The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020

This note provides an assessment of impact to support the introduction of a national permitted development right for the demolition of buildings and construction of new dwellinghouses in their place.

As noted in the Explanatory Memorandum, to support economic renewal, this legislation has been brought forward at pace and therefore this assessment of impact has been provided alongside the instrument as an interim measure. A full Regulatory Impact Assessment will be produced in due course and submitted for independent verification against any Business Impact Target set under the requirements of the Small Business, Enterprise and Employment Act 2015.

Creating new homes through the regeneration of vacant and redundant buildings – Assessment of impact

1. Description of measures

The Government is to introduce a new national permitted development right to allow for the demolition of certain vacant and redundant buildings and rebuild as residential.

The Secretary of State has powers to grant planning permission by development order for specified development. These national permitted development rights as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, are deregulatory: removing the need for a full planning application, and therefore reducing bureaucracy and cost. Permitted development rights subject to prior approval allow for local consideration only of specific planning matters.

The right will apply to vacant and redundant free-standing buildings that fell within the B1(a) offices, B1 (b) research and development, B1 (c) industrial processes (light industrial) use classes, and free-standing purpose-built residential blocks of flats (C3 use class) on 12 March 2020, the date of *Planning for the future* as such buildings may already be found in residential areas. To ensure that the right applies to buildings that are vacant and redundant and are no longer suitable for modern use rather than between tenancies the right will apply to buildings built before 1 January 1990, and which have been vacant for at least 6 full months prior to the date of the application for prior approval.

The right provides for the demolition of the existing building and to build a new residential building. The right allows for redevelopment within the footprint of buildings with a footprint of up to 1,000 square metres (sqm), and with a maximum height of 18 metres. To provide flexibility and make effective use of the airspace above existing buildings to create additional homes, the right also provides for the residential building to be up to two additional storeys higher to an overall maximum height of 18 metres. This can result in developments of up to 6,000 sqm which can deliver in the region of 80-100 new dwellings.

A building with a high floor to ceiling height, such as a light industrial building, may provide for more than one residential storey within this original storey as long as the overall maximum height of the final building is no higher than 18 metres and each storey is no more than 3 metres.

The right allows for local consideration of specific planning matters through prior approval. This will draw on those matters for prior approval in other rights, such as flooding, transport and highways, noise, design and appearance, impacts on the amenity and character of the area etc. The right also requires prior approval consideration in respect of the provision of adequate natural light in all habitable rooms, and plans for landscaping including