

healthier homes and the ongoing saga of permitted development

Appalling space standards and lack of access to natural light, fresh air and thermal comfort are just some of the seriously detrimental outcomes of the government's determination to pursue the extended permitted development route to the creation of new homes in England, as **Ben Clifford** explains



Photos: Ben Clifford

A permitted-development change-of-use scheme of what had been a retail unit in Croydon – this is post-conversion and is now somebody's 'home'

And so the saga of planning deregulation in England continues: on 30 March, the government announced that it will introduce a new permitted development

right (PDR) for the conversion of commercial buildings from the wide-ranging new Class E use class to residential use.¹ The announcement was

somewhat bizarrely couched in terms of 'new freedoms' that would 'revitalise' high streets and town centres. The highly negative response to the government's pre-implementation consultation on this idea was then published the day after.²

Permitted development has existed ever since our comprehensive, statutory system of development control was introduced in 1948, but has traditionally constituted very minor development, such as extensions to the rear of an existing house, and temporary structures. Its expansion to encompass ever more significant forms of development and thus reduce the scrutiny by local planning authorities and the degree of regulatory control that can be exerted over them is a deregulation driven more by ideology than evidence. Following the introduction of the PDR for the conversion of offices to residential uses in 2013, we have seen the introduction since 2015 of PDRs relating to converting retail and various associated *sui generis* uses to residential, agricultural to residential, and storage and light industrial to residential.

Changing the use of buildings is hardly a new phenomenon. In many British cities there are early-19th century buildings near the centre which became less popular as residences in the 1960s and 1970s and switched to office use and which may now be turning back to residential use, the generous space standards and ceiling heights aiding such 'adaptive re-use'. Converting vacant commercial buildings to residential use can help regenerate areas and can be a sensible approach in relation to sustainability, given the embodied carbon in buildings and given that many (but not all) are within existing urban areas with at least some supporting infrastructure already in place.

Alongside the sustainability and regeneration arguments, arguments in favour of conversion also include the fact that we are generally accepted to need a greater supply of housing in England (albeit the housing crisis is far more complex than the reductive use of overall national supply figures would suggest). Since permitted development was introduced, government data shows that over 72,000 dwellings have been created through change of use rights, and, as the specific data has been collected only since 2015, the number since 2013 will be higher still.³

The issue is not, however, that the principle of converting buildings to residential use is wrong. The issue is the way such change of use is governed through the planning system, and the implications of that. In short, the problem is not adaptive re-use; the problem is permitted development as the governance instrument to allow and achieve such conversions. This type of permitted development has had a number of disbenefits which have become quite apparent and can be directly linked to the developments being managed through PDRs rather than full planning permission.

Most serious are the issues related to the quality of the residential accommodation created in so many permitted development schemes. Various with colleagues at UCL (University College London) and the University of Liverpool, I have collected evidence about some of these issues and examples of very poor commercial-to-residential conversion schemes under permitted development in three reports and a book published between 2018 and 2020.⁴ The stand-out issue from this work has been the appalling space standards usually seen with conversions under PDRs.

In our 2018 report, looking across five English local authority case studies, we found that just 30% of the dwellings created through PDRs would meet the nationally described space standards, compared with 94% of the dwellings created through change of use which had been allowed through a full planning permission. In our 2020 report, looking across another 11 English local authority case studies, 22% of the PDR dwellings we examined were large enough to meet the standards, compared with 73% of the planning permission dwellings.

Planning permission units were often only just below the national standards and had sometimes been compliant with slightly lesser, older local standards, or the shortcomings were due to issues discussed in officer reports, such as the difficulties of converting listed buildings. Permitted development dwellings were often significantly smaller – for example studio flats of 15 square metres compared to the suggested minimum of 37 square metres.

In a recent case in Leicester, a planning inspector upheld the council's refusal of a PDR retail-to-residential conversion where a unit would have been just 8 square metres on the basis that this could not count as a dwelling, but a similar attempt in Hounslow to block 18 square metre and 24 square metre office-to-residential conversions on the same basis in 2014 were unsuccessful and overturned by planning inspectors, even though they noted the tiny space necessitated that a bed that could be 'raised up to the ceiling when it was not in use' to allow space for non-sleeping activities.⁵

Space standards matter and have commonly been considered a basic component of decent housing for over a century (featuring in the Tudor Walters report of 1918). At the extreme, lack of space in the dwelling can impact the physical health of occupiers, but more common is the impact on mental health and wellbeing through constraints on everyday life (such as sufficient room to allow a reasonable range of different activities to take place, including work, socialising, cooking, and sleeping). Owing to the housing crisis, there is often a lack of choice for many people over where they live, meaning that many of those inhabiting these tiny 'units' (they hardly seem fit to be called homes) are not there freely. In some cases, there may even be overcrowding with families in these small units, particularly given

the preponderance of studio and one-bed flats in these PDR schemes, divorced from any link to actual local need.

