Communities and Local Government

Improving Permitted Development

Consultation

www.communities.gov.uk
community, opportunity, prosperity

Communities and Local Government

Improving Permitted Development

Consultation

July 2009
Department for Communities and Local Government

Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

Communities and Local Government Publications
Tel: 0300 123 1124
Fax: 0300 123 1125
Email: product@communities.gsi.gov.uk
Online via the Communities and Local Government website: www.communities.gov.uk

75% recycled
This is printed on
75% recycled paper

July 2009

Product Code: 09PD06013

ISBN: 978-1-4098-1634-8

Consultation summary

Topic of consultation:	Improving regulation of development that may be undertaken with no or limited local planning authority (LPA) oversight – 'permitted development' and 'prior approval' respectively.
Scope of this consultation:	This paper seeks views on proposals for changes to the planning system in relation to permitted development rights, Article 4 Directions – locally-defined restrictions to national permitted development rights – and proposed changes to the regulation of non-domestic hard-surfacing. Consultation responses will inform policy, both in terms of the overall premise and detailed recommendations of proposals.
Geographical scope:	England.
Impact assessment:	Proposals' impacts have been assessed at Annex B.

To:	This is a public consultation, and is open to anyone to respond.
Body/bodies responsible for the consultation:	Communities and Local Government (Planning System Improvement Division)
Duration:	30 July to 23 October 2009
Enquiries:	Tom Bristow, 020 7944 3727 tom.bristow@communities.gsi.gov.uk
How to respond:	By email to permitted.development@communities.gsi.gov.uk In writing to: Permitted Development Communities and Local Government Floor 1, Zone A1 Eland House Bressenden Place London SW1E 5DU
Additional ways to become involved:	This will be largely a written exercise, though we do intend to hold meetings with interested groups.
After the consultation:	A summary of responses to the consultation will be published on the Department's website alongside an announcement of the Government's decision on the way forward.
Compliance with the Code of Practice on Consultation:	This consultation complies with the code.

Getting to this stage:	The Killian Pretty Review highlighted how obtaining planning permission for some minor non-domestic development can place burdens on business out of proportion with potential impacts. The Government's response to the Killian Pretty Review acknowledged that reducing the burden of the planning system on applicants has taken on a new imperative in the current economic climate, and placed an early priority on reducing the need for planning permission for some small scale development by businesses.[1] Alongside the Government's response to the Killian Pretty Review, we published a report of proposals by WYG Planning and Design (WYG) for extending permitted development rights to non-domestic concerns.[2] WYG proposed changes in relation to a wide range of non-domestic uses including shops, offices, institutions, agriculture, and waste management. We have at this stage given priority to consulting upon the changes that would remove the greatest number of planning applications from the system and which would offer most benefit to business. Given that the Government's general policy is reducing the burden of the planning system where appropriate on users, the burden of making Article 4 Directions on LPAs should also be minimised. We are therefore proposing changes to the process by which Article 4 Directions are made. This paper also responds to Sir Michael Pitt's Review of the summer 2007 floods by proposing changes to the regulation of hard-surfacing that may be laid by certain non-domestic uses.[3]
Previous engagement:	Preliminary discussions with key stakeholders have been conducted both directly by CLG, and indirectly via research undertaken by WYG Planning and Design.

1 http://www.communities.gov.uk/publications/planningandbuilding/killianprettyresponse

2 http://www.communities.gov.uk/publications/planningandbuilding/finalconsentsreview

3 http://archive.cabinetoffice.gov.uk/pittreview/thepittreview.html

Contents

Figures and Tables

Section 1

Introduction

1. This consultation paper sets out the Government's proposals for changes to the planning system in relation to:

    - non-domestic permitted development – i.e. development that may be legitimately undertaken without the need to apply for planning permission from the local planning authority (LPA)
    - non domestic prior approval – an intermediate planning tier between permitted development and planning application which requires limited information from applicants with regard to prospective developments, and where consent is deemed granted if LPA does not object within a given time-period
    - the procedure by which Article 4 Directions – local restrictions to national permitted development rights – are made by LPAs
    - regulation of hard-surfacing for certain non-domestic uses

2. This paper is the Government's response to the Killian Pretty recommendation that the number of minor applications that require full planning permission should be substantially reduced.[4] This paper also responds to Sir Michael Pitt's Review of the summer 2007 floods by proposing changes to the regulation of hard-surfacing that may be laid for certain non-domestic uses.[5] The proposals take account of the economic downturn by proposing that business be allowed to undertake minor extensions to their premises without the costs of preparing and submitting a planning application.

3. The proposals in this paper apply to England only, and would be incorporated in an amendment to secondary planning legislation – the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).[6]

[4] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/killianprettyreview/

[5] http://archive.cabinetoffice.gov.uk/pittreview/thepittreview.html

[6] http://www.opsi.gov.uk/si/si1995/uksi_19950418_en_1

Section 2

Background

4. Changes to householder permitted development rights were introduced in October 2008, based on the principle that developments could take place as permitted development if there were no significant adverse impacts on the amenity of the immediate surroundings.

5. The Planning White Paper *Planning for a Sustainable Future* (May 2007) committed the Government to reviewing permitted development rights as follows:[7]

   "We also propose to extend the impact approach to permitted development to other types of development such as industrial or commercial buildings as appropriate… our proposals to extend permitted development rights are aimed at reducing bureaucracy for minor applications which have little or no impact beyond the individual property."

6. The Killian Pretty Review described how obtaining planning permission for some minor non-domestic development can place burdens on business that are out of proportion with potential impacts.[8] The Review also noted that over 80 per cent of minor non-domestic developments are approved. The Government's response to the Killian Pretty Review in March 2009 acknowledged that reducing the burden of the planning system on applicants has taken on a new imperative in the current economic climate, and placed an early priority on reducing the need for planning permission for some small scale development by businesses.

7. The Review recommended that the Government should take steps to substantially increase the number of small scale commercial developments and other minor non domestic developments that are treated as permitted development. Additionally the Review recommended revising and expanding the prior approval regime so as to provide a proportionate intermediate approach (between permitted development and planning permission) for appropriate forms of non domestic development.

[7] http://www.communities.gov.uk/publications/planningandbuilding/planningsustainablefuture

[8] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/killianprettyreview/

8. Alongside the response to the Killian Pretty Review, the Government published a report of proposals by WYG Planning and Design for extending permitted development rights to non-domestic land uses.[9]

9. WYG proposed changes in relation to a wide range of non-domestic uses including shops, offices, institutions, agriculture, and waste management. We have at this stage given priority to consulting upon the changes that would remove the greatest number of planning applications from the system and which would offer most benefit to business. The proposals below are therefore limited broadly to shops, offices, some institutions, industry, and warehousing.

10. If implemented in full, the proposals set out in this consultation paper would remove approximately 25,000 applications from the system annually in England, making a significant contribution towards the Killian Pretty target of removing 31,500 such applications.

[9] http://www.communities.gov.uk/publications/planningandbuilding/finalconsentsreview

Section 3

Proposals

Permitted development

Shops

11. Retail and town centre uses cover a wide range of uses including shops, sandwich bars, banks, building societies, restaurants, cafes, public houses, wine bars and hot food takeaways. The uses are included in classes A1 to A5 of the Use Classes Order.[10]

12. Retail and town centre uses currently have no specific permitted development rights for altering or improving existing buildings or erecting new buildings. The Government's policy is to promote vital and viable town centres by focusing growth in existing centres to strengthen and regenerate them. This policy is set out in *Planning Policy Statement 6: Planning for Town Centres*,[11] and its draft successor *Planning Policy Statement 4: Planning for Prosperous Economies.*[12]

13. The policy of promoting development is of particular importance at a time of economic difficulty – a policy that should also be seen as applying also to shops, pubs, restaurants and other outside of town centres.

14. The proposals for retail and town centre uses including shops are to provide new permitted development rights to allow for alterations and extensions to existing buildings up to 50 square metres, to a maximum of 25 per cent of existing floor space. The extensions would be subject to the following additional limitations:

    - single story and a maximum height of 5 metres
    - no closer to a highway or communal parking area than any existing building
    - no closer than two metres to any boundary
    - similar materials to the existing building to be used
    - not within the curtilage of a listed building
    - not in front of an existing building
    - no loss of turning/manoeuvring space for vehicles

    (See Figure 1 for a diagram of proposals for shop permitted development rights)

[10] See http://www.planningportal.gov.uk/england/genpub/en/1011888237913.html

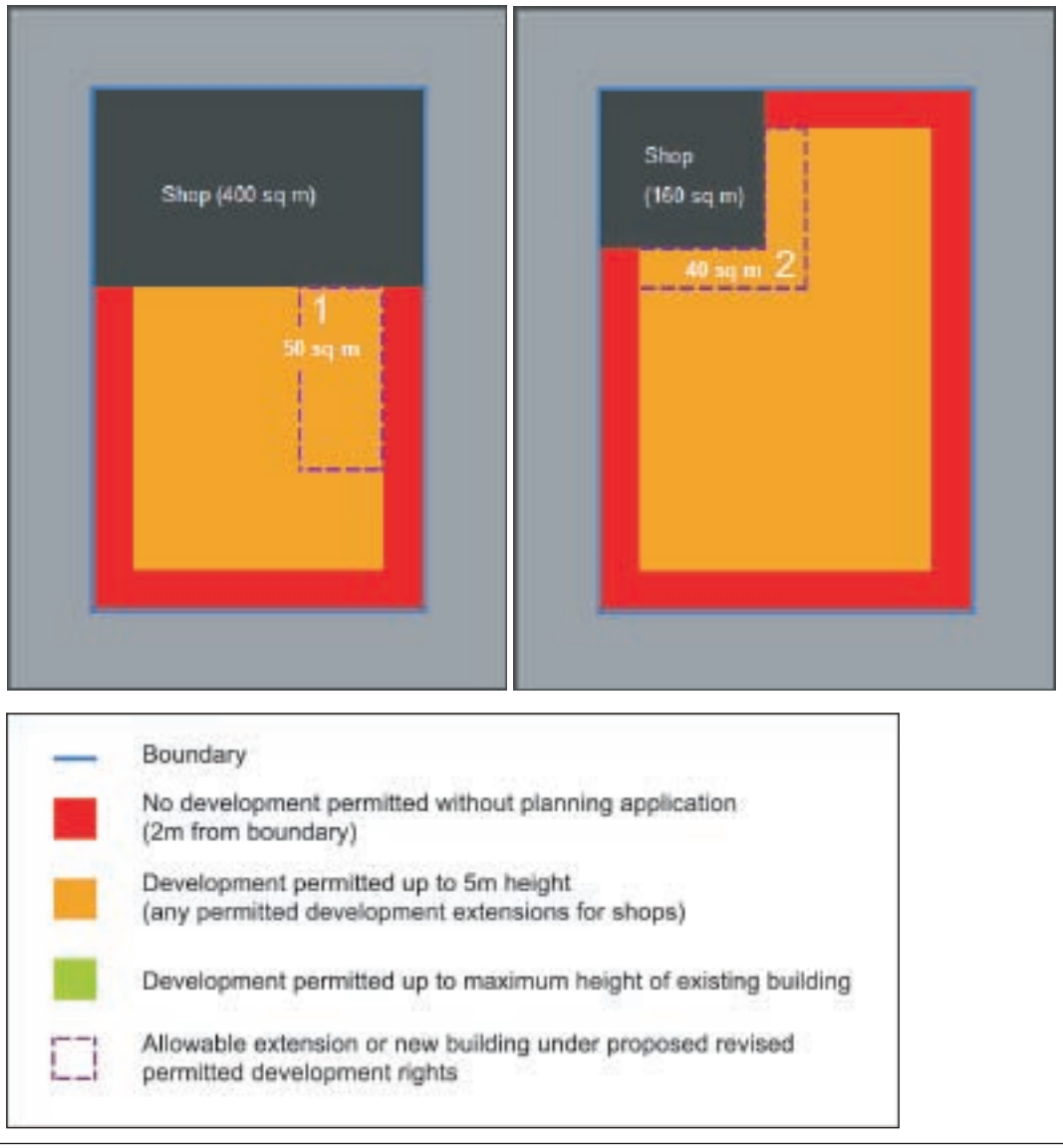
[11] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/pps6/

[12] http://www.communities.gov.uk/publications/planningandbuilding/consultationeconomicpps

15. There would be no new permitted development rights for shops to create new freestanding buildings, other than trolley stores, since shops and restaurants generally operate out of a single building. Freestanding trolley stores would be permitted subject to the following limitations:

- not more than 20 square metres floor area
- not within 20 metres of the boundary with a residential property
- not more than 2.5 metres high

Figure 1: Proposals for shop permitted development rights



16. Extension 1 would be allowed under proposed extensions to shop permitted development rights if it complies with the following conditions:

    - is 50 square metres or less
    - does not exceed 5m in height (blanket limit for shop extensions)
    - shops would not have the right to create new buildings other than trolley stores (as detailed above)

17. Extension 2 would be allowed under proposed extensions to shop permitted development rights if it complies with the following conditions:

    - is 40 square metres or less (25 per cent of the existing building)
    - does not exceed 5m in height

Question 1: What are your comments on the proposals for shops?

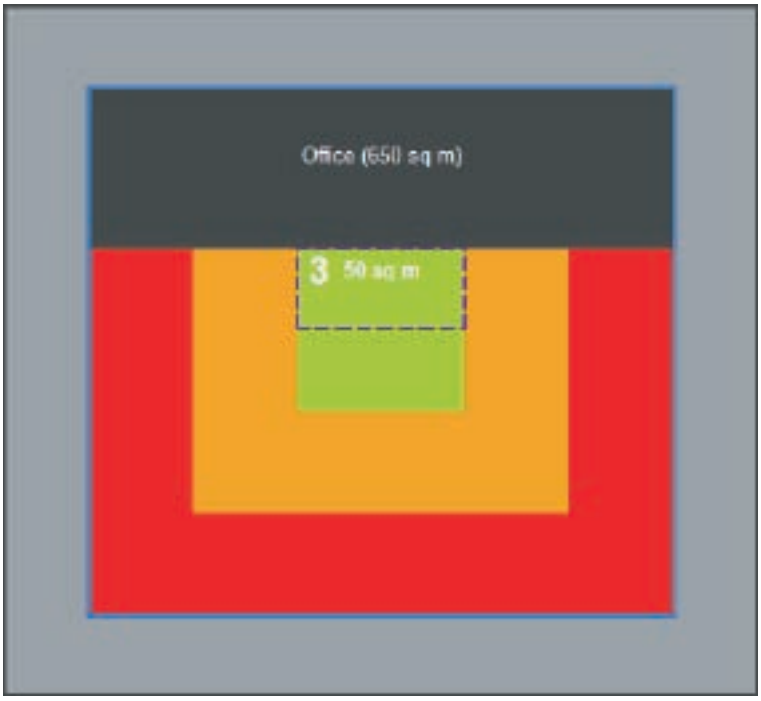
Offices

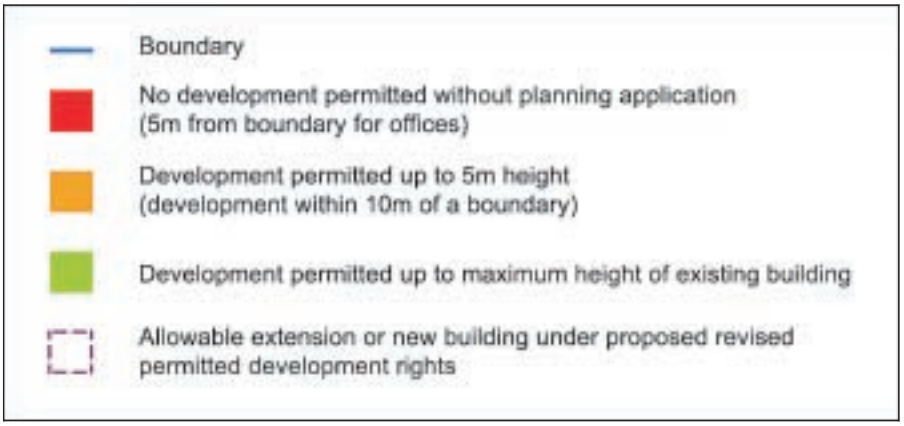
18. Class B1 Business of the Use Classes Order covers use as an office other than a use within class A2 (financial and professional services), for research and development of products or processes or for any industrial process. There are currently no specific permitted development rights for offices. The proposal for offices is to allow new permitted development rights to extend an existing building up to 50 square metres, to a maximum of 25 per cent of existing floorspace. There would be no right to erect new freestanding buildings since offices are unlikely to require additional buildings for operational purposes. Extensions would be subject to the following additional limitations:

    - height no greater than existing building, unless within 10 metres of a boundary, in which case the maximum height would be 5 metres
    - not within 5 metres of a boundary
    - not visible from a highway
    - similar materials to existing building
    - not within the curtilage of a listed building
    - no loss of turning/manoeuvring space for vehicles

    (See Figure 2 for a diagram of proposals for office permitted development rights)

Figure 2: Proposals for office permitted development rights





19. Extension 3 would be allowed under proposed extensions to office permitted development rights if it complies with the following conditions:

- is 50 square metres or less
- is not higher than the existing building
- offices would not have the right to create new freestanding buildings

Question 2: What are your comments on the proposals for offices?

