and safety of the local area. There is no restriction on sizes of such waste heaps. This additional PDR should not be permitted.

**14. Do you think that the proposed changes to Article 4 Directions represent a sensible balance between freeing up opportunities for low impact development and protecting areas which need special protection?**

CLLS response to consultation on amendments to compensation for domestic PDRs stated that the current system was appropriate and proportionate and should not be changed. This applies to the proposed changes to non-domestic Article 4 compensation.

**15. Do you think that Section 189 of the Planning Act 2008 (which limits LPA liability to compensation to 12 months following local restriction of national permitted development rights) should apply to Article 4 Directions made in respect of non-domestic permitted development rights?**

Yes. Removal of rights should apply to non-domestic as for domestic and the impact (loss of rights) on either is the same.

**16. Do you agree that LPAs should be able to make Article 4 Directions without the approval of the Secretary of State?**

No. As Article 4 Directions are a removal of personal rights, there should be proper control over their imposition.

**17. Do you agree that LPAs should be required to consult before making Article 4 Directions?**

Yes. Consultation should be undertaken, and also in the cases where emergency action has been taken.

**18. /Do you agree that the notification requirements are appropriate and allow owners/occupiers to be informed whilst allowing an LPA to act quickly if necessary?**

Yes

**19. Do you think that impact assessment work undertaken broadly captures the types and levels of costs associated with the policy options?**

Yes

**20. Do you think that impact assessment work undertaken broadly captures the type, types and levels of costs associated with the policy options?**

Yes

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