In our 2020 research, we found that space standards were worse for dwellings created through PDR schemes than for planning permission schemes in all of our case study local authority areas, but that they tended to be smaller in more deprived communities. Large office block conversions often also led to many tiny units, compared with small retail unit conversions (the under a 150 square metre overall size limit on retail-to-residential conversions is now increased to 1,500 square metres under the Class E rules).

While the often tiny space standards have been the most notable problem in the quality of residential units created through PDRs, they are not the only issue. There have been issues with natural light, with some units even being created with no windows at all, but more commonly with reduced natural light into the main habitable area of the dwelling through strange, contrived layouts resulting from attempts to maximise the number of new flats carved out of large-floorplate commercial buildings. We reported in 2020 that 72% of the dwellings created under PDRs only had single-aspect windows, compared with 29.5% created through planning permission. Some of these single-aspect conversions were also north facing.

Window aspect was something that we could tell readily from the sort of floorplans usually submitted through the PDR prior-approval process; however, there will be many cases where the issues go beyond this and would include factors such as windows that do not open or are tinted – which might be fine for commercial buildings but are less desirable for residential buildings. Ventilation, and the availability of fresh air, daylight and thermal comfort, can all be issues with implications for the health and wellbeing of the inhabitants.

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There have also been issues with amenity and outdoor space. In our 2018 research, we had found that just 14% of the PDR dwellings examined benefited from access to private or communal amenity space (such as a roof terrace, garden area, or balcony), while in 2020 we found that just 3.5% of the PDR units benefited from access to private amenity space (such as a balcony), far less than the

rates for dwellings created through planning permission.

The COVID-19 pandemic has served to remind us of the importance of such access for wellbeing, and, while many people might not be so confined to home as the pandemic eases, this continues to be an important issue widely recognised as part of creating good-quality dwellings at higher density. This is compounded by the fact that things such as neighbourhood access to green space and adequate provision of play space in what can be quite large conversion schemes simply cannot be considered through a PDR process, given that it is the very opposite of proactive and holistic planning.

The location of PDR conversions can also be deeply problematic. The majority of commercial-to-residential schemes are in town centre areas which are often suitable for dwellings and with good access to services. Looking beyond averages, however, to the extremes possible under permitted development, there can be dwellings created in the middle of industrial estates and business parks which offer exceptionally poor amenity with potential externalities from neighbouring premises and poor access to shops and public transport. Issues with non-sustainable locations with poor access to services can also be associated with agricultural-to-residential PDR schemes, which have often been overlooked in the story of permitted development as they are not so associated with poor-quality housing but can be deeply problematic in sustainability terms.

While some of these converted buildings are so shockingly bad that even passers-by would notice them, others may be easy to overlook for those not having to endure living in them. Living in more comfortable quarters, it can sometimes be all too easy to forget the conditions of poor-quality residential accommodation that can cause damage to people's health. Powerful testimony from some residents during our research discussed the impact of feeling cut off and suffering from noise from neighbouring uses in unsuitable locations, of overcrowding where families live in one-bedroom flats, and of children having to play in the corridors because of a lack of space in their flats or outdoor or specific play space provision in the former office blocks that they now call home. Lack of adequate accessibility for disabled residents was also raised as an issue.

The residential quality issues are extremely important but are not the only factors that should cause concern about the expansion of PDRs for schemes that create new dwellings. There has been no requirement that the buildings being converted are actually vacant, and while some surplus and empty commercial buildings have been positively re-used through conversion, there are many others than have been at least partially and sometimes fully occupied prior to PDR change of use. This is particularly the case in London and the South East,



An office-to-residential permitted-development conversion on a business park location in Slough

where high housing prices can lead to a push to convert occupied employment space to residential use. Removing such commercial space can negatively impact local businesses if they are unable to find suitable alternative accommodation and can negatively impact the preservation of mixed communities and the fine-grained mixture of land uses which can sometimes make for vibrant urban areas.

There is usually no planning gain to be levied on PDR schemes. They are not generally considered liable for Section 106 contributions (including affordable housing provision), and, even when Community Infrastructure Levy charging schedules are adopted, if the scheme does not create new floorspace it can usually avoid making any contributions. This is highly problematic given that there are different impacts on local infrastructure from residential compared with commercial buildings, particularly with regard to social and green infrastructure. The increase in change-of-use schemes seen when PDRs were extended may be more about the increased profitability resulting from the lack of affordable housing and infrastructure contributions than about the process of gaining planning permission per se having been an insurmountable barrier before 2013.

The nature of nationally defined PDRs also removes the opportunity for local management of the built environment and opportunities for community engagement. Local Plan policies cannot be applied, reducing the scope for any meaningful proactive ‘planning’ or influence over the location and form of

development by local planners. Local communities cannot effectively input into PDR processes, whether this be through Local Plan or development management processes, because they are not subject to local policies and the principle of development has already been established nationally.