Institutions (universities, colleges, hospitals)

20. Permitted development rights exist for schools, colleges, universities, hospitals, council-run care homes and other council buildings. Other institutional uses do not have permitted development rights. The current permitted development rights are set out principally in Parts 32 (educational or medical uses) and 12 (local authority uses) of the GPDO. These rights are not always clearly expressed. They present a number of inappropriate restrictions which are discussed by WYG.

21. Planning Policy Guidance 17: *Sport and Recreation* states the importance of open space and recreational land to delivering Government objectives such as urban renaissance, rural renewal, community cohesion and health and well being.[13]

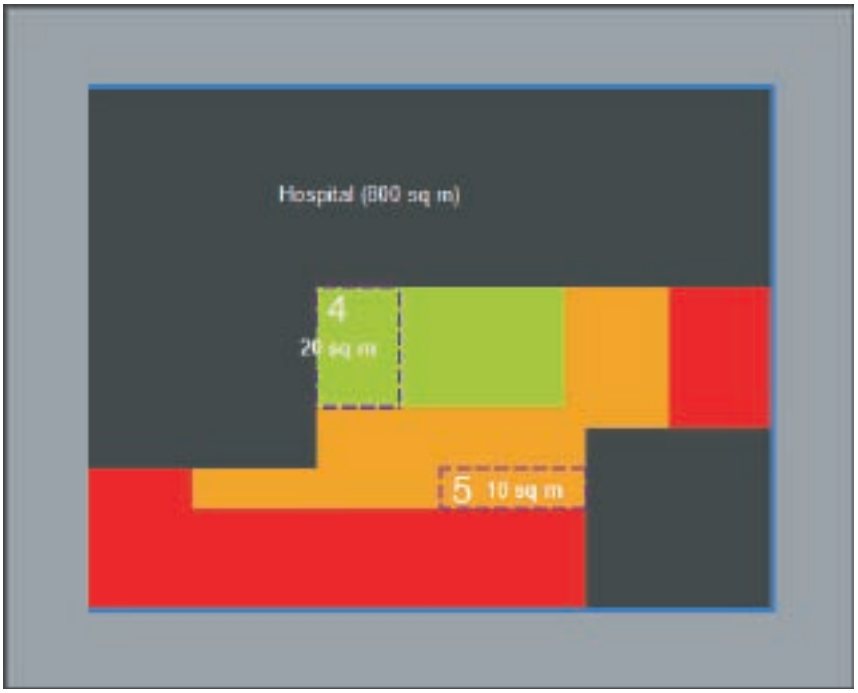
22. WYG found that universities, colleges and hospitals had the strongest case for a relaxation of permitted development rights where they occupy substantial sites. Following their recommendation the Government proposes new permitted development rights for these land uses of 100 square metres for extensions to existing buildings and/or one new building per existing building. These allowances would be subject to the following limitations:

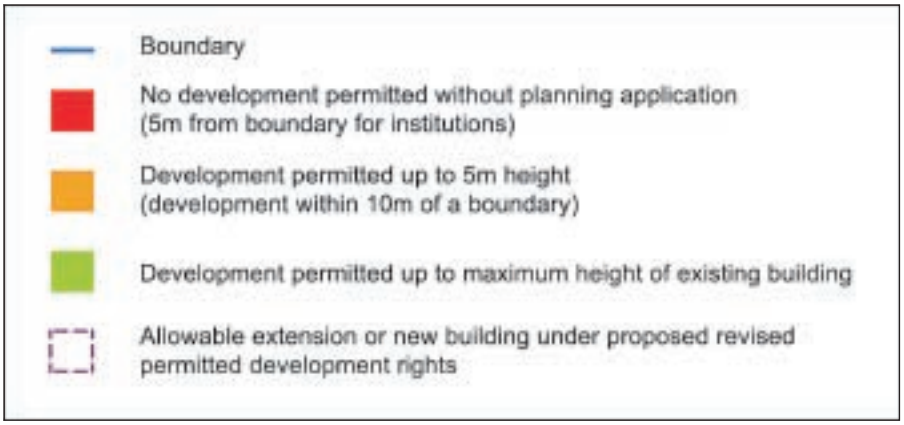
    - maximum height of 5 metres for new buildings
    - additional floorspace not to exceed 25 per cent of the size of the original building
    - extensions to be no higher than existing building or 5 metres if within 10 metres of a boundary
    - new buildings and extensions to be no closer than 5 metres to any boundary and no closer to a highway than any existing building
    - not within the curtilage of a listed building
    - maximum 50 per cent ground coverage
    - similar materials to existing buildings

    (See Figure 3 for a diagram of proposals for institutional permitted development rights)

[13] http://www.communities.gov.uk/publications/planningandbuilding/planningpolicyguidance17

Figure 3: Proposals for institutional permitted development rights





23. Extension 4 and new building 5 would be allowed under proposed extensions to institutional permitted development rights provided they comply with the following conditions:

- extension 4 is not higher than the existing building
- new building 5 does not exceed 5m in height (a blanket limit on new build for institutions)
- the combined total floorspace of 4 and 5 does not exceed 100 square metres
- the hospital would be allowed to create one further freestanding building, provided that, in total, all extensions and new build do not exceed 100 square metres

Question 3: What are your comments on the proposals for institutions?

Schools

24. Schools often have a range of buildings albeit on smaller sites than universities. The limitation proposed for new permitted development rights for schools (including residential schools) is extension and/or creation of one new building per existing building up to 50 square metres. This right would not be allowed to lead to an increase in the number of pupils since such a rise can adversely affect neighbours (for example as a result of increased traffic). Building would not be permitted on playing fields. Other limitations would be the same as those shown above for universities, colleges and hospitals.

Question 4: What are your comments on the proposals for schools?

Industry and warehousing

25. Industry and warehousing are covered in the Use Classes Order as Class B1 Business, B2 General Industrial and B8 Storage or distribution. Part 8 of the GPDO confers permitted development rights on industrial and warehouse developments, but does not explicitly include research and development uses. The current rights allow for extensions up to 1,000 square metres or 500 square metres in sensitive areas subject to the increased volume not exceeding 25 per cent of the original building or 10 per cent in sensitive areas.

26. Government planning policy for the economy is set out in draft PPS4: *Planning for Prosperous Economies*. PPS 4 aims for long-term sustainable economic growth in cities, towns and rural areas by setting out policies to meet the challenges of global competition, rapid advances in technology, working patterns and enabling local communities to take advantage of the economic opportunities offered by low carbon products and services. Planning's role is central to this agenda in influencing the supply of land, enhancing town centres, and facilitating economic growth.

27. WYG found that the evidence pointed to the existing permitted development rights being generally set at the right level for industry and warehousing – WYG identified only one area of inconsistency, that compared with schools and hospitals existing rights did not allow for the erection of new buildings.

28. The proposals here are to add to the existing permitted development rights of industry and warehousing to extend existing buildings by up to 1,000 square metres, by allowing the construction of one new building per existing building up to 100 square metres. Both the existing and new allowances would apply also to research and development of products or processes. The new allowance would be subject to the following limitations:

    - maximum 1,000 square metres floorspace extension per building (500 square metres in sensitive areas) up to a maximum of 25 per cent extra floorspace

- height no greater than existing building or maximum of 5 metres if within 10 metres of a boundary
- not within 5 metres of a boundary or visible from a highway
- no loss of turning/manoeuvring space for vehicles
- similar materials to the existing building
- not within the curtilage of a listed building
- maximum 50 per cent ground coverage of the curtilage collectively resulting from extensions and section of new buildings. This would ensure that the rights to erect new buildings do not result in an unacceptable proliferation of such buildings on large sites

(See Figures 4 and 5 for diagrams of proposals for industrial permitted development rights)

Figure 4: Proposals for industrial permitted development rights

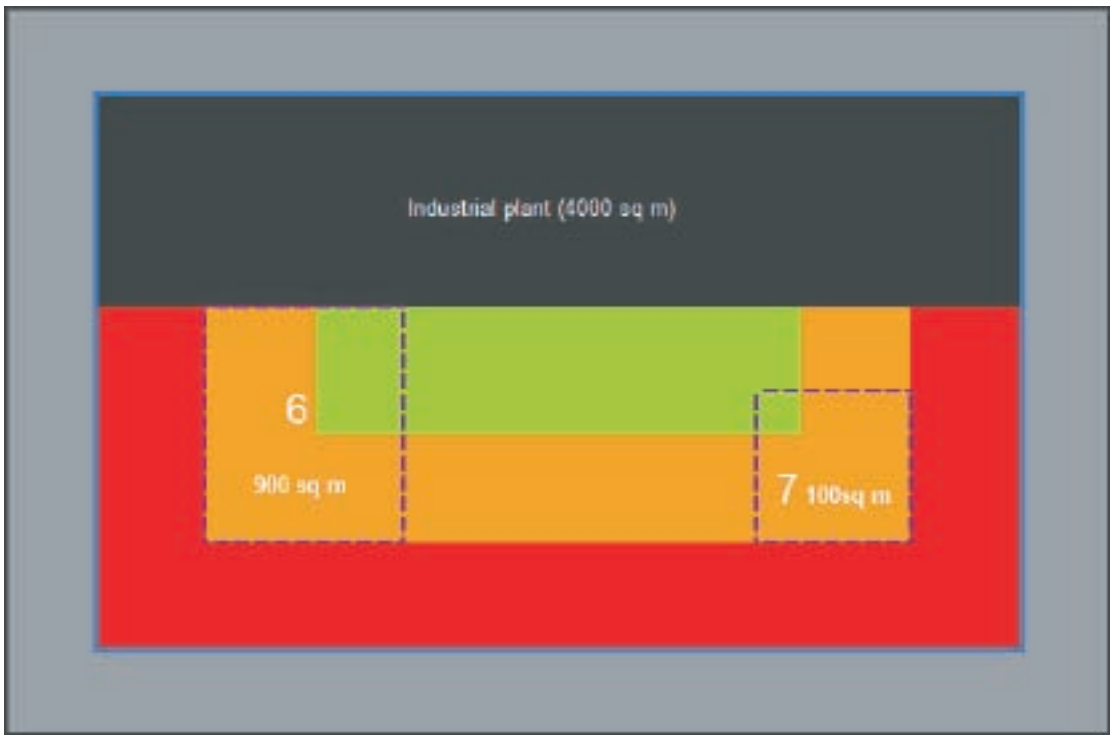
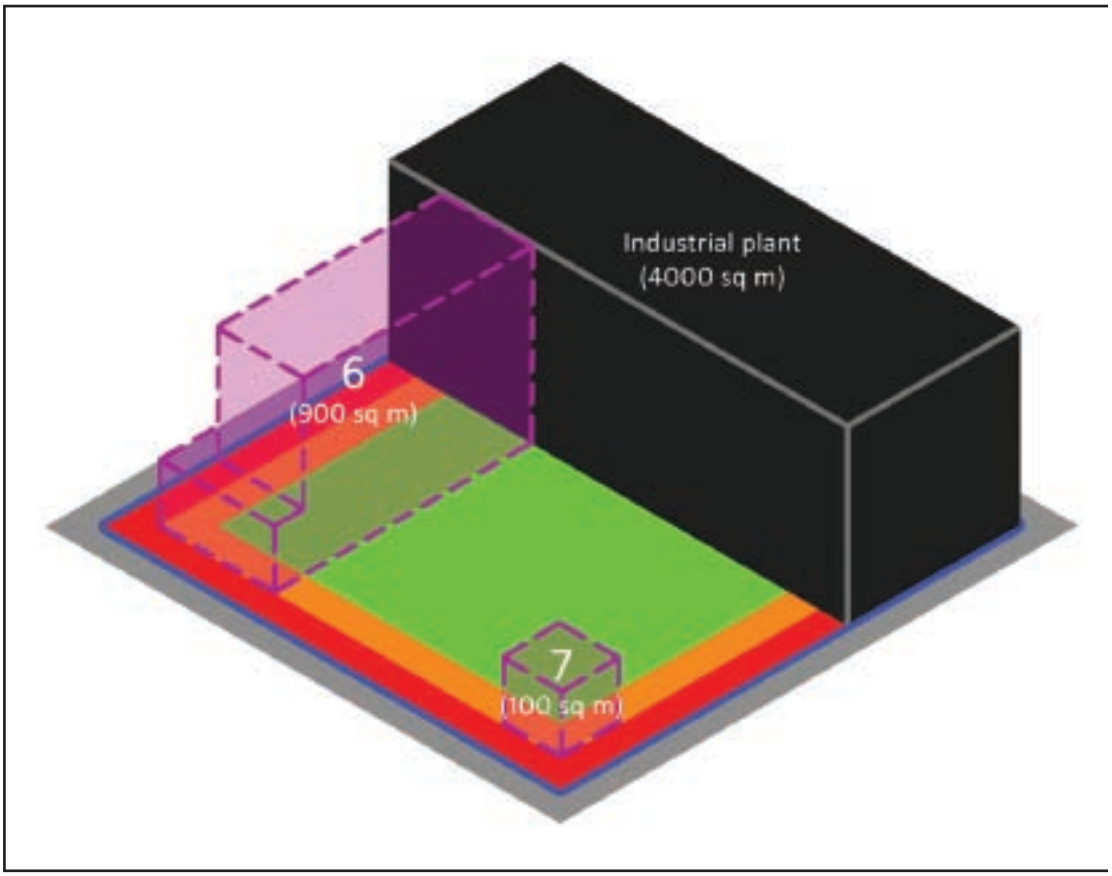
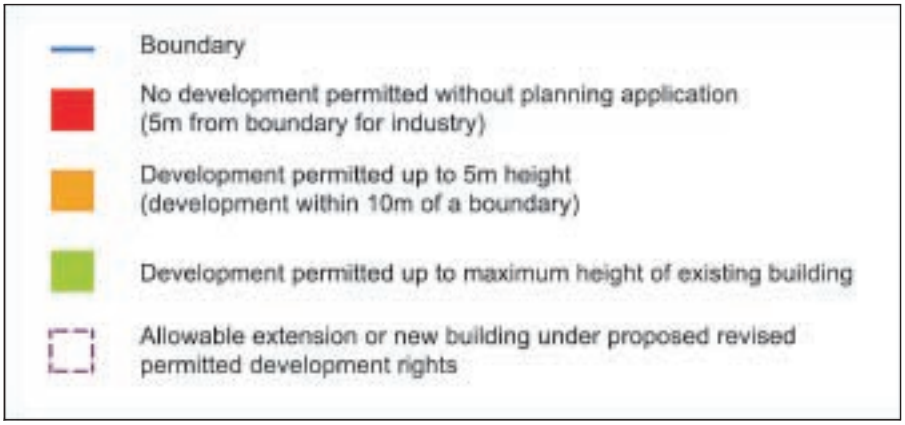


Figure 5: Proposals for industrial permitted development rights (3-D view)





29. Extension 6 and new building 7 would be allowed under proposed extensions to industrial permitted development rights provided they comply with the following conditions:

- neither extension 6 nor new building 7 exceed the height of the original building in the green area (i.e. beyond 10m from a boundary), and no more than 5m in the orange area (i.e. between 5m and 10m from a boundary)
- the floorspace of new building 7 does not exceed 100 square metres

- the collective floorspace of extension 6 and new building 7 does not exceed 1000 square metres
- the industrial plant would be allowed to create no additional buildings nor extend further (given that there would be a limit of one new building per existing building, and as the total floorspace of extension 6 and new building 7 is 100 square metres- the maximum 25 per cent of the original building allowed under permitted development)

Question 5: What are your comments on the proposals for industry and warehousing?

Air-conditioning units

30. The status of air conditioning units in the planning system is currently imprecise. Some LPAs consider that planning permission is required for air conditioning units given their potential environmental, visual, and noise impacts. An alternative interpretation of the GPDO is that permitted development rights encompass air conditioning units on roofs and possibly elsewhere (i.e. if they are presumed to constitute development within the curtilage of a building). WYG recommended that prior approval should apply to air conditioning unit installation.

31. Air conditioning units are a similar technology to air source heat pumps insofar as heat is transferred from one environment to another. As part of our proposed extension of permitted development rights to renewable technologies we are proposing to make air source heat pumps permitted development subject to noise limits. Air source heat pumps will be considered in a consultation paper which is in preparation.

32. Given the similarity in technologies we are minded to extend permitted development rights to air conditioning units subject to certain limitations. If taken forward, making air conditioning units permitted development would remove approximately 5,600 planning applications from the system annually, entailing savings of approximately £9million for business.[14]

33. In deciding whether to change arrangements, another important consideration is the effect of air conditioning units on climate change and whether making air conditioning units permitted development might encourage greater take-up. Tackling climate change is a key priority for the planning system and the supplement to Planning Policy Statement 1, *Planning and Climate Change*, sets out how planning should contribute to reducing emissions and stabilising climate change and take into account the unavoidable consequences. The PPS supplement states that applicants for planning permission should consider how well their proposals for development

[14] £1m of which is from planning fees that would be avoided, £8m in administrative savings preparing applications (based on PwC's administrative burdens study).

contribute to the Government's ambition of a low-carbon economy and how well adapted they are for the expected effects of climate change. In addition, the supplement states that planning authorities should also consider the likely impact of proposed development on the vulnerability to climate change of existing or proposed development.

34. One of the key findings identified in UK Climate Projections published in June 2009[15] states that buildings will be more likely to overheat in the future as a result of higher summer temperatures, and an increased frequency of summer heat waves, with the heat wave of 2003, when record high temperatures were recorded for the UK, projected to become a normal event by the 2040s. Methods of passive cooling, such as the use of blinds and external shading, will be needed to avoid an increased reliance on air conditioning, and an accompanying potential increase in summer energy use. An increase in air conditioning use would worsen the urban heat island effect in summer, making passive cooling more difficult to achieve.

Question 6: Should permitted development be expanded to include air conditioning units?

Question 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;

b. the energy efficiency and carbon footprints of buildings;

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

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

35. If air conditioning units were to be permitted development we would need to define what limitations would apply. The limitations could include:

a. noise arising from the operation of the unit not exceeding 40dB ($L_{Aeq\ 5min}$)[16] at one metre from a window of a habitable room in the facade of any neighbouring property.

[15] http://www.defra.gov.uk/environment/climatechange/adapt/pdf/uk-climate-projections.pdf

[16] dB represents decibels, the unit of noise measurement. LAeq, 5mins is the average sound level over a 5 minute period, with A-weighting, which reflects how the human ear responds to sounds of different frequency (pitch)

b. units would only be attached to buildings on town centre uses (as defined above), including shops, institutions, offices and industrial buildings. 40dB expressed in this way is the same noise limit as that proposed for micro wind turbines in the consultation on changes to permitted development rights for householder microgeneration in April 2007. This noise limit is considered appropriate for the established technology of air conditioning units.

c. units, including any noise attenuating shrouds, would not exceed 8 cubic metres (i.e. 2m X 2m X 2m).

d. units would not be installed other than at the rear of a building.

e. units would be 5 metres or more from a boundary.

f. units would not be visible from a highway in a conservation area or World Heritage Site.

Question 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?

Summary of permitted development proposals

36. The proposals to remove certain non-domestic developments with limited impacts from the planning system will allow business greater freedom to expand without incurring the costs associated with applying for planning permission. Proposed extensions to permitted development will not, however, remove the requirement for any other forms of necessary development consent (i.e. listed building consent, consent of Natural England in relation to development in Sites of Special Scientific Interest, building regulations, etc.). The Government is consulting simultaneously about how the Community Infrastructure Levy and permitted development rights will interact. The proposals in summary are:

Table 1: Summary of permitted development proposals[17]				
Development type	**Extension to permitted development rights**	**Approximate numerical significance (annually, England)**		
		Number of Applications	**% minor applications**	**% all applications**
Shops and offices	Extension allowed by up to 50 square metres, to a maximum of 25% additional floorspace	6,300	4	1
Institutions (including universities, schools, and hospitals)	Allowed to create 1 new structure per existing building or extend existing buildings by up to 100 square metres, (schools 50 square metres), to a maximum of 25% additional floorspace	3,300	2	0.5
Industry and warehousing	Allowed to create new structures up to 100 square metres to a maximum of 25% additional floorspace. Industrial permitted development rights to cover explicitly research and development uses	Not available	Not available	Not available
Permeable hard-surfacing	Shops, offices and institutions: 50 square metres permitted, industry 100 square metres	Not available	Not available	Not available
Air-conditioning units	Installation	5,600	4	1
Approximate Totals	**–**	**15,200**	**10**	**2.5**

[17] Figures are calculated based on research by WYG.

Prior approval

37. Different forms of prior approval apply to different types of development, notably agriculture and telecommunications. If the LPA does not object after 28 days for certain agricultural development proposals (such as building extensions, alteration of private ways, or excavation work), or 56 days for telecommunication applications, developments are deemed to have planning consent. Prior approval for telecommunications allows for consultation, whereas the agricultural procedure does not (unless the LPA considers it necessary).

38. LPAs determine the acceptability of prior approval applications only in terms of siting, design, and other specific considerations (such as the potential impact of certain telecommunications related development on aviation). As the LPA has 28 or 56 days in which to object to the application, this offers the applicant certainty over timescales.

39. WYG proposed a form of prior approval for certain types of development. The Government's proposals for the types of development to be covered under this regime are limited here to the installation of hole-in-the-wall style automated teller machines (ATMs) and the alteration of shopfronts outside Conservation Areas and World Heritage Sites. No change is proposed to the existing prior approval regimes, including those that apply to agriculture and telecommunications.

40. The form of prior approval proposed here would allow for deemed consent to be granted after 28 days if the LPA did not comment within this period. Applications would be made on the standard application form. There would be no requirement to consult on the grounds that in general the developments are uncontentious. LPAs could consider the design, appearance and siting, but not the principle, of the proposed development. Consents might carry conditions. If a prior approval application were rejected, an applicant could submit an application for planning permission. WYG propose that fees for further developments that would operate under prior approval would be raised to that of minor householder applications (£150) to better reflect the work involved on the part of the LPA.

Question 9: What are your views on the proposed prior approval regime described above?

Shopfronts

41. WYG proposed that alterations to existing shopfronts, excluding security shutters or grilles, should be subject to prior approval. The reasoning for this is that, in general, shop front alterations are relatively non contentious developments with limited impact. Shopfront alterations also form an important part of the continuous process of town centre revitalisation and renewal. Prior approval would ensure that the ability of LPAs to maintain control over the design of shopfronts would be maintained, given

that any decisions could be based on associated design guidance. The Government agrees with this approach and also with WYG's recommendation that full planning permission should continue to apply for alterations to shopfronts in Conservation Areas, as well as in World Heritage Sites. The need for planning permission in such areas would give LPAs the ability to reject a new shopfront on principle where the existing shopfront is considered worthy of retention.

Question 10: What are your comments on the proposals for shopfronts?

Automated Teller Machines (ATMs)

42. The Government agrees with WYG's recommendation that 'hole-in-the-wall' style ATMs on exterior walls should be subject to prior approval in most areas. ATMs are in general relatively non contentious developments but some may have associated impacts necessitating LPA consideration. The police sometimes have concerns over siting ATMs in relation to crime areas. The proposed way forward to deal with these concerns would be the establishment of local supplementary guidance on the siting of ATMs agreed between the LPA and the relevant police authority.

43. In Conservation Areas, World Heritage Sites, and within the curtilage of listed buildings, ATMs would continue to require a full planning application so that the principle of the development could be addressed.

Question 11: What are your comments on the proposals for ATMs?

Summary of prior approval proposals

44. We have proposed shop front alteration and hole-in-the-wall style ATM installation for the prior approval system. The reasons for this are their numerical significance in terms of the number of planning applications and the potential to speed up planning decisions for business, which is especially important in the current economic climate. Proposed extensions to the prior approval regime will not, however, remove the requirement for any other forms of necessary development consent (i.e. listed building consent, consent of Natural England in relation to development in Sites of Special Scientific Interest, building regulations, etc.). The figures in the table below are estimates for the number and proportion of developments that would apply for a prior approval determination rather than 'full' planning application annually in England if the Government's proposals for prior approval are adopted in full.

Table 2: Summary of prior approval proposals				
Development type	**Development allowed under prior approval regime**	**Approximate numerical significance (annually, England)**		
		Number of Applications	**% minor applications**	**% all applications**
Shop fronts	Alteration	7,100	5	1.5
External ATMs	Installation	2,800	2	0.5
Approximate totals	**–**	**9,900**	**7**	**2**

Hard-surfacing

45. Sir Michael Pitt's review of the summer 2007 floods proposed regulation of hard-surfacing for both domestic and non-domestic uses. In October 2008 we granted permitted development rights for hard-surfacing of front gardens so long as provision was made for the water to run off to a permeable area; the Government's proposals for further regulation of non-domestic hard-surfacing are described below.

Shops, offices and institutions

46. The Government proposes to grant new permitted development rights to shops, offices, and institutions to be able to lay up to 50 square metres of permeable hard-surfacing without the need to apply for planning permission.

Industrial and warehousing premises

47. The GPDO allows industry and warehousing to lay an unlimited area of hard-surfacing. The Government proposes no change to this provision, except that in future, where hard-surfacing is laid, provision should be made for drainage to a permeable surface. The permeability requirement would not, however, apply where there was a risk of contamination.

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

Question 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)?

Article 4 Directions

48. The use of Article 4 Directions by LPAs to withdraw permitted development rights locally form part of the Government's wider policy as set out in the Planning White Paper published in 2007. Given that the Government's general policy is reducing the burden of the planning system on users where appropriate, equally the burden of establishing Article 4 Directions on LPAs (effectively locally-defined restrictions to national permitted development rights in exceptional circumstances where a local problem arises) should also be minimised.

49. At present LPAs can make Article 4 directions, but may be liable for claims for compensation years later if they subsequently refuse a planning application for something that would previously have been permitted development.

50. Section 189 of the Planning Act 2008 limits the liability of LPAs for compensation when permitted development rights are withdrawn through an Article 4 Direction so that compensation may only be payable if an application is made and refused within 12 months of the withdrawal. It also provides that if a LPA gives at least 12 months notice of the withdrawal of permitted development rights, no compensation will be payable. We propose that Article 4 Directions will be the prescribed manner for withdrawal.

51. The Government intends to commence Section 189 in April 2010. At the same time it will apply the provisions of Section 189 to the withdrawal of permitted development rights for domestic buildings as consulted upon in August 2007.[18] The Government also proposes in this consultation paper to apply these provisions to withdrawal of permitted developments rights for non-domestic uses. Subject to the outcome of consultation, regulations to achieve this would come into force in April 2010 alongside the commencement provision.

52. Currently, Article 4 of the GPDO provides for the following forms of direction:

- under Article 4(1) a LPA can restrict any permitted development rights (except Class B of part 22 (mineral exploration) or Class B of part 23 (removal of material from mineral-working deposits). It is not the subject of public consultation. A Direction usually takes effect once approved by the Secretary of State, unless it is a Direction to which 5(4) applies and notice has been served on the occupier or owner of the land to which the Direction relates
- under Article 4(2) a Direction can be used to restrict certain permitted development rights in Conservation Areas. The Direction must be subject to at least 21 days consultation, but does not need Secretary of State approval. It comes into force on the date on which notice is served on the owner or occupier or notice is published, but it expires after 6 months unless confirmed. The Direction can be confirmed no sooner than 28 days after public consultation began

[18] http:www.communities.gov.uk/publications/planningandbuilding/changesdevelopmentconsultation

- article 5(4) allows for immediate restriction of certain permitted development rights. It does not require public consultation and has a six month life unless approved by the Secretary of State

53. In addition to commencing the compensation provision in Section 189 of the Planning Act 2008, the Government proposes to make the following changes through secondary legislation to the process by which Article 4 Directions are made:

- remove the need for Secretary of State approval for all Directions made under the GPDO to remove permitted development rights, but retain a reserve power for the Secretary of State to revoke or revise them
- require LPAs to consult on proposals for Directions for a minimum of 21 days before confirming them. The method of consultation will be for the LPA to determine, but they should be mindful of advice available to them on good practice
- Directions will be notified by serving notice on the owner/occupier of the land to which the Direction relates. Or, where an LPA considers that individual service is impracticable, it may give notice of the making of the Direction by site display at not less than two places within the specified areas of the Direction, for a period of not less than six weeks. Directions will come into effect at a date determined by the LPA. There is also a requirement to publish the Direction locally
- there will remain a provision for LPAs to act quickly, if necessary, in order to deal with a threat to the amenity of their area. The LPA will be able to make a direction removing permitted development rights immediately. Such a Direction would last six months and would expire unless confirmed by the authority following consultation

54. Circular 9/95 specifies that permitted development rights should only be withdrawn in exceptional circumstances and that such action is rarely justified unless there is a real and specific threat. We do not propose to amend this test for the removal of permitted development rights.

55. A draft Statutory Instrument setting regulations to give effect to these changes is included in this consultation paper at Annex A.

Question 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?

Question 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?

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

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

Question 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?

Section 4

Summary of consultation questions

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

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

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

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

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

6. Should permitted development be expanded to include air conditioning units?

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;
   b. the energy efficiency and carbon footprints of buildings;
   c. the ability of residents and businesses to meet future carbon budgets; and
   d. the impact upon alternative means of dealing with extreme temperatures, e.g. passive cooling.

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

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

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

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

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

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)?

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?

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?

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

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

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?

Impact assessment questions

See Impact Assessments for the precise detail on which we would welcome consultation responses.

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

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

Section 5

About this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business, Innovation and Skills and are in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome

2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible

3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals

4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach

5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained

6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation

7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Coordinator
Zone 6/H10
Eland House
London SW1E 5DU

or by email to: consultationcoordinator@communities.gsi.gov.uk

Annex A

Draft statutory instruments

- The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, pages 34–38. This Order changes the procedure relating to Article 4 Directions.

- The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010, pages 39–52. This Order amends the GPDO to grant planning permission for some categories of development which previously required planning permission.

STATUTORY INSTRUMENTS

2010 No. XXXX

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*6th April 2010*

The Secretary of State, in exercise of the powers conferred by sections 59, 60 and 333 of the Town and Country Planning Act 1990(**a**), makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 and shall come into force on 6th April 2010.

(2) This Order applies in relation to England only.

Amendment of the Town and Country Planning (General Permitted Development) Order 1995

2.—(1) The Town and Country Planning (General Permitted Development) Order 1995(**b**) is amended as follows.

(2) For articles 4, 5 and 6 substitute—

"Directions restricting permitted development

4.—(1) If the Secretary of State or the appropriate local planning authority is satisfied that it is expedient that development described in any Part, Class or paragraph in Schedule 2, other than Class B of Part 22 or Class B of Part 23, should not be carried out unless permission is granted for it on an application, he or they may give a direction under this paragraph that the permission granted by article 3 shall not apply to—

(a) all or any development of the Part, Class or paragraph in question in an area specified in the direction; or

(b) any particular development, falling within that Part, Class or paragraph, which is specified in the direction,

---

(**a**) 1990 c.8; to which there are amendments not relevant to this Order. These powers are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; see the entry in Schedule 1 for the Town and Country Planning Act 1990 (c.8) as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/ 253). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers.

(**b**) S.I. 1995/418. Relevant amendments were made by S.I. 1996/252, S.I. 1996/528, S.I. 1996/593 and S.I. 2006/1282.

and the direction shall specify that it is made under this paragraph.

(2) A direction under paragraph (1) shall not affect the carrying out of—

(a) development permitted by Part 11 authorised by an Act passed after 1st July 1948 or by an order requiring the approval of both Houses of Parliament approved after that date;

(b) development permitted by Class B of Part 13;

(c) any development mentioned in Part 24, unless the direction specifically so provides;

(d) any development in an emergency other than development permitted by Part 37; or

(e) development permitted by Part 37 or 38.

(3) A direction given or having effect as if given under this article shall not, unless the direction so provides, affect the carrying out by a statutory undertaker of the following descriptions of development—

(a) the maintenance of bridges, buildings and railway stations;

(b) the alteration and maintenance of railway track, and the provision and maintenance of track equipment, including signal boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail;

(c) the maintenance of docks, harbours, quays, wharves, canals and towing paths;

(d) the provision and maintenance of mechanical apparatus or appliances (including signalling equipment) required for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, quay, harbour, bank, wharf or basin;

(e) any development required in connection with the improvement, maintenance or repair of watercourses or drainage works;

(f) the maintenance of buildings, runways, taxiways or aprons at an aerodrome;

(g) the provision, alteration and maintenance of equipment, apparatus and works at an aerodrome, required in connection with the movement of traffic by air (other than buildings, the construction, erection, reconstruction or alteration of which is permitted by Class A of Part 18 of Schedule 2).

(4) In this article and in articles 5 and 6 "appropriate local planning authority" means—

(a) in relation to a conservation area in a non-metropolitan county in England, the county planning authority or the district planning authority; and

(b) in relation to any other area, the local planning authority whose function it would be to determine an application for planning permission for the development to which the direction relates or is proposed to relate.

Procedure for article 4(1) directions

5.—(1) Subject to article 6, notice of any direction given under article 4(1) shall, as soon as practicable after the direction has been given, be given by the appropriate local planning authority—

(a) by local advertisement; and

(b) subject to paragraph (2), by serving the notice on the owner and occupier of every part of the land within the area to which the direction relates.

(2) The local planning authority need not serve notice on an owner or occupier in accordance with paragraph (1)(b) where they consider that individual service on that owner or occupier is impracticable because it is difficult to identify or locate him or they consider that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.

(3) Where, pursuant to paragraph (2), notice is not served on an owner or occupier, the appropriate local planning authority shall serve notice by site display at no fewer than two locations within the area to which the direction relates, or, if the direction is made under article 4(1)(b), on the site of the particular development to which the direction relates, for a period of not less than six weeks.

(4) The notice referred to in paragraph (1) shall—

(a) include a description of the development and the area to which the direction relates, or the site to which it relates, as the case may be, and a statement of the effect of the direction;

(b) specify that the direction is made under article 4(1) of this Order;

(c) name a place where a copy of the direction, and a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, may be seen at all reasonable hours;

(d) specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority; and

(e) specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than two years after the date referred to in sub-paragraph (d).

(5) Where a notice given by site display is, without any fault or intention of the authority, removed, obscured or defaced before the period referred to in paragraph (3) has elapsed, the authority shall be treated as having complied with the requirements of that paragraph if they have taken reasonable steps for the protection of the notice, including, if need be, its replacement.