Local planners do still have some limited influence over schemes through the pre-set list of technical things being checked through prior-approval processes, but the fee chargeable for this has been laughably small and so, on top of everything else, processing PDR prior approvals is actually reducing the resources of austerity-hit local authorities through lost fees (as well as lost planning gain). Constrained resources, combined with a lack of government guidance on things such as the ability to apply conditions to prior approvals, may be why there has often been poor monitoring of these schemes. In some cases, the scheme built clearly varies from floorplans submitted for prior approval (which can be of shockingly poor quality to begin with). The impacts of developments delivered in this deregulated space may be felt for years to come.

There have been government changes to PDRs and the prior-approval process in recent years. A report I led, published in 2020, was commissioned and funded by the Ministry of Housing, Communities and Local Government to learn more about residential quality issues associated with PDRs. Having received our report, the government acted in June 2020 to require ‘adequate natural light’ to all habitable rooms created through change-of-use PDRs. It then acted in September 2020 (hours before a key vote on

permitted development regulations in Parliament) to require, from April this year, dwellings created through change-of-use PDRs to meet the nationally described space standards.⁶

Although most people would probably be shocked to find that it had been possible to create dwellings without any windows at all for seven years, these additional safeguards are welcome, and the minimum space standards should go some way to mitigating the worst of PDRs. The issue of the lack of planning gain contributions was acknowledged in the Planning White Paper, with a proposal that at some undefined time in the future these PDR conversions would need to make contributions to the new consolidated Infrastructure Levy.⁷

These policy developments are not, however, sufficient to ensure that we will always be creating healthy homes through PDRs. Other issues, such as access to outdoor and play space, remain and are important for what can be large conversions creating multiple dwellings. I have also already seen a proposal under the upward-extension PDR in which the requirements for 'adequate natural light' would be fulfilled by having skylights and lightwells into some flats, but no windows which can open, or which you can look out of at all. This would potentially meet the narrow requirements of the prior-approval process but would clearly be quite problematic, with issues of ventilation and the impact on people's wellbeing from not having a view of the outside world from any part of their flat.

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Our current system of case-by-case planning permission would be able to stop such conversions because of typical Local Plan policies on creating new residences that provide a satisfactory living environment. The more narrowly defined prior-approval process could not. A real advantage of our system of

planning permission is the ability of a local planner to take a more holistic view of the scheme and see, all things considered, whether or not it is acceptable. This just is not possible under permitted development.

Other countries with more as-of-right or zoning-type planning systems do have processes more akin to PDRs for approving individual schemes, without the case-by-case discretion typical of planning in the UK. However, they also have much more sophisticated fixed standards than our prior-approval process. As my colleague Manuela Madeddu has highlighted, in Italy the fixed and non-negotiable standards which apply to residential development there would prevent many of the conversion schemes that we have seen in England being allowed at all, as they would be unable to comply with the much more rigid safeguards in place.⁸

Precisely because we have a tradition of being able to take a holistic case-by-case view of the merits of a scheme through our system of development management, we do not have a sophisticated system of fixed standards to ensure that satisfactory living environments are created through the PDR process. The prior-approval process has evolved, but it would still have a long way to go to ensure healthy homes, and this is one reason why some of the proposals from the August 2020 Planning White Paper are so concerning – similarly, the recent government announcement to create a new Class E to residential PDR. Without a much more sophisticated system of minimum standards enforced through Building Regulations and planning processes, PDRs will always be problematic.

I am currently working with colleagues at UCL's Centre for Advanced Spatial Analysis to try to estimate the scope of class E to residential PDRs in four case study local authorities. This clearly widens the reach of permitted development to a far greater range and number of buildings than the preceding PDRs for change of use to residential. It is hard to think of many buildings in a local high street or town centre which would not be liable to change to residential under the new rights. This calls into question the policies from a Local Plan related to things like town centre regeneration, which would no longer be able to be applied to much change and development. There would also be considerable scope for poor-quality housing to still be delivered through this PDR, with the associated social and economic impacts.

The pattern of future use of commercial space as we come out of the pandemic is also uncertain, making the timing of this policy unfortunate: temporarily vacant commercial space may be converted to residential use before we have a proper understanding of the longer-term demand for such space – and residential space is harder to convert back to commercial use than the change the other way round. At the same time, the government has proposed making it harder for local authorities to try

to remove these PDRs through the use of Article 4 Directions.⁹ There is every reason to be concerned.