(6) The direction shall come into force in respect of any part of the land within the area to which it relates on the date specified in accordance with paragraph (4) but shall not come in to force unless confirmed by the local planning authority in accordance with paragraphs (8) and (9).

(7) On giving a direction under article 4(1)—

(a) a county planning authority shall give notice of it to any district planning authority in whose district the area or part of the area to which the direction relates is situated; and

(b) except in metropolitan districts, a district planning authority shall give notice of it to the county planning authority, if any.

(8) In deciding whether to confirm a direction given under article 4(1), the local planning authority shall take into account any representations received during the period specified in accordance with paragraph (4)(d).

(9) The local planning authority shall not confirm a direction until a period of at least 28 days has elapsed following the latest date on which any notice relating to the direction was served or published.

(10) The local planning authority shall, as soon as practicable after a notice has been confirmed—

(a) give notice of its confirmation and the date it will come into force; and

(b) send a copy of the direction as confirmed to the Secretary of State as soon as practicable.

(11) Notice under paragraph (10)(a) shall be given in the manner described in paragraphs (1), (3) and (4); and paragraph (2) shall apply for this purpose as it applies for the purpose of paragraph (1)(b).

(12) A local planning authority may, by making a subsequent direction, cancel any direction given by them under article 4(1), and the Secretary of State may make a direction cancelling any direction under article 4(1) given by a local planning authority.

(13) Paragraphs (1) to (11) shall apply to any direction made under paragraph (12).

Directions with immediate effect

6.—(1) This article applies to a direction given by the appropriate local planning authority under article 4(1) where the authority consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area.

(2) Paragraphs (1) to (3), (4)(a) to (d), (5), and (7) to (13) of article 5 shall apply to a direction to which this article applies.

(3) The direction shall come into force in respect of any part of the land within the area to which it relates—

(a) on the date on which the notice is served in accordance with paragraph (1)(b) of article 5 on the occupier of that part of the land or, if there is no occupier, on the owner; or

(b) if paragraph (2) of article 5 applies, on the date on which the notice is first published or displayed in accordance with paragraph (3) of article 5.

(4) A direction to which this article applies shall expire at the end of the period of six months beginning with the date on which it comes into force unless confirmed by the appropriate local planning authority in accordance with paragraphs (8) and (9) of article 5 before the end of the six month period.".

Signed by authority of the Secretary of State for Communities and Local Government

Name
Parliamentary Under Secretary of State
Date Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order substitutes articles 4, 5 and 6 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) (S.I. 1995/418). The substituted provisions apply in relation to England only.

The GPDO grants planning permission for certain classes of development. However, the GPDO also contains provisions which enable local planning authorities to give directions to withdraw that permission within a local area (article 4 directions). When a local authority gives an article 4 direction, planning permission is then required for development of that class in the area to which the direction applies.

This Order changes the procedure relating to article 4 directions so that local planning authorities no longer require approval from the Secretary of State for certain kinds of article 4 direction. Instead, local planning authorities are required to notify affected owners and occupiers (unless they consider it impracticable because it is difficult to identify or locate them or they consider that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable, in which case notice by site display is required) and to give public notice by advertisement. They may not confirm an article 4 direction within 28 days of the last date on which a notice or advertisement was served or published and must first consider any representations made within the period specified in the notice or advertisement for the making of representations. Following confirmation, the direction will come into force on the date specified in it, which must be within 2 years of the start of the consultation period.

The Order also sets out a procedure for article 4 directions where local planning authorities consider that development would be prejudicial to the proper planning of their area or constitute a

threat to the amenities of their area. In these circumstances a local planning authority can make an article 4 direction with immediate effect. The direction will come into force when notice is served on the occupier of the land affected or, if the land is unoccupied, as soon as notice is served on the owner of the land. If individual service is impracticable, the direction will come into force when notice is first published by advertisement or site display. Such a direction will automatically expire after 6 months unless confirmed by the local planning authority following consultation.

An impact assessment has been prepared in relation to this Order. It has been placed in the library of each House of Parliament and copies may be obtained from the Planning Directorate, the Department for Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU.

STATUTORY INSTRUMENTS

2010 No. XXXX

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*6th April 2010*

The Secretary of State, in exercise of the powers conferred by sections 59, 60, 61(1) and 333 of the Town and Country Planning Act 1990(**a**), makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 and shall come into force on 6th April 2010.

(2) This Order applies in relation to England only.

Directions restricting permitted development

2.—(1) The Town and Country Planning (General Permitted Development) Order 1995(**b**) is amended as follows.

(2) For Part 2 of Schedule 2 substitute—

"Part 2

MINOR OPERATIONS

Class A

Permitted development

A The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

(**a**) 1990 c.8; to which there are amendments not relevant to this Order. These powers are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; see the entry in Schedule 1 for the Town and Country Planning Act 1990 (c.8) as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/ 253). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers.

(**b**) S.I. 1995/418. Relevant amendments were made by S.I. 1996/252, S.I. 1996/528, S.I. 1996/593 and S.I. 2006/1282.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

Class B

Permitted development

B The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

Class C

Permitted development

C The painting of the exterior of any building or work.

Development not permitted

C.1 Development is not permitted by Class C where the painting is for the purpose of advertisement, announcement or direction.

Interpretation of Class C

C.2 In Class C, "painting" includes any application of colour.

Class D

Permitted development

D The installation of an external air conditioning unit or units on a building.

Development not permitted

D.1 Development is not permitted by Class D if—

(a) the cumulative total volume of development under Class D would exceed eight cubic metres;

(b) the unit or units would be within five metres of a boundary;

(c) noise arising from the operation of the unit would exceed 40dB ($L_{Aeq\ 5min}$) at one metre from the window of a habitable room in the façade of any neighbouring property;

(d) it would be within the curtilage of a listed building or would affect a listed building or its setting;

(e) the building on which the unit or units would be installed is used for any class of use within classes B3 to B7 or class C3 of the Schedule to the Use Classes Order;

(f) in relation to land within a conservation area or a World Heritage Site, the unit or units would be visible from a highway;

(g) the unit or units would be placed on a wall other than a rear wall.

Interpretation of Class D

D.2 For the purposes of Class D "external air conditioning unit" includes any external fan units, noise attenuation shrouds, condenser systems, and vents necessary to condition the air within a building. ".

(3) For Part 8 of Schedule 2 substitute—

"Part 8

INDUSTRIAL AND WAREHOUSE DEVELOPMENT

Class A

Permitted development

A The erection, extension or alteration of an industrial building or a warehouse.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) the building as erected, extended or altered is to be used for purposes other than those of the undertaking concerned;

(b) the building is to be used for a purpose other than—

(i) in the case of an industrial building, the carrying out of an industrial process, research and development of products or processes, or the provision of employee facilities;

(ii) in the case of a warehouse, storage or distribution or the provision of employee facilities;

(c) the height of the building as erected, extended or altered would exceed—

(i) five metres if within ten metres of a boundary of the curtilage;

(ii) in all other cases, the height of the original building;

(d) the cumulative total floor space of any buildings erected, extended or altered would exceed 50% of the total ground area of the curtilage;

(e) the total floor space of any building erected would exceed 100 square metres;

(f) the total floor space of the original building would be exceeded by more than—

(i) 10% in respect of development on any article 1(5) land or 25% in any other case;

(ii) 500 square metres in respect of development on any article 1(5) land or 1,000 square metres in any other case;

(g) any part of the development would be carried out within five metres of any boundary of the curtilage;

(h) the development would lead to a reduction in the space available for the parking or turning of vehicles;

(i) any building erected would be visible from a highway;

(j) the development would be within the curtilage of a listed building or would affect a listed building or its setting; or

(k) the development would result in the erection within the curtilage of more than double the number of the original buildings.

Conditions

A.2 Development is permitted by Class A subject to the conditions that—

(a) any building erected, extended or altered shall only be used—

(i) in the case of an industrial building, for the carrying out of an industrial process for the purposes of the undertaking, for research and development of products or processes, or the provision of employee facilities;

(ii) in the case of a warehouse, for storage or distribution for the purposes of the undertaking or the provision of employee facilities;

(b) shall not be used to provide employee facilities between 7.00 pm and 6.30 am for employees other than those present at the premises of the undertaking for the purpose of their employment;

(c) shall not be used to provide employee facilities if a notifiable quantity of a hazardous substance is present at the premises of the undertaking; and

(d) any extension or alteration shall be constructed using materials which, when the building is viewed from outside, have a similar appearance to those used in the construction of the original building.

Interpretation of Class A

A.3 For the purposes of Class A—

(a) the erection of any additional building within the curtilage of another building (whether by virtue of Class A or otherwise) and used in connection with it is to be treated as the extension of that building, and the additional building is not to be treated as an original building;

(b) where two or more original buildings are within the same curtilage and are used for the same undertaking, they are to be treated as a single original building in making any measurement except for the purposes of paragraph A.1(k);

(c) "cumulative total floor space" of a building erected includes the total floor space of any existing buildings previously erected at any time under Class A;

(d) "employee facilities" means social, care or recreational facilities provided for employees of the undertaking, including crèche facilities provided for the children of such employees;

(e) "industrial building" means a building used for the carrying out of an industrial process and includes a building used for the carrying out of such a process on land used as a dock, harbour or quay for the purposes of an industrial undertaking and land used for research and development of products or processes, but does not include a building on land in or adjacent to and occupied together with a mine;

(f) "original building" means any building other than a building erected at any time under Class A; and

(g) "warehouse" means a building used for any purpose within Class B8 (storage or distribution) of the Schedule to the Use Classes Order but does not include a building on land in or adjacent to and occupied together with a mine.

Class B

Permitted development

B Development carried out on industrial land for the purposes of an industrial process consisting of—

- **(a) the installation of additional or replacement plant or machinery,**
- **(b) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus, or**
- **(c) the provision, rearrangement or replacement of a private way, private railway, siding or conveyor.**

Development not permitted

B.1 Development described in Class B(a) is not permitted if—

- (a) it would materially affect the external appearance of the premises of the undertaking concerned, or
- (b) any plant or machinery would exceed a height of 15 metres above ground level or the height of anything replaced, whichever is the greater.

Interpretation of Class B

B.2 In Class B, "industrial land" means land used for the carrying out of an industrial process, including land used for the purposes of an industrial undertaking as a dock, harbour or quay, and land used for research and the development of products or processes, but does not include land in or adjacent to and occupied together with a mine.

Class C

Permitted development

C Development consisting of—

- **(a) The provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned; or**
- **(b) the replacement in whole or in part of such a surface.**

Conditions

C.1 Development is permitted by Class C subject to the condition that—

- (a) where there is a risk of groundwater contamination the hard surface shall not be made of porous material;
- (b) in all other cases, the hard surface shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the industrial building or warehouse.

Interpretation of Class C

C.2 In Class C—

"industrial building" means a building used for the carrying out of an industrial process and includes a building used for the carrying out of such a process on land used as a dock, harbour or quay for the purposes of an industrial undertaking and land used for research and development of products or processes, but does not include a building on land in or adjacent to and occupied together with a mine; and

"warehouse" means a building used for any purpose within Class B8 (storage or distribution) of the Schedule to the Use Classes Order but does not include a building on land in or adjacent to and occupied together with a mine.

Class D

Permitted development

D The deposit of waste material resulting from an industrial process on any land comprised in a site which was used for that purpose on 1st July 1948 whether or not the superficial area or the height of the deposit is extended as a result.

Development not permitted

D.1 Development is not permitted by Class D if—

(a) the waste material is or includes material resulting from the winning and working of minerals, or

(b) the use on 1st July 1948 was for the deposit of material resulting from the winning and working of minerals.".

(4) For Part 32 of Schedule 2 substitute—

"Part 32

SCHOOLS, COLLEGES, UNIVERSITIES OR HOSPITALS

Class A

Permitted development

A The erection, extension or alteration within the curtilage of any school, college, university or hospital of any building required for use as part of, or for a purpose incidental to, the use of that school, college, university or hospital.

Development not permitted

A.1 Development is not permitted by Class A if—

(b) the cumulative total floor space of any buildings erected, extended or altered would exceed 25% of the total floor space of the original buildings;

(c) the cumulative total floor space of any buildings erected, extended or altered would exceed 50% of the total ground area of the curtilage;

(d) any part of a building erected, extended or altered would be within five metres of a boundary of the curtilage or closer to a highway than any existing building;

(e) as a result of the development, any land used as a playing field immediately before the development took place could no longer be so used

(f) the height of any building erected would exceed five metres;

(g) the height of any building as extended or altered would exceed—

(i) five metres if within ten metres of a boundary of the curtilage;

(ii) in all other cases, the height of the original building;

(h) the floor space of any building erected would exceed—

(i) in the case of a school, 50 square metres ; or

(ii) in any other case, 100 square metres ;

(i) in the case of a school, the development would increase the capacity for students at the school;

(j) the development would be within the curtilage of a listed building or would affect a listed building or its setting; or

(k) the development would result in the erection within the curtilage of more than double the number of original buildings.

Condition

A.2 Development is permitted by Class A subject to the condition that any building erected, extended or altered shall be constructed using materials which, when the building is viewed from outside, have a similar appearance to those used in the construction of the original building.

Interpretation of Class A

A.3 For the purposes of Class A—

"cumulative total floor space" of buildings erected includes the total floor space of any existing buildings previously erected at any time under Class A;

"original building" means any building other than a building erected at any time under Class A.

Class B

Permitted development

B Development consisting of—

(a) The provision of a hard surface within the curtilage of any school, college, university or hospital to be used for the purposes of that school, college, university or hospital; or

(b) the replacement in whole or in part of such a surface.

Development not permitted

B.1 Development is not permitted by Class B if the area of ground to be covered by the hard surface would exceed 50 square metres.

Conditions

B.2 Development is permitted by Class B subject to the condition that—

(a) where there is a risk of groundwater contamination the hard surface shall not be made of porous material;

(b) in all other cases, the hard surface shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the institution.".

(5) In Schedule 2, after Part 40 insert—

"Part 41

OFFICE BUILDINGS

Class A

Permitted development

A The extension or alteration of an office building.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) the total floor space of the original building would be exceeded by more than—

(i) 25%; or

(ii) 50 square metres;

(b) the height of the building as extended or altered would exceed—

(i) five metres if within ten metres of a boundary of the curtilage;

(ii) in all other cases, the height of the original building;

(c) any part of the development would be within five metres of any boundary of the curtilage;

(d) the extension or alteration would be visible from a highway;

(e) the development would be within the curtilage of a listed building or would affect a listed building or its setting;

(f) the development would lead to a reduction in the space available for the parking or turning of vehicles.

Conditions

A.2 Development is permitted by Class A subject to the condition that any extension or alteration shall be constructed using materials which, when the building is viewed from outside, have a similar appearance to those used in the construction of the original building.

Interpretation of Class A

A.3 For the purposes of Class A—

"office building" means a building used for any purpose within Class B1 of the Schedule to the Use Classes Order; and

"original building" means any building other than a building erected at any time under Class A.

Class B

Permitted development

B Development consisting of—

(a) The provision of a hard surface within the curtilage of an office building to be used for the purpose of the undertaking concerned; or

(b) the replacement in whole or in part of such a surface.

Development not permitted

B.1 Development is not permitted by Class B if the area of ground covered by the hard surface would exceed 50 square metres.

Conditions

B.2 Development is permitted by Class B subject to the condition that—

(a) where there is a risk of groundwater contamination the hard surface shall not be made of porous material;

(b) in all other cases, the hard surface shall be made of porous material or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the office building.

Part 42

SHOPS OR CATERING, FINANCIAL OR PROFESSIONAL SERVICES ESTABLISHMENTS

Class A

Permitted development

A. The extension or alteration of a shop or a catering, financial or professional services establishment.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) the total floor space of the original building would be exceeded by more than—

(i) 25%; or

(ii) 50 square metres;

(b) the development would have more than one storey;

(c) the height of the building as extended or altered would exceed five metres;

(d) the building as extended or altered would be closer to a communal parking area or highway than the original building;

(e) any part of the development would be within two metres of any boundary of the curtilage;

(f) the development would be within the curtilage of a listed building or would affect a listed building or its setting;

(g) the development would extend beyond a wall which forms the principal elevation of the original building; and

(h) the development would lead to a reduction in the space available for the parking or turning of vehicles.

Conditions

A.2 Development is permitted by Class A subject to the condition that any extension or alteration shall be constructed using materials which, when the building is viewed from outside, have a similar appearance to those used in the construction of the original building.

Class B

Permitted development

B The erection or construction of a trolley store within the curtilage of a shop.

Development not permitted

B.1 Development is not permitted by Class B if—

(a) the total floor space of the building erected would exceed 20 square metres;

(b) any part of the building erected would be within 20 metres of any boundary of the curtilage of any building used for any purpose within Part C of the Schedule to the Use Classes Order; or

(c) the height of the building would exceed 2.5 metres.

Conditions

B.2 Development is permitted by Class B subject to the condition that the building is only used for the storage of shopping trolleys.

Interpretation of Class B

For the purposes of Class B—

"communal parking area" means an area, either publicly or privately owned, reserved for the parking of multiple vehicles; and

"trolley store" means a building designed to be used for the storage of shopping trolleys.

Class C

Permitted development

C The alteration of a shop front

Development not permitted

C.1 Development is not permitted by Class C if it—

(a) increases the total floor space of the shop;

(b) includes the installation of security grills;

(c) is within a conservation area or on a World Heritage Site; or

(d) would be within the curtilage of a listed building or would affect a listed building or its setting.

Condition

C.2 Development is permitted by Class C subject to the following conditions—

(a) the developer shall, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the development;

(b) the application shall be accompanied by a written description of the proposed development and a plan indicating the site together with any fee required to be paid;

(c) the development shall not be begun before the occurrence of one of the following—

(i) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(ii) where the local planning authority give the applicant notice within 28 days of receiving the application of their determination that such prior approval is required, the giving of such approval; or

(iii) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;

(d) where the local planning authority give the applicant notice that such prior approval is required the applicant shall—

(i) display a site notice by site display on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave notice to the applicant;

(ii) take reasonable steps to protect the notice, including replacing it if need be; where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in sub-paragraph (i) has elapsed, the applicant shall be treated as having complied with the requirements of that sub-paragraph if the applicant has complied with this sub-paragraph;

(e) the development shall, except to the extent that the local planning authority otherwise agree in writing, be carried out—

(i) where prior approval is required, in accordance with the details approved;

(ii) where prior approval is not required, in accordance with the details submitted with the application; and

(f) the development shall be carried out—

(i) where approval has been given by the local planning authority, within a period of three years from the date on which approval was given;

(ii) in any other case, within a period of three years from the date on which the local planning authority were given the information referred to in paragraph (b).

Interpretation of Class C

C.3 For the purposes of Class C—

(a) "shop front" means the part of a shop which faces a street; and

(b) "shop" means a building used for any purpose within Class A1 of the Schedule to the Use Classes Order.

Class D

Permitted development

D The installation of an automated teller machine on a shop or a catering, financial or professional services establishment.

Development not permitted

D1. Development is not permitted by Class D if—

(a) the development would be within a conservation area or on a World Heritage Site; or

(b) the development would be within the curtilage of a listed building or would affect a listed building or its setting.

Conditions

D.2 Development is permitted by Class D subject to the condition that—

(a) the developer shall, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the development;

(b) the application shall be accompanied by a written description of the proposed development and a plan indicating the site together with any fee required to be paid;

(c) the development shall not be begun before the occurrence of one of the following—

(i) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(ii) where the local planning authority give the applicant notice within 28 days of receiving the application of their determination that such prior approval is required, the giving of such approval; or

(iii) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;

(d) where the local planning authority give the applicant notice that such prior approval is required the applicant shall—

(i) display a site notice by site display on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant;

(ii) take reasonable steps to protect the notice, including replacing it if need be; where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in sub-paragraph (i) has elapsed, the applicant shall be treated as having complied with the requirements of that sub-paragraph if the applicant has complied with this sub-paragraph;

(e) the development shall, except to the extent that the local planning authority otherwise agree in writing, be carried out—

(i) where prior approval is required, in accordance with the details approved;

(ii) where prior approval is not required, in accordance with the details submitted with the application; and

(f) the development shall be carried out—

(i) where approval has been given by the local planning authority, within a period of three years from the date on which approval was given;

(ii) in any other case, within a period of three years from the date on which the local planning authority were given the information referred to in paragraph (b).

Class E

Permitted development

E Development consisting of—

(a) the provision of a hard surface within the curtilage of a shop or a catering, financial or professional services establishment to be used for the purpose of the undertaking concerned; or

(b) the replacement in whole or in part of such a surface.

Development not permitted

E.1 Development is not permitted by Class E if the area of ground covered by the hard surface would exceed 50 square metres.

Conditions

E.2 Development is permitted by Class E subject to the condition that—

(a) where there is a risk of groundwater contamination the hard surface shall not be made of porous material;

(b) in all other cases, the hard surface shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the undertaking.

Interpretation of Part 42

F. For the purposes of Part 42 "shop or catering, financial or professional services establishment" means a building used for any purpose within Classes A1 to A5 of the Schedule to the Use Classes Order.

Signed by authority of the Secretary of State for Communities and Local Government

Name
Parliamentary Under Secretary of State
Date Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) (S.I. 1995/418) as to England only.

The GPDO grants planning permission for certain classes of development. This Order amends the GPDO to grant planning permission for some categories of development which previously required planning permission. Some of these permitted development rights are granted, however, subject to an application procedure (prior approval) which allows the local planning authority to intervene and require that, before that particular development is commenced, its approval must be obtained with respect to the siting, design and external appearance of the development.

Article 2 of this Order substitutes a new Part 2 (Minor Operations) in Schedule 2 to the GPDO. It introduces permitted development rights for air conditioning units on certain types of building such as shops, offices and industrial buildings. These rights are subject to certain constraints.

Article 3 of this Order substitutes a new Part 8 (Industrial and Warehouse Development) in Schedule 2 to the GPDO. It introduces permitted development rights for one new building per

existing industrial building subject to certain constraints. Further, it extends the previous permitted development rights for industrial buildings and warehouses to research and development uses. The new Part 8 also amends the permitted development rights for the provision and partial or total replacement of hard surfaces within the curtilage of an industrial building.

Article 4 of this Order substitutes a new Part 32 (Schools, Colleges, Universities or Hospitals) in Schedule 2 to the GPDO. It extends the permitted development rights for schools, colleges, universities and hospitals and allows extensions and alterations to such institutions, subject to certain constraints. However, it restricts the permitted development rights for new buildings to one per existing building. It makes special provision for schools in particular.

Article 5 of this Order inserts two new Parts into Schedule 2 to the GPDO – Part 41 (Office Buildings) and Part 42 (Shops or Catering, Financial or Professional Services Establishments). Part 41 grants permitted development rights to extend or alter office buildings, subject to certain constraints. In Part 42, Class A grants permitted development rights to extend or alter shops and certain catering, financial or professional services establishments, subject to certain constraints. Class B grants permitted development rights for buildings for the storage of shopping trolleys within the curtilage of a shop, subject to certain constraints. Class C grants permitted development rights for the material alteration of shop fronts, subject to certain constraints. In particular, prior approval has to be obtained for the siting, design and external appearance of shop front alterations and is not permitted in conservation areas or on World Heritage Sites. Class D grants permitted development rights for the installation of automated teller machines (ATMs) on shops etc. However, prior approval must be obtained for the siting, design and external appearance of these ATMs and they are not permitted development in conservation areas or on World Heritage Sites. Class E grants permitted development rights for the provision and partial or total replacement of hard surfaces within the curtilage of a shop or certain catering, financial or professional services establishments, subject to conditions.

An impact assessment has been prepared in relation to this Order. It has been placed in the library of each House of Parliament and copies may be obtained from the Planning Directorate, the Department for Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU.

Annex B

Consultation stage impact assessments

Overview

If enacted in full, the recommendations in this consultation document would remove approximately 25,000 non-domestic planning applications from the system annually (England only), entailing an estimated saving by business of between £6m and £9m in planning fees. It is, however, impossible to determine how proposals for changes to regulation of hard-surface provision will change this figure. Nonetheless, these recommendations make a significant contribution towards the Killian Pretty review target of removing 31,500 such applications from the system annually.

In addition, based on PwC's estimate of the administrative burden of making a planning application, businesses would also save an estimated £40m – 50m in preparing applications prior to submission. Total savings by business if all the proposals in this consultation document were enacted are estimated to be £20m – 60m, with the range reflecting uncertainty around the assumptions made.

LPAs would also benefit from no longer being required to consider minor non-contentious applications, and from the fee proposed for further development types that would adopt a prior approval mechanism being increased from £70 to £150 to better reflect the amount of work involved.

The effect of changes to the process of making an Article 4 direction are more complex and difficult to quantify. An impact assessment considering both applying Section 189 of the Planning Act 2008 to non domestic development and further changes to the Article 4 procedure has also been undertaken as part of this consultation below.

Summary: Intervention & Options

Department /Agency: **Communities & Local Government**	Title: **Impact assessment of extending permitted development and the prior approval regime to further categories of development**	
Stage: Consultation stage	**Version:** 1.0	**Date:** 24 June 2009

Related Publications: The Killian Pretty Review, *Planning Applications: A faster and more responsive system*
Non-Householder Minor Development Consents Review, White Young Green Planning

Available to view or download at:
http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf
http://www.communities.gov.uk/documents/planningandbuilding/pdf/finalconsentsreview.pdf

Contact for enquiries: Tom Bristow **Telephone:** 020-7944-3727

What is the problem under consideration? Why is government intervention necessary?

Currently, obtaining planning permission for some non-domestic development can place unnecessary burdens on business which are out of proportion with the potential impacts of development, as well as diverting resources within Local Planning Authorities away from larger and more strategically important development. This contributes to a slower and less effective planning system. In the current economic climate, the importance of reducing the burden of the planning system on applicants is paramount. The Government has therefore placed a priority on reducing the need for planning permission for some small scale development by business. In addition, the current provision of impermeable hard-surfacing on industrial sites may contribute to flooding. Permitted development rights will be used to encourage the use of permeable surfacing in relation to industry, offices, shops, and institutions where permitted development rights to lay up to 50 square metres of hard-surfacing are proposed.

What are the policy objectives and the intended effects?

- to make the planning system respond more proportionately to the developments with which it relates
- to reduce the administrative burden for businesses by allowing greater freedom to undertake minor development (with no or minimal impact) without the need to apply for full planning permission
- to reduce the number of planning applications in the planning system, thereby allowing LPAs to re-allocate resources to larger, more strategically important development
- to allow LPAs to determine applications for impermeable industrial hard-surfacing and promote permeable hard-surfacing on non-domestic sites in order to reduce surface water run-off

What policy options have been considered? Please justify any preferred option.

Option 1: 'No change' across the range of policy proposals

Option 2: (i) extend permitted development rights for certain forms of non-domestic development

(ii) introduce a prior approval regime for specified non-contentious development

(iii) restrict the permitted development regime for laying hard-surfacing on industrial sites to the use of permeable materials, and allow other specified non-domestic uses to lay up to 50 square metres of hard-surfacing without the need to apply for planning permission

Option 1 maintains the current unnecessary burdens on business, and the time resources of Local Planning Authorities

Option 2 is preferred as it will reduce the burdens on business and will contribute to the objective of creating a faster and more effective planning system. The changes to permitted development rights for hard-surfacing will reduce surface water run off which will reduce the impact of future development on flooding.

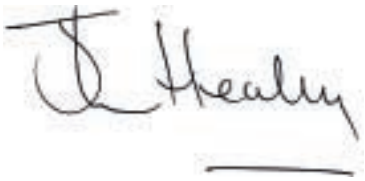
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed three years after implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 29 July 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: **Extend permitted development rights for certain non-domestic development; introduce a prior approval regime for specified development; change regulation of non-domestic hard-surfacing**

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition)	**Yrs**	Loss of fee revenue for Local Planning Authorities: annual £5m-£7m; 10 year PV £44m-£59m (not included in totals as transfer). Costs to business of permeable materials: £0 to £16m; 10 year £0-£135m. More applications for Certificates of Lawful Development (25 – 50 per cent of affected applications): annual £3m-£7m; PV £28m-£56m additional cost to applicants. Cost to business of planning permissions £0-£2m; 10 year £0-£15m.
£0		
Average Annual Cost (excluding one-off)		
£3m-£25m		**Total Cost** (PV) **£28m-£206m**

Other **key non-monetised costs** by 'main affected groups'
There may be some negative impact from development which does not go through the planning system on third parties (i.e. overshadowing, overlooking, etc.). Research, however, shows that over 80 per cent of minor non domestic planning applications are approved, therefore the likely surrounding impact of developments considered eligible for being redefined as permitted development will be minimal. There may also be some negative impact on firms which specialise in impermeable materials.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'
One-off	**Yrs**	Fee and admin cost savings for business: annual £42m-£59m; 10 year PV £350m-£495m
£0		
Average Annual Benefit (excluding one-off)		Resource savings for Local Planning Authorities assumed to be equal to loss in fee revenue: annual £5m-£7m; 10 year PV £44m-£59m (not included in totals as transfer).
		Benefits from reduced floods: £1m; 10 year £8m.
£43m-£60m		**Total Benefit** (PV) **£358m-£503m**

Other **key non-monetised benefits** by 'main affected groups'
There are additional non-monetised benefits connected with the changes to hard-surfacing requirements-savings in the energy costs of treating sewerage; improved water quality through reduced water pollution; reduction in the urban heat island effect when gravel is used instead of asphalt.

Key Assumptions/Sensitivities/Risks The assumptions used in monetising the costs are laid out in the evidence base.

Price Base Year 2009	**Time Period Years** 10	**Net Benefit Range** (NPV) **£152m-£475m**	**NET BENEFIT** (NPV Best estimate) **£314m**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			April 2010	
Which organisation(s) will enforce the policy?			Local authorities	
What is the total annual cost of enforcement for these organisations?			£ Unknown	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£N/A	
What is the value of changes in greenhouse gas emissions?			£ Unquantifiable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase – Decrease)

Increase of £6m Decrease of £45m **Net Impact £–39m**

Key:	**Annual costs and benefits: Constant Prices**	**(Net) Present Value**

Evidence Base

Background

(i) Permitted development rights and the prior approval regime

The Killian Pretty Review highlighted how obtaining planning permission for some non-domestic development can place burdens on business out of proportion with potential impacts. The Government's response to the Killian Pretty Review welcomed the recommendations made and agreed to consult on measures to *"create a planning application process which is more proportionate, that ope*rates more efficiently and effectively, and is more easily understood by all involved." It also acknowledged that reducing the burden of the planning system on applicants has taken on a new imperative in the current economic climate, and placed an early priority on reducing the need for planning permission for some small scale development by business.

The planning system currently relates differently to developments with varying degrees of impact in proportion to their associated impacts. 'Permitted development' is development which may legitimately be undertaken with no oversight from the local planning authority (LPA). Permitted development rights are established on an impacts-based approach; if a development would have no or minimal impact, it is an unnecessary burden on the applicant to prepare an application and pay the relevant fee, and an equally unnecessary burden on LPAs to consider such trivial development.

Other more significant development requires the submission of a planning application. This allows the LPA to consider whether the development is acceptable both in principle and in detail, whether the development accords with local, regional, and national plans, and to consult both stakeholders and public.

An intermediate planning tier exists between permitted development and planning permission- the 'prior approval' regime. If a development operates under prior approval, the principle of that development is accepted, and cannot therefore be considered by the LPA. The LPA will consider only siting, design, and other specific considerations related to the proposal (such as potential impact on aviation in relation to telecommunications development). If the LPA does not reject the prior approval application within a certain number of days that proposal has deemed consent. The prior approval regime applies to certain types of development (notably minor agricultural works, telecommunications installations, and demolition of buildings) which may have impacts that necessitate LPA consideration, but for which the submission of a planning application is overly burdensome in comparison with potential impacts.

A report of proposals by WYG Planning and Design (WYG), published alongside the Killian Pretty review, recommended extending permitted development rights to a number of non-domestic concerns, and proposed changes to how a wide range of non-domestic uses including shops, offices, institutions, agriculture, and waste management interact with the planning system. The Government has given priority to consulting upon the changes that would remove the greatest number of planning applications from the system and which would benefit the widest range of businesses.

(ii) Hard surfacing

Surface water flooding occurs wherever high rainfall events exceed the drainage capacity in an area and such events can lead to serious damage of property and possessions. Increasing urbanisation and 'urban creep' (increased amounts of hard-surfacing in urban areas) are likely to increase flooding. Sir Michael Pitt's review of the summer 2007 floods proposed that householders should no longer be able to lay impermeable surfaces as of right on front gardens, and that Government should consult on extending this restriction to back gardens and business premises. In October 2008 we granted permitted development rights for hard-surfacing of front gardens so long as provision was made for the water to run off to a permeable area.

Rationale for change

Applying for planning permission places a large administrative burden on business, estimated at around £1.1bn in 2006.[19] A more proportionate response to minor developments with little or no impact would reduce the burden on business and remove applications from the planning system, allowing LPAs to focus their resources on development proposals with more significant impacts. This will contribute to a more efficient and effective planning system.

In the current economic climate, the Government's priority is to reduce the burden of the planning system on applicants where appropriate. Removing or lessening the demands of the planning system on certain non-domestic types of development will allow business greater freedom to expand without the financial and administrative burden of having to seek planning permission.

Therefore where developments have almost no impact they should be permitted development (i.e. development that may legitimately be undertaken without the need to submit a planning application). Where developments may have some impacts that would necessitate LPA consideration, but where the submission of a full planning application seems disproportionately burdensome with these impacts, consideration should be given to how the role of the planning system can be reduced. In October 2008 the Government enacted changes to reduce the number of non contentious householder developments

[19] Administrative Burdens of Regulation – Communities and Local Government http://www.communities.gov.uk/documents/corporate/pdf/regulation-burden.pdf

that need to submit a planning application – these proposals continue the process of reducing the burden of the planning system on applicants where appropriate in relation to non-domestic development.

There is currently little incentive for businesses to mitigate surface water run-off effects from their properties by using permeable materials. They do not bear the full cost or consequences of the decision to lay impermeable hard-surfacing because the impacts on flood risk and water pollution may be felt further down the drainage catchment. Changes to existing policy so that the use of permeable materials is made permitted development should incentivise their use when a business chooses to lay hard-surfacing.