There is, of course, a need for more housing, but we need the right quality, affordability and type of homes in the right places. In seeking to boost housing supply, the government seemed to go very quickly for the deregulatory (and, for central government, no apparent cost) approach of PDRs, following suggestions from right-learning think-tanks. Yet there were alternatives to promote adaptive re-use of buildings. Such change of use has always happened: in 2006-07, under the requirements of needing full planning permission, 20,150 new dwellings were created across in England through change of use. That this number had declined to 11,540 by 2010-2011 will have had much to do with economic cycles and the global financial crash rather than planning 'barriers' and would surely have rebounded even without the government expanding permitted development in the way it did.

Our research found that before the office-to-residential PDR, from 2009 to 2013, 87% of planning applications for office-to-residential conversion did get planning permission, suggesting that there was hardly a deluge of schemes being blocked by the planning system. Lack of conversion of even vacant commercial buildings can be about issues beyond just planning regulation, such as lack of awareness of possibilities by landowners, absentee owners, developers tending to want to do the new build schemes they are used to, broader local economic conditions, and so on. These can be tackled in alternative approaches to deregulation, such as local authorities proactively setting out policies for where and how they would want to see conversions, and working proactively with landowners and developers to promote conversions (all of which require properly resourced planning departments).

Sadly, we did not take a planning-led approach to promoting adaptive re-use in England. Left to the whim of developers, some good-quality schemes have certainly been delivered through PDRs, but a majority of what I would estimate to be over 75,000 dwellings created through change-of-use PDRs since 2013 are of poor quality. The question about issues related to this now existing housing stock, plus the continuing possibility of yet more problematic dwellings being created under the newly expanded PDRs, mean that there is every reason to seek proper legislation to ensure homes fit for all of society to have a reasonable chance of a good quality life in.

The government seems wedded to PDRs and problematic planning reform which can mean, while not as bad as PDRs, even developments having gone through full planning permission can be far from perfect.¹⁰ Given this, we need a Healthy Homes Act to ensure adequate safeguards for the decent housing we should expect in our society.

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Notes

- 1 'New freedoms to support high streets and fast track delivery of schools and hospitals across England introduced today'. Press Release. Ministry of Housing, Communities and Local Government, 31 Mar. 2021. www.gov.uk/government/news/new-freedoms-to-support-high-streets-and-fast-track-delivery-of-schools-and-hospitals-across-england-introduced-today
- 2 *Supporting Housing Delivery and Public Service Infrastructure: Government Response*. Ministry of Housing, Communities and Local Government, Mar. 2021. www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure
- 3 Live Tables on Housing Supply: Net Additional Dwellings. Ministry of Housing, Communities and Local Government. www.gov.uk/government/statistical-data-sets/live-tables-on-net-supply-of-housing
- 4 See B Clifford, J Ferm, N Livingstone and P Canelas: *Assessing the Impacts of Extending Permitted Development Rights to Office-to-Residential Change of Use in England*. RICS Research Trust, May 2018. www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england-rics.pdf; B Clifford, J Ferm, N Livingstone and P Canelas: *Understanding the Impacts of Deregulation in Planning: Turning Offices into Homes? Palgrave Macmillan, 2019*; B Clifford: *Healthy Homes? Thirty Examples of Permitted Development Conversion*. Bartlett School of Planning, University College London, Sept. 2019. www.ucl.ac.uk/bartlett/planning/sites/bartlett/files/tcpa_room_the_breathe_examples_-_clifford_et_al.pdf; and B Clifford, P Canelas, J Ferm, N Livingstone, A Lord and R Dunning: *Research into the Quality Standard of Homes Delivered through Change of Use Permitted Development Rights*. Ministry of Housing, Communities and Local Government, Jul. 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902220/Research_report_quality_PDR_homes.pdf
- 5 The recent Leicester appeal is Planning Inspectorate reference APP/W2465/W/20/3259525. The Hounslow appeals from 2015 are Planning Inspectorate references APP/F5540/A/14/2228951 and APP/F5540/A/14/2228868
- 6 'Permitted development' homes to meet space standards'. Press Release. Ministry of Housing, Communities and Local Government, 30 Sept. 2020. www.gov.uk/government/news/permitted-development-homes-to-meet-space-standards
- 7 *Planning for the Future*. White Paper. Ministry of Housing, Communities and Local Government, Aug. 2020. www.gov.uk/government/consultations/planning-for-the-future
- 8 M Madeddu and B Clifford: 'Housing quality, permitted development and the role of regulation after COVID-19'. *Town Planning Review*, 2021, Vol. 92(1), 41-48
- 9 *National Planning Policy Framework and National Model Design Code: Consultation Proposals*. Ministry of Housing, Communities and Local Government, Feb. 2021. www.gov.uk/government/consultations/national-planning-policy-framework-and-national-model-design-code-consultation-proposals/national-planning-policy-framework-and-national-model-design-code-consultation-proposals
- 10 *A Housing Design Audit for England*. Place Alliance, Jan. 2020. <http://placealliance.org.uk/research/national-housing-audit/>