Policy objectives

The policy objective is to remove from the planning system those relatively minor, non-contentious developments for which businesses currently need to submit a full planning application by extending permitted development rights for a wide range of non-domestic developments and introducing a prior approval regime for specific categories of minor non-domestic development. This measure is part of a broader move to render the operation of the planning system more proportionate with regard to the developments to which it relates, and to ensure developments with limited or no impacts are allowed to be undertaken without burdening either applicants or LPA.

In addition, the proposals address the risk of increased surface water flooding caused by the increased use of impermeable hard-surfacing. The proposals mean that businesses that want to lay hard-surfacing will not need to get planning permission as long as water runs off to a permeable surface.

The intended effects of the proposals include:

- reducing the burden of the planning system on business
- reducing the need for LPAs to consider trivial or uncontentious developments
- reducing the burden of the planning system on certain types of development that cannot be reclassified as permitted development, but for which submission of a full application seems disproportionate with potential impacts through applying a prior approval regime to further types of non-domestic development
- ensuring that the fee charged for any further development adopting a prior approval regime will be uplifted to better reflect the quantity of work undertaken to process such an application on behalf of the LPA.
- maintaining a proportionate level of LPA control – though reduced – for changes to shop-fronts and ATM installations to enable LPA input on aspects such as shop front design and crime considerations via the prior approval mechanism
- reducing surface water run-off from impermeable surfaces laid on non-domestic properties

Options

Option 1: Do nothing

The current system would remain unchanged. Businesses would continue to have to obtain planning permission for minor, largely non-contentious development, irrespective of associated impacts. LPA resources would also be unnecessarily devoted to more routine applications as opposed to those of greater strategic importance.

Option 2: Extending permitted development rights for a range of non-domestic development and introducing a simplified prior approval regime for specified, non-contentious development

(a) Shops and other high street uses (Use classes A1-A5[20]):

Extend permitted development rights to allow extensions for existing shops of up to 50 square metres floor space provided this is not greater than 25 per cent of existing floor space.

There would be restrictions on height and proximity to boundaries, and a requirement that materials used matched those of the existing building. In short, any development would not exceed the height of existing buildings (to a maximum of 5m) and would not be undertaken within 2m of a boundary.

(b) Offices (Use class B1, excluding research and development and 'light industrial' – permitted development rights for industry are dealt with subsequently):

Extend permitted development rights to allow extensions for existing offices of up to 50 square metres floor space provided this is not greater than 25 per cent existing floor space.

There would be restrictions on height and proximity to boundaries, and on the materials used. In short, any development would not exceed the height of existing buildings (or 5m if within 10m of a boundary) and would not be undertaken within 5m of a boundary. The extension should use similar materials to the existing buildings.

(c) Schools, colleges, universities and hospitals:

Extend permitted development rights to allow for extensions or new structures of up to 100 square metres for colleges, universities and hospitals, provided this is not greater than 25 per cent existing floor space. Extend permitted development rights to allow for extensions or new structures of up to 50 square metres for schools (including residential schools) of up to 50 square metres provided pupil capacity would not be increased and no playing fields would be lost as a result, provided this is not greater than 25 per cent existing floor space.

[20] Classes of use as set out in the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments

There would be restrictions on height and proximity to boundaries. In short, any development would not exceed the height of existing buildings (or 5m if within 10m of a boundary) and would not be undertaken within 5m of a boundary.

(d) Industry, (Use class B2, including research and development uses):
Extend permitted development rights to allow industry, warehousing, and research and development uses to construct new buildings up to 100 square metres floor space provided this is not greater than 25 per cent of existing floorspace. Industrial uses already have permitted development rights to extend their properties by 1000 square metres up to 25 per cent existing floorspace, or 500 square metres up to 10 per cent existing floorspace in sensitive areas.

(e) Air-conditioning units:
Extend permitted development rights so that non-domestic uses would be allowed to install external components of air-conditioning units (and associated noise attenuation shrouds). There would be a size limit of 8 cubic metres (equivalent to a unit of 2m x 2m x 2m), noise limit of 40dB and any units installed ($L_{Aeq\ 5min}$) must be at the rear of a building.[21]

Where air-conditioning units in Conservations Areas and World Heritage sites would be visible from the highway, they would require planning permission, given the visual impact air conditioning unit installation might have.

(f) Introduce a simplified prior approval process for specified non-contentious development:
Introduce a prior approval regime (with the fee uplifted from £70 currently to £150 to better reflect work involved on behalf of the LPA). A prior approval process would restrict the range of factors that LPAs could bring to bear in determining applications for changes to shop fronts and hole-in-the-wall style ATM installations.

Under this simplified regime, there would, for example, be no requirement for consultation as is currently the requirement on 'full' planning applications. A prior approval mechanism applied to further types of development would operate under 'deemed consent' i.e. if the LPA does not object to a development within 28 days, the proposal is approved. Both removing the need for consultation and requiring the LPA to consider the application within 28 days will expedite the process of determining applications and give applicants certainty over the timescales involved. Provision would, however, be made to ensure that the specific impacts of developments be considered through locally-generated supplementary guidance. This issue is of particular importance in relation to ATM siting and issues of crime, and may also be relevant in terms of design guides for shop-front alteration.

[21] dB-decibels: (a measure of sound level), Leq: equivalent noise level (the noise level averaged over a period of time) 5min: duration of 5 minutes. This notation therefore effectively requires that any noise produced by air conditioning units must not exceed an average of 40 decibels when measured over a period of 5 minutes.

(g) Improve regulation of hard-surface provision
Allow shops, offices, and institutions to lay 50 square metres of permeable hard-surfacing as permitted development.

Qualify the existing permitted development right of industry to lay unlimited hard-surfacing to unlimited hard-surfacing that allows drainage to a permeable surface (the permeability requirement would not apply, however, where there was a risk of contamination).

Research conducted on behalf of Communities and Local Government by CIRIA into hard-surfacing materials informed the methodology for this element of the impact assessment. The report *Understanding Permitted Development and Impermeable Surfaces* will be published on CLG's website.

Preferred option
Option 2(a) to (g) collectively are the preferred option. This would avoid businesses undertaking unnecessary application processes and paying associated fees, enable LPAs to concentrate their resources on more complex or more contentious applications, and respond to Sir Michael Pitt's review of the 2007 floods by proposing changes to the regulation of hard-surfacing.

Cost/benefit analysis

Sectors/groups affected:

- local planning authorities
- businesses (all applicants for non-domestic planning applications)
- third parties affected by new development

Option 1: Do nothing
There would be no additional costs or benefits in choosing the do nothing option. However, the inefficiency of the current system for both users and administrators would persist.

- LPAs would continue to receive revenue from businesses for non-domestic planning applications for relatively minor development
- full consideration would be given to any planning issues that may arise from these applications for development – (although, in general, these applications are minor and largely non-contentious; in excess of 80 per cent of these applications are passed)
- local planning authorities would continue to dedicate resources to determining applications for relatively minor development in a way which is disproportionate to the impact of development

- businesses would continue to face the costs of applying for planning permission for relatively minor development, and may be tempted to either avoid the planning system as a result (as is currently anecdotally the case with hole-in-the-wall style ATM installation), or alternatively not undertake development that may be economically beneficial

Option 2: (a) – (e) Extend permitted development rights for: *(a) Shops and other high street uses, (b) offices, (c) institutions, and (d) industry for relatively minor, non-contentious development (e) installation of air-conditioning units*

Benefits summary
Businesses in town centres and elsewhere (for example near waterways) in the use classes specified will benefit from no longer having to apply for planning permission and therefore not paying a fee or meeting the administrative cost associated with preparing a planning application. In addition, both the uncertainty of whether planning permission will be granted, and the uncertainty of when a determination will be reached will be removed, making it easier for businesses to plan small-scale extensions. These cost savings are monetised below.

Local planning authorities will need to devote less of their scarce administrative resources on determining planning applications for largely minor and non-contentious development leading to a re-allocation of resources towards more strategically important, larger development. This will also contribute towards a more efficient and effective planning system which is focused on proposed development which will have the greatest impact. There may also be some additional costs to LPAs which are detailed below.

The proposed changes (a) – (d) will withdraw approximately 9,600 planning applications from the planning system annually (approximately 6 per cent of all minor applications) and the changes related to air conditioning units will withdraw another 5,600 applications (approximately 4 per cent of all minor applications)[22].

Costs summary
Local authorities would lose the revenue derived from the planning application fees for these developments. However, fee revenue is intended to cover the resources needed to process planning applications, and there will be a commensurate saving in the resource needed by LPAs for processing applications relating to these types of development.

There may also be some additional costs to LPAs:

- The creation of supplementary guidance in relation to ensuring police concerns over ATM siting and crime, and possibly other considerations such as design codes that would apply to ATM installation and shop-front alteration. There is a

[22] As explained in the assumptions used for estimating the costs and benefits, these proportions have been calculated using the total number of minor development applications for 2006/07.

wide variation in the form that such guidance currently takes, from brief criteria to substantial documents. This may also be a burden on associated organisations involved in the production of supplementary guidance – notably police authorties who will need to be involved with any guidance established in relation to hole-in-the-wall style ATM installation. It is, however, expected that the up-front police commitment in creating supplementary guidance would be offset by a more proportionate approach to ATM installation that would mean police involvement on each specific development would no longer be necessary.

- If LPAs wish to restrict the type of development in their local area which these permitted development rights would allow, they would have to issue Article 4 directions. Article 4 Directions are locally-defined restrictions to permitted development rights that can be established when the cumulative exercise of permitted development rights causes a local problem. There is an administrative burden on LPAs in creating Article 4 directions, and through removing permitted development rights LPAs may be liable for compensation where the exercise of former permitted development entitlements would have benefitted the developer financially (a separate Impact Assessment has been undertaken which details these issues). As Government's general policy is to increase what is allowed as permitted development, where Local Authorities need to restrict national permitted development rights locally (where, in exceptional circumstances, for example, their cumulative exercise results in a local problem), the procedural burden of establishing an Article 4 Direction should be minimised. The Government will, therefore, be issuing regulations which will enable LPAs to issue Article 4s related to householder development with a reduced liability to pay compensation (provided at least 12 months notice is given) and consult on whether this provision might equally apply to Article 4 directions removing non-domestic permitted development rights.
- LPAs may also have to respond to more certificate of lawful development requests as any changes to permitted development will require familiarisation on the part of users and may cause confusion. However, there is a fee associated with such a request, which should cover any LPA resource needed to process the request.

It has not been possible to quantify these costs for LPAs due to lack of evidence. In particular it is not clear what proportion of LPAs might issue supplementary planning guidance in relation to these changes; and how likely it is that an LPA would issue Article 4 directions.

Consultees are asked to provide any available evidence to assist with monetising these costs for the final stage impact assessment.

There is the potential for some development to have a negative impact on third parties in the immediate vicinity such as overlooking, overshadowing, and general visual impact. These concerns may result in more complaints regarding developments to the LPA. The likelihood of this being a factor is minimal, however, precisely because these developments have been recommended by WYG as candidates for where the oversight of the LPA might beneficially be lessened on the basis that they are non-contentious and have minimal impacts.

(f) Introduce a prior approval process for specified, non-contentious development (i.e. changes to shops fronts and ATM installation):

Benefits summary

There will be fees savings for applicants using a prior approval regime, as compared to the fees for a full planning application. In addition, the prior approval application process that would apply to further types of development would have no requirement to consult, and place limited information requirements on applicants (limited to design, siting, and other specific concerns such as ATM siting and crime). This would mean that business would need to devote less time to preparing a prior approval application than would be needed for a planning application, and equally that the LPA's workload would be reduced through having to consider fewer factors in determining whether the proposed development is acceptable. A prior approval process, which operates under a 'deemed consent' mechanism – i.e. if LPA does not object to the development within 28 days it is deemed acceptable, also offers the applicant the certainty of a fixed-term response. The fee and administrative savings are monetised below.

Costs summary

Applicants could be uncertain as to the requirements for completing these prior approval applications, given that any alterations to the planning system have associated familiarisation costs. However, these costs will be mitigated by the fact that the process itself should constitute less of an administrative burden then submitting a full planning application.

The amount of work involved for LPAs in determining prior approval applications has been presented to Government by many members of the planning profession as almost equal to that required for processing full planning applications (the current fee; £335 for telecoms development, £70 for other forms of prior approval does not represent the work needed to process such an application on behalf of the LPA). It is therefore proposed that the fee payable for the specified developments that would operate via a prior approval mechanism would be subject to a fee of £150 (that of minor householder development) in order to better reflect the resources needed by the LPA.

A prior approval regime could be viewed by the industry as not going far enough (this may particularly be the case in relation to retail groups and ATM providers) given the relatively uncontentious nature of the development, and, in particular, the fact that many ATMs have been installed without any recourse to the LPA.

(g) Improve regulation of hard-surface provision

Impacts on shops, offices and institutions

Shops, offices, and institutions will be able to lay 50 square metres of permeable hard-surfacing as permitted development. The extension of permitted development rights to this type of development will mean that shops, offices and institutions which want to lay permeable hard-surfacing will now be able to do so without incurring the costs of applying for planning permission. This will be a direct saving for those businesses, and remove further applications from the planning system. This in turn will allow LPAs to better focus their resources on development with more significant impacts.

LPAs will face a reduction in planning application fees, but this is assumed to have a neutral impact as the fee is intended to meet the costs of processing the application which the LPA will no longer face.

In monetising the benefits (below), it is assumed that only those businesses which would have laid permeable materials anyway benefit from the proposal. In reality, the proposal may lead to greater use of permeable surfacing than is currently the case which will have the associated benefit of reducing the surface water run-off area, which in turn will contribute to reducing the risk of flooding.

By allowing businesses to lay hard-surfacing which may be used for car parking, there may be increased encouragement for travel by car to a particular business. This might contribute to greater carbon emissions from cars.

Impacts on industrial uses

- the proposed changes to permitted development rights for hard-surfacing on industrial sites represent a restriction when compared with current policy
- the proposed changes will benefit those whose properties are at risk of flooding by reducing the number of floods caused by surface run-off. As well as the reduced cost of cleaning up floods, there may be other potential benefits from the reduction in impermeable hard-surfacing: savings in the energy costs of treating sewerage; reduction in the urban heat island effect if gravel is used instead of asphalt; and enhanced water resources via ground water recharge
- businesses wanting to lay hard-surfacing without applying for planning permission will now need to use permeable materials or ensure that there is drainage to a permeable surface. This may impose extra costs on businesses due to the greater cost of permeable materials, if under the do nothing scenario they would have chosen to use impermeable hardsurfacing. Some businesses may choose to incur the extra costs of applying for planning permission instead of choosing a permeable solution

- LPAs are likely to face a small increase in the numbers of planning applications related to hard-surfacing from those businesses which do not choose a permeable solution. It is assumed that the resource costs to LPAs will be met by the fee which accompanies the planning applications, and that this is not therefore a net cost for LPAs

Monetised costs and benefits

Key assumptions made in the calculation of costs and benefits of Option 2:

(a) – (f) Extending permitted development and the prior approval regime to further categories of development

- The number of affected applications has been estimated based on the sample studied in the WYG report[23]. The report looked at a sample of planning applications made in 2006/07, and so extrapolation of the total number of applications affected by our proposed changes has been made with reference to total numbers of minor applications for that year. In England, there were **151,100** minor applications in 2006/07 and in England and Wales, there were **163,961**. This compares with a total of 622,746 applications across all types of development.
- The sample of minor planning applications used in the WYG analysis included applications from both England and Wales. Of the total sample of minor applications (504), 97 per cent were from England. This compares with 92 per cent of all minor planning applications in 2006/07 which were from England. The policy proposal only applies to development in England. In order to account for this, the WYG estimates of the numbers of applications saved have been adjusted by applying the proportions of applications in the sample to the total number of minor development applications.

[23] Non Householder Minor Development Consents Review, White Young Green Planning (November 2008)

Table 1: Estimated numbers of minor applications affected		
Type of development (WYG study)	**Proportion of sample**	**Estimated number of minor applications affected**
Shops	2.8%	4,200
Offices and industry	1.4%	2,100
Institutions and leisure	2.2%	3,300
Plant and Machinery	3.7%	5,600
Shop fronts	4.7%	7,100
ATMs	1.8%	2,800
TOTAL		**25,100**

- Where development is made permitted development, businesses save both the fees that accompany a planning application, and the administrative costs associated with preparing a planning application. The fee for a minor non-domestic planning application is currently **£335** where the floorspace of the building would be increased, **£170** where floorspace would not be increased. The administrative cost of preparing a planning application is taken from the PwC administrative burdens measurement project which estimated it to be **£1450** for a minor development. For comparison, more recent research completed by Arup looked at a sample of applications made by SMEs for office and industrial development concerning establishment of premises.[24] These included applications for the installation of shop fronts, signage and new outbuildings. Although not directly comparable to all the development types above, it seems likely that the costs of this type of application would also act as a proxy for the administrative costs incurred by businesses in submitting applications. The median cost given in the report for these types of applications is £1875 which includes the planning application fee. Without the fee, this would be £1540 which is close to the PwC figure.
- For development which will come under the new prior approval regime, there will also be a saving on planning application fees, as it will cost less. Currently, the types of development affected pay a fee of £170. Prior approval will cost £150, leading to a saving of **£20** for each application which no longer needs to apply for full planning permission. No administrative savings are assumed for development which goes through the new prior approval regime.

[24] *Benchmarking the Costs to Applicants of Submitting a Planning Application*, Arup (May 2009)

Table 2: Estimated savings for businesses				
	Annual savings – fees	**Annual savings – administrative costs**	**Total annual savings**	**10 year savings**
Applications which become permitted development	£4 million	£22 million	£26 million	£217 million
Applications which fall under prior approval	£0.2 million	£7 million	£7.2 million	£61 million
TOTAL	**£4.2 million**	**£29 million**	**£33 million**	**£278 million**

- The same estimates have been used to calculate the loss of fee revenue to LPAs both annually and discounted over 10 years. However, the fee is intended to cover the resource that LPAs use in processing planning applications. Therefore it is assumed that although LPAs lose this revenue, resources which can be valued using the fee revenue as a proxy would be freed up in planning departments and could be redeployed to work on applications for more significant development (in terms of its potential impacts).
- There may be an increase in requests for Lawful Development Certificates (LDC) as users may be confused by the system and seek to confirm via the LPA whether a proposed development is allowed under permitted development or not. We think it is unlikely that a large proportion of the businesses affected will request Lawful Development Certificates once permitted development rights are extended to the specified types of development, as a significant proportion are likely either to use planning consultants for advice on proposed development and the planning system, or have in-house teams that deal with issues related to their premises. There is no evidence of what proportion of businesses might request an LDC so assumptions have been made that between a quarter and a half of the businesses affected by the changes to permitted development would apply for an LDC. LDCs cost half the normal planning fee and it is assumed that the administrative costs involved in preparing an application are also halved.

Table 3		
Scenario	**Increased annual costs**	**10 year present value costs**
25% of businesses request LDC	£3 million	£28 million
50% of businesses request LDC	£7 million	£56 million

(g) Hard-surfacing

New permitted development rights for shops, offices and institutions to have up to 50 square metres of permeable hardsurfacing

- Shops, offices and institutions make up approximately 40 per cent of all commercial property in England.[25] There are 1,341,622 commercial properties in England, meaning approximately 536,650 properties will be affected by the proposals.
- The proposals extend permitted development rights for the specified types of commercial property to lay up to 50 square metres of hard-surfacing as long as the material used is permeable. There is no available evidence on how many planning applications relating to laying hard-surfacing for shops, offices and institutions are made annually. In estimating the benefits it is assumed that between 1 per cent and 3 per cent of these properties might lay hard-surfacing each year and that they benefit from not having to apply for planning permission and bearing the associated administrative costs – the planning fee of £170 and administrative costs of £1450.
- It is not thought that there will be an associated increase in requests for Lawful Development Certificates relating to this type of development as the proposal is expected to be straightforward to interpret.

Table 4: Estimated savings to shops, offices and institutions – range depends on proportion of businesses affected annually (1 per cent – 3 per cent)			
Saving	**Saving to individual business**	**Annual saving**	**10 year PV saving**
Reduction in planning fees	£170	£1m to £3m	£8m to £23m
Reduction in administrative cost	£1450	£8m to £23m	£65m to £194m
TOTAL	**£1620**	**£9m to £26m**	**£73m to £217m**

Industry and warehousing to retain the current permitted development right to lay an unlimited amount of hard-surfacing, but subject to a new restriction that it is a permeable surface.

[25] CLG statistics for Commercial and Industrial Property

The monetisation of the costs and benefits has been informed by cost-benefit analysis completed by consultants for Communities and Local Government.[26]

- After implementation of the policy, businesses wishing to lay hard-surfacing on an industrial or warehousing site will either have to apply for planning permission or use permeable materials.
- The benefits from the policy arise from the estimated reduction in surface run-off area compared to the do nothing scenario where businesses face no incentive to use permeable materials. The smaller run-off area leads to a reduction in sewer floods and combined sewer overflows – a 1 per cent reduction in run-off surfaces leads to a 9 per cent reduction in sewer related flooding. The Environment Agency estimates that the average cost of a sewer flood is £39,000 and the costs of combined sewer overflows as £51,000.
- Approximately 60 per cent of commercial property in England is used for industry and warehousing and there are 1,341,622 commercial properties in total. In calculating the costs and benefits it is assumed that 2.5 per cent of these properties would want to lay 50 square metres of hard-surfacing each year on their sites.
- The range of costs has been estimated based on a range of assumptions about current practice. Currently hard surfacing laid on industrial and warehousing sites can be designed to drain to a permeable surface and not to the sewer. Potentially, there are ways for a business to lay hard-surfacing which meets the requirement for permeability without incurring the extra cost of permeable materials. This explains the zero cost at the lower end of the range.
- However, it is also possible that businesses will comply with the restriction to permitted development rights by using permeable materials or applying for planning permission in order to use other materials. The high end of the range of costs has been calculated assuming 90 per cent of the businesses that wish to lay hard-surfacing choose to use permeable materials, while the remaining 10 per cent apply for planning permission and incur the associated costs.
- Table 4 shows the difference in costs for the permeable and impermeable materials that might be used for industrial and warehousing sites, taken from the research completed by consultants.[27]

[26] CIRIA, *Understanding permeable and impermeable surfaces: Technical report on surfacing options and Cost Benefit Analysis* (2009)

[27] CIRIA, *Understanding Permeable and Impermeable Surfaces: Technical report on surfacing options and Cost Benefit Analysis* (2009)

Table 5: Cost premium for permeable surfaces		
Material	**Cost per sq m**	**Cost difference (permeable – impermeable)**
Impermeable concrete block paving	£65.50	£31.80
Permeable concrete block paving	£97.30	
Impermeable asphalt	£73.94	£33.86
Permeable asphalt	£107.80	

- It is assumed that 50 per cent of the businesses using permeable materials choose concrete block paving and 50 per cent choose asphalt.
- The range of costs reflects different estimates of the price elasticity of demand. There is no evidence of how sensitive industry demand for hard-surfacing will be to the increase in costs of materials used. The estimates of the price elasticity of demand used are a range from 0.5 to 2 which reflects the methodology used when estimating demand for permeable materials for the impact assessment related to hard-surfacing in front gardens[28]. The higher the price elasticity of demand, the greater the fall in quantity demanded when the cost of laying hard-surfacing increases.

Table 6: Costs and benefits of permitted development rights for permeable surfaces on industrial sites					
Price elasticity of demand	**Annual cost**	**Annual benefit**	**10 year PV costs**	**10 year PV benefits**	**Net present value (10 years)**
0.5	£18m	£1m	£149m	£8m	–£141m
1	£15m	£1m	£125m	£8m	–£117m
2	£9m	£1m	£78m	£8m	–£70m

- For the purposes of the impact assessment, the costs and benefits have both been measured over 10 years, in order to ensure consistency across the analysis of the different policy proposals. However, the benefits of reduced flooding are cumulative, and so the average annual benefit would increase if the benefits of a reduction in run-off surface were calculated over a longer time period. Over a longer time-frame the costs of permeable surfacing would also be likely to fall as suppliers of permeable materials responded to increased demand. The cost premium for permeable materials is assumed to remain constant over the 10 year period of the analysis but this may be an over-cautious assumption.

[28] http://www.opsi.gov.uk/si/si2008/em/uksiem_20082362_en.pdf

Consultees are asked to consider whether the assumptions made in the estimation of the costs and benefits of the proposals to restrict permitted development rights for hard-surfacing on industrial and warehousing sites to permeable materials are reasonable.

In particular:

(i) Is the assumption about the percentage of industry and warehousing properties that would choose to lay hard-surfacing each year reasonable (2.5 per cent)?

(ii) Is the estimate of the average area (50m^2) that a business would want to surface realistic?

(iii) Is the range of assumptions regarding how businesses react to the restriction to permitted development rights realistic?

Administrative Burdens

The change in administrative burdens has been calculated as follows:

Annual **reduction** in administrative burden from the changes to minor applications (not related to hard-surfacing): £29m (Table 1)

Annual **increase** in administrative burden from increased requests for LDCs (not related to hard-surfacing): £4m (midpoint of range)

Annual reduction in administrative burden from permitted development rights for permeable surfaces for shops, offices and institutions: £15.5m (midpoint of range in Table 4)

Annual increase in administrative burden for industry applying for planning permission to lay impermeable surfaces: £1.5m

The total reduction in the administrative burden on business is £39m.

Consultation

This impact assessment accompanies a public consultation document. In respect of this Impact Assessment we are specifically seeking views on:

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

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

Monitoring and Evaluation

Monitoring

Government Offices for the regions: the Secretary of State for Article 4 Directions will monitor any change in use of Article 4s. Further discussion of the evaluation of the policy will be made in the final impact assessment.

Enforcement

Local Planning Authorities are already expected to take discretionary enforcement action against breaches of planning control, having regard to national and local countryside protection policies.

Sanctions

No new sanctions are proposed.

Specific Impact Tests

Competition assessment

There is no impact on competition from the most of the proposals covered in this impact assessment. The proposals are de-regulatory across the board and therefore it is not envisaged that they will unduly advantage or disadvantage any interests over any others. However, it is possible that firms that specialise in impermeable paving and surfaces are competing against firms that specialise in permeable paving and surfaces. It is therefore possible that reducing demand for impermeable paving and surfaces through the measures proposed will restrict competition to a degree. This will be mitigated by firms switching their business to permeable paving. The only constraint for such a switch will be the skills needed to lay permeable paving.

Small firms' impact test

There should in general be no adverse impact on small firms from this proposal. If anything, though this is extremely difficult to quantify, the measures will advantage SMEs to a greater degree than large business given that, for example, an extension to a small business premise of 50 square metres would make more of a difference in operational terms than the same size of extension to a larger office complex. Also the administrative burden of applying for planning permission for such development will have a proportionately greater impact on SMEs.

Some small firms that specialise in impermeable paving and surfaces may be adversely affected by this measure if they face reduced demand for their product. The extent of the effect will depend on their ability to convert their business to the supply of permeable paving and surfaces. As mentioned above, this will be dependent on the skills of employees within the business. Firms will also have time before implementation to adjust their stock.

Legal aid impact test

There will be no legal aid impact from this proposal.

Sustainable development, carbon assessment, other environment

We do not envisage that the proposals to extend permitted development rights to a range of uses, including shops, offices, institutions and industry, will lead to significant increased carbon or other greenhouse gas emissions. Whilst an enlarged building "footprint" will require a concomitant increase in heating/ventilation, the requirements of current building regulations could mean that, in many cases, the overall building efficiency increases.

The proposal to extend permitted development rights to allow the installation of air-conditioning units may have some environmental impact if the numbers of units installed increases – principally from the energy such units consume during their operation. However, whilst individual air-conditioning units undoubtedly use energy to function, and thereby have the potential for increased carbon footprint, they are used primarily during the summer and many are relatively energy efficient in that they are designed to condition a specific area, and frequently have 'sleep' or reduced power modes when peak operational levels are not required. In any case, it should be remembered that the alternative to air-conditioning – for example, electric fans or self-contained air-conditioning units – also use electricity and thus have their own carbon footprint.

EU law requires that a label must be displayed on all electrically powered heat-pump and cooling-only air-conditioning units up to 12 kW capacity. The label rates efficiency from A to G (A being the most efficient) and also shows the annual energy consumption of the system. Building Regulations require that all air-conditioning systems with an effective rated output of more than 12 kilowatts must be regularly inspected by an energy assessor. The inspections must be a maximum of five years apart.

In addition, the presence of air-conditioning can often encourage building owners/managers to have efficient thermal glazing and high levels of insulation, ensuring minimal heat loss in the building as a whole, which is of considerable environmental benefit.

The proposals with regard to permeable paving will encourage sustainable drainage which aims to mimic natural drainage systems and uses less energy and other resources than are used by conventional techniques of transporting, treating, and disposing of surface water via the sub-surface sewerage systems.

Health impact assessment

There are not expected to be any detrimental health impacts from this proposal.

Race, disability, gender and other equality

We do not expect any adverse impacts as a result of this proposal.

Human rights

We do not expect a negative impact on human rights from this proposal.

Rural proofing

We do not believe this proposal will have a negative impact on rural areas.

Specific Impact Tests: Checklist

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Summary: Intervention & Options		
Department /Agency: **Communities & Local Government**	**Title:** **Impact assessment of applying Section 189 of the Planning Act 2008 to Article 4 Directions restricting non-domestic permitted development, and further changes to the general process of making an Article 4 Directions**	
Stage: Consultation	**Version:** 1	**Date:** 24 June 2009
Related Publications: Planning Act 2008		

Available to view or download at:
http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_1

Contact for enquiries: Tom Bristow **Telephone:** 020 7944 3727

What is the problem under consideration? Why is government intervention necessary?

Government's general policy is to increase what development may be undertaken without the need to apply for planning permission, i.e. as permitted development, to ensure efficiency in the planning system. The cumulative exercise of permitted development rights may, however, cause a local problem. LPAs can restrict permitted development rights locally in exceptional circumstances via establishing an Article 4 Direction if this is the case. There are currently, however, a number of shortcomings with the process of establishing an Article 4 Direction, notably that:

LPAs may be liable to pay compensation where permitted development rights are removed (which may disincentivise their use where necessary)

Apart from in relation to conservation areas, Article 4 Directions must be approved by the Secretary of State, which is seen as an unnecessary degree of Secretary of State oversight (which could again act as a disincentive to their use).

Apart from those relating to conservation areas, Article 4 Directions are not the subject of public consultation.

What are the policy objectives and the intended effects?
Given that the Government is increasing what is allowed under permitted development, it wishes to ensure that an LPA can act to restrict permitted development rights by the use of an Article 4 Direction with minimal procedural burdens. The stringency of the test of circumstances where an Article 4 might legitimately apply would remain.

Section 189 of the Planning Act 2008 already makes provision for the liability of LPAs to pay compensation where permitted development rights are withdrawn to be limited to 12 months, or negated altogether if a minimum of 12 months consultation is undertaken. An impact assessment of applying Section 189 to Article 4s restricting householder permitted development has previously been undertaken. The Government will apply S.189 in relation to domestic permitted development rights in due course.

We are separately consulting on whether this provision to limit LPA compensation liability should apply to other types of development. In addition, further proposals to both ease the process of making an Article 4 Direction and make it more locally-accountable by LPAs are proposed, specifically by removing the need for Secretary of State approval, requiring a public consultation period of 21 days for all Article 4s, and allow LPAs to publicise Article 4 Directions by serving site notice rather than contacting all potentially affected landowners/ tenants where these individuals are impossible to determine/locate. (The Government outlined the intention to consider changes to the Article 4 procedure in the White Paper, Planning for a Sustainable Future, in 2007.)

What policy options have been considered? Please justify any preferred option.
Proposals for change:

(1) 'do nothing'

(2) Apply Section 189 of the Planning Act 2008 (which removes all liability for compensation if Article 4s are consulted upon for 12 months, or liability for compensation is limited to 12 months after permitted development rights are withdrawn) to Article 4 Directions made in relation to non-domestic uses.

(3) (a) enact further changes to the process by which Article 4 Directions are established:

(b) remove the requirement for Secretary of State approval

(c) require a public consultation period of 21 days for all Article 4s

(d) allow notice publicising Article 4 Directions to be served on the land in place of individual notification, where individual owners/occupiers cannot be identified

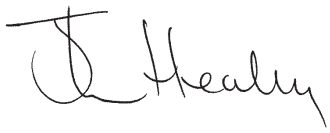
Policy options except (1) are not exclusive, i.e. following representations from consultation any combination of (2) (3) (a) (b) (c) (d) may be enacted. Proposal (2) needs only be assessed in the context of Article 4 Directions restricting non-domestic permitted development rights as the impact of this change has been assessed inn relation to householder development as part of the Planning Act 2008. Proposals (c) (d) and (e) need to be assessed in relation to issuing Article 4 Directions related to domestic and non-domestic permitted development rights.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?
The policy will be reviewed three years after implementation.

Ministerial Sign-off For consultation select stage Impact Assessments:

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 29 July 2009

Summary: Analysis & Evidence

Policy Option: (options (2) & (3) (a) (b) (c) inclusive)	Description: **Application of Section 189 of the Planning Act 2008 to Article 4 Directions restricting certain non-domestic permitted development rights, and further proposed changes to the process of establishing Article 4 Directions for all permitted development rights**

COSTS

ANNUAL COSTS		Section 189 and proposed changes relate to changes in the procedure for making Directions, not to the stringency of the test that determines whether a Direction may be made. It is therefore impossible to estimate the degree to which these proposals could increase the use of Article 4s by LPAs as Article 4 making is discretionary.
One-off (Transition)	**Yrs**	
£ Unknown		
Average Annual Cost (excluding one-off)		
£ Unknown		**Total Cost** (PV) **£ Unknown**

Overall, changes to ease the process of creating Article 4 Direction may encourage their use- passing on the environmental and/or social benefits of restricting national permitted development rights locally where these cause a problem.

LPAs bear the administrative costs of processing applications for where permitted development rights have been withdrawn (in addition these planning applications are exempt from paying fees)- and given that more Article 4s may be created as a result of these proposals, this LPA workload may be increased.

Proposal (2) – implementing Section 189 of the Planning Act 2008 for Article 4s related to non-domestic development, which allows for development to be undertaken for a period of 12 months during consultation (or application for compensation to be made for 12 months where restrictions are in place) will mean that any costs to those ultimately affected by Article 4 Directions would be minimal.

Proposal (3) (a) The requirement that all Article 4s should be the subject of public consultation will be a cost on LPAs. All LPAs, however, have consultation systems in place that can be drawn on (i.e. there would be no familiarisation costs), and proposal (3) (c) that allows notice of an Article 4 to be served on the land rather than on individual landowners/ tenants where they cannot be identified, this allows an LPA to act quickly to deal with problems. Proposal (3) (b) has no tangible costs or benefits.

BENEFITS

ANNUAL BENEFITS		Not possible to monetise benefits	
One-off	**Yrs**		
£0			
Average Annual Benefit (excluding one-off)			
£ Unknown		**Total Benefit** (PV)	**£ Unknown**

Proposal (2) will ensure that LPA liability to pay compensation where permitted development rights are restricted is limited to 12 months. This will benefit both LPAs who face compensation claims directly, and may encourage greater use of Article 4s, thus passing on the societal benefits of Article 4 Directions (i.e. in terms of preventing deterioration of local amenity as a result of the cumulative exercise of permitted development rights where there is a local problem) more readily.

Proposal (3) (a) and (3) (b) will ensure Article 4s are more locally accountable (i.e. encouraging greater public involvement in the process) by substituting the role of the Secretary of State in approving Directions.

Proposal (3) (c) will allow for action to be taken quickly with problem sites.

Key Assumptions/Sensitivities/Risks

Assumption – the current Article 4 procedure (both in terms of liability for compensation, and other procedural issues) is a disincentive to make an Article 4 Directions and discourages LPAs from readily addressing the need to restrict national permitted development rights locally where this is important.

Sensitivity – that the prevailing Government approach at a national level is to both allow further types of development to be undertaken as permitted development, and promote greater local power to condition development as is seen fit by LPAs.

Price Base Year	**Time Period Years**	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			April 2010	
Which organisation(s) will enforce the policy?			N/A	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)
Increase of £	Decrease of £	**Net Impact £**

Key:	**Annual costs and benefits: Constant Prices**	**(Net) Present Value**

Evidence Base (for summary sheets)

Background

The Government's general policy is to free up the planning system and introduce greater permitted development rights where appropriate.

Permitted development rights (PDRs) are granted by the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). The GPDO grants planning permission for certain types of development and thereby removes the need to apply for the express approval of the LPA.

On occasions the impact of national permitted development rights may cause a problem locally (for example, the right to undertake minor alterations to dwellinghouses would be unacceptable in areas of architectural heritage). LPAs must therefore be able to restrict national permitted development rights in exceptional local circumstances.

LPAs can already restrict permitted development rights in exceptional circumstances by making an Article 4 Direction. However, there are some potential constraints on the use of directions by LPAs. The liability to pay compensation where permitted development rights are withdrawn has been isolated as a particular disincentive to establish Article 4 directions. The issue of LPA liability for compensation was addressed in the Planning Act 2008. Section 189 of this Act provides for the liability for compensation to be limited to twelve months following the introduction of an Article 4 direction (or negated if the Article 4 direction is the subject of 12 months consultation). The provision will be applied to types of development on a case by case basis. Following public consultation on the issue, the Government is currently committed to apply Section 189 of the Planning Act 2008 to Article 4 Directions restricting householder permitted development.[29]

With greater permitted development rights comes the greater likelihood of LPAs needing to restrict those rights. The Government therefore, proposes to amend the process of making an Article 4 Direction in order to make it simpler for the LPA and to allow those affected by the Direction to engage in the process. By way of a practical example of where the cumulative exercise of permitted development rights may entail a local problem, erection of fences is allowed under Schedule 2, Part 2 Minor Operations of the GPDO. Agricultural land owners, for example, may physically sub-divide their land under permitted development entitlements, and subsequently sell parcels on to buyers, who, given that the land is marked out in plots, may misinterpret that the land has planning permission to be built upon. This practice has been extensively debated in Parliament as it results firstly in the often unsightly physical sub-division of agricultural land; and subsequent neglect of the land given that buyers typically had expected to use the land for a purpose other than agriculture (i.e. development).

[29] http://www.communities.gov.uk/publications/planningandbuilding/changesdevelopmentconsultation

The Government's aim is therefore not to reduce the strength of the 'exceptional circumstances' test which justifies the establishment of an Article 4, but to ease the process of creating an Article 4 Direction where this test has been met. The ability of LPAs to decide what is appropriate locally is also very much in keeping with Government's desire to devolve decision making to the local level.

The commencement of the compensation provisions in the 2008 Planning Act in relation to householder permitted development rights will help prevent an overly cautious approach to the use of Article 4 Directions by LPAs. The compensation provisions may be applied to other forms of development following specific consultation.

Current planning legislation

The Town and Country Planning (General Permitted Development) Order 1995 SI No 418

Article 4 of The Town and Country (General Permitted Development) Order 1995 deals with directions restricting permitted development.

Under **Article 4(1)** a direction can be used by a local planning authority to restrict any permitted development rights (except Class B of GPDO Schedule 2 Part 22 or Part 23 Class B). A direction under this section is not the subject of public consultation and only takes effect once the Secretary of State has approved it and notice has been served on the occupier or owner of the land to which the Direction relates. There is no obligation on the LPA to notify occupiers or owners of its intention to make an article 4(1) direction. The duty to notify owners and occupiers arises once the direction is approved.

Under **Article 4(2)** a direction can be used to restrict certain permitted development rights in conservation areas. A direction under this section is the subject of public consultation for at least 21 days. No Secretary of State approval is needed. The Direction comes into force on the date on which notice is served on the owner or occupier or notice is published, but it expires after 6 months unless confirmed. The Direction can be confirmed no sooner than 28 days after public consultation has commenced. It is confirmed by the LPA without Secretary of State involvement.

Article 5(4) allows for immediate restriction of certain permitted development rights. It does not require public consultation and has a six month life unless approved by the Secretary of State.

The Planning Act 2008

Section 189 of the Planning Act 2008, introduced provisions relating to compensation to the effect that if planning permission is withdrawn by way of an article 4 direction compensation will only be payable if an application is made within 12 months of the direction coming into force. It also provides that if an LPA gives at least twelve months notice of withdrawal of the permitted development right compensation will not be payable.

The Government will commence Section 189 of the Planning Act 2008 (and issue associated regulations) which will enable LPAs to issue Article 4s related to householder permitted development without this liability provided at least 12 months notice is given in due course, and consult on whether this provision might equally apply to Article 4 directions removing non-domestic permitted development rights.

Policy objectives

The aim of the policy is to:

- reduce LPA liability compensation where it is necessary to withdraw non-domestic permitted development rights via applying Section 189 of the Planning Act 2008 to Article 4 Directions restricting non-domestic permitted development
- render the process of establishing Article 4 Directions more locally accountable (through requiring public consultation and removing the requirement for Secretary of State approval)
- ensuring that, in cases where the landowner/occupier cannot be identified, an Article 4 Direction can still be issued quickly by allowing notice to be served on the site to which a Direction would apply rather than on individual landowners/ tenants

Policy Options

1) Baseline: do nothing

2) Implementing Section 189 of the Planning Act 2008 for Article 4s related to non-domestic development, which allows for development to be undertaken for a period of 12 months during consultation (or application for compensation to be made for 12 months where restrictions are in place) will mean that any costs to those ultimately affected by Article 4 Directions would be minimal. The impact of this proposal in terms of Article 4 Directions related to householder development has already been assessed in relation to the Planning Act 2008, but needs to be considered here in the context of non-domestic permitted development rights.

3) a) Remove the need for the Secretary of State to approve all Article 4(1) and 5(4) Directions – 4(2) Directions do not currently require Secretary of State approval. The Secretary of State would retain a reserve power of intervention to revoke or revise directions.

b) Require that all Article 4 Directions be the subject of public consultation for at least 21 days before they are confirmed.

c) Allow notice to be served on the land in place of individual notification if the owner/ occupier cannot be identified/found.

Exempting (1), options (2) & (3) (a) (b) (c) (d) are not exclusive – i.e. following representations made during consultation any, none, or any combination of (2) (3) (a) (b) (c) (d) may be adopted.

Sectors and groups affected

The groups that could be affected by the outcomes of an Article 4 Direction are numerous; however we are not changing the scope of Article 4 Directions but the mechanism by which they are established. These are policies that should therefore only directly affect Local Planning Authorities and Government Offices (who currently act as the Secretary of State in determining the acceptability of Artilce 4 Directions). Others who may be indirectly affected include:

- shops, offices, institutions, industry (restricted compensation)
- the wider public who might be affected by someone else's proposed development
- landowners
- developers

Costs and benefits

(1) Baseline: Do nothing

Costs

Overall, if nothing is done to ease the process by which LPAs make Article 4s, the factors currently acting as a disincentive to establish Article 4s would remain. Authorities would either be dissuaded from establishing an Article 4 where this might benefit the quality of the built environment (as outlined in the example in Background) or, if they chose to establish an Article 4, be required to undergo a process that could be regarded as onerous. The disincentives to establishing Article 4 Directions can result in costs manifested in the quality of the built environment.

Policy proposal (2) i.e. applying changes to compensation liability as established in Section 189 of the Planning Act 2008 to Article 4 directions restricting nationally-established permitted development rights for shops, offices, institutions, and industry. Under 'no change' the current liability LPAs face when establishing Article 4 Directions restricting certain non-domestic permitted development rights would continue to disincentivise Article 4 use or expose LPAs to significant liability where they did chose to restrict permitted development rights.

Policy proposal (3) (a) the need to gain Secretary of State approval for Article 4 directions could act as a disincentive for LPAs to use Article 4s as a tool to manage development in their area – i.e. the Directions must be made first, there is no guarantee of approval from the Secretary of State, and the timing of the process is uncertain (as the Secretary of State has an indefinite time-frame to ratify, oppose, or modify an Article 4 Direction).

(b) Lack of democratic/ public accountability in Article 4(1) and 5(4) remains, given that they are not currently subject of public consultation, only Secretary of State approval. If Article 4 Directions are to be made and approved by the LPA without referral to the Secretary of State it is appropriate that there is some degree of public input into the Direction and a public consultation is therefore necessary. The introduction of a consultation requirement allows local people to have a voice in the management of their area and to raise opposition if they feel a permitted development right is being unfairly withheld.

(c) The problem of serving notice on individual land owners/ residents will continue to cause a problem in areas where there are a considerable number of involved parties, or situations where it is difficult to determine which individuals to notify. The changes to the notification procedures will allow an LPA to go ahead with a Direction, and protect the amenity of an area, where it is not possible to identify the owners and serve quickly in any other way.

Benefits

The 'do nothing' option would mean there are no familiarisation/ transitional costs with LPAs adopting a revised system.

The public would enjoy fewer restrictions to their permitted development rights given that the process as it currently stands may dissuade LPAs from establishing Article 4 Directions (whereas policy proposals may increase their use).

Preferred Option: Amend the Article 4 making process by way of policy proposals (b)-(e):

Costs

Policy proposal (2) Householders/non domestic developers may find that their desired development is no longer permitted development and will no longer be entitled to compensation- subject to 12 month's notice having been given. It is difficult to quantify the associated monetary cost as it is difficult to predict how national permitted development rights will be altered in the future, and therefore how and where LPAs might seek to restrict these.

In practice, however, we believe the loss to applicants through reducing LPA liability to pay compensation would be minimal. Previously, applicants only benefited from compensation for 12 months after a restrictive change in permitted development rights nationally; therefore in the 12 months following a restrictive change to national permitted development rights locally a developer is allowed to undertake the development rather than apply for compensation.

Any potential cost in the longer-term, due to greater restrictions being imposed, has to be offset against the proposal to provide for an extended permitted development regime. Without the ability to subsequently amend permitted development rights locally, the scope of national extension might well be less and, therefore, any additional benefits that might have stemmed from extensions to national permitted development rights be nullified.

There would, additionally, be familiarisation costs on the part LPAs in adopting the new process.

Policy option (3) (a) removing the role of the Secretary of State in determining the acceptability of Article 4 Directions would reduce the administrative burden on Government Offices (who act as the Secretary of State in determining Article 4 Directions). Given the Secretary of State could intervene to amend or reject Article 4 Directions this administrative saving would be limited, as each Article 4 would still require oversight. Policy option (3) (a) would, however, entail no savings for LPAs as they would still have to notify Government Offices as is currently the situation.

Policy option (3) (b) there would be an increased administrative burden on LPAs given the requirement to consult on all Article 4 Directions. Consultation, would, be for 21 days. The precise nature of the consultation would be for the LPA to determine. LPAs will be able to draw upon their long established experience of consultation to find the most appropriate type for Article 4 Directions. It is difficult to monetise the costs of consultation as Article 4s can vary widely from those affecting specific developments to entire sites, and even the entire area of a Local Authority (clearly the consultation burden for each will be very different). Also we have no way of estimating how many Article 4 Directions will be made.

Policy option (3) (c) entails costs associated with putting up site notices and costs of publicising, locally – currently only Article 4 Directions relating to conservation areas have a requirement to publish locally.

Benefits

Generally, there should be minimal impacts on business. An amended process of establishing Article 4s will allow LPAs to better regulate development in their area in line with their development plan (which must take account of economic issues alongside social and environmental issues and general amenity).

As there would in general be reduced burdens on LPAs for the process of creating Article 4 Direction, a higher quality built environment may result from a potential increase in Article 4 use resulting from these proposals, where it is necessary to resolve a specific local problem.

Policy proposal (2) reduced LPA liability to pay compensation where permitted development rights removed (in relation to Article 4 Directions related to non-domestic permitted development): a survey by Roger Tyms identified that 31 per cent of LPAs were reluctant to apply Article 4 directions because of the threat of compensation.[30]

Policy proposal (3) (b) the local democratic accountability of Article 4 process would be increased.

[30] Keith Thomas (1997) Development Control: Natural and Built Environment, http://books.google.co.uk/books?id=Ty7PKCad7FcC&pg=PA74&lpg=PA74&dq=roger+tyms+article+4+direction&source=bl&ots=RNZNXLRz6T&sig=s_O9owes0_8bZFSaEvEWwIJQdi4&hl=en&ei=FHdLSpinGIeD-Qa0opzfBQ&sa=X&oi=book_result&ct=result&resnum=1

Policy proposal (3) (c) Allowing an LPA to notify by means of a site notice when owners/ occupiers cannot be identified enables them to act quickly to protect an area where speed is important i.e. in relation to subdivision of land.

Consultees are asked to consider whether the assumptions made in considering the costs and benefits of proposals to amend the Article 4 process are reasonable, and to provide any supporting evidence to monetise these assumptions, in particular; (i) What additional cost will be placed on LPAs by consulting publicly on all Article 4 Directions for a minimum period of 21 days? (ii) Is allowing notice of an Article 4 Direction to be served on site rather than on individual owners/tenants in situations where it is either difficult or unfeasible to identify relevant parties sufficient to allow LPAs to make Article 4 Directions in difficult situations? (iii) What the reduction in Government Offices' administrative burden would be as a result of the proposed change to the role of the Secretary of State?

Consultation

This impact assessment accompanies a public consultation document. In respect of this Impact Assessment we are specifically seeking views on:

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

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

Monitoring and evaluation

Monitoring

Government Offices for the regions: the Secretary of State for Article 4 Directions will monitor any change in use/ frequency of Article 4s. Further discussion of the evaluation of the policy, including arrangements for a formal review, will be made in the final impact assessment.

Enforcement

It is expected that proposals will have no net increase on LPA burdens.

Sanctions

No new sanctions are proposed.

Specific impact tests

Competition assessment
A competition filter has been carried which indicates this measure will have no significant impact on competition.

Small firms' impact test
The regulation does not specifically apply to small business and we have not identified any specific impact relating to them.

Legal aid
There are no Legal Aid costs associated with this proposal.

Sustainable development
Article 4s are important mechanisms to ensure that development is restricted where appropriate; in particular where the cumulative exercise of permitted development rights causes a local environmental problem. Article 4 Directions are therefore useful mechanisms which can contribute towards environmental sustainability and social vitality. Proposals increase the public accountability of Article 4 Directions and encourage greater freedom for LPAs to condition development in their area.

Other environment
Article 4 Directions are tools that can be used to restrict permitted development rights where appropriate and are therefore a positive tool for ensuring environmental protection.

Carbon assessment
There are no carbon costs associated with this proposal.

Health impact assessment
There are no health impacts associated with this proposal.

Race, disability, gender and other equality
We do not expect any adverse impacts as a result of this proposal.

Human rights
These proposals have no expected impact on human rights.

Rural proofing
Having engaged the views of the Commission for Rural Communities, we believe this measure will not have a negative impact on rural areas. Unisghtly physical sub-division of agricultural land that leads to a degradation of local amenity (as explained in the Background section of this assessment) is a particular problem, for example, that Article 4s can help mitigate against.

Specific Impact Tests: Checklist

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

ISBN 978-1-4098-1634-8

ISBN: 978-1-4098-1634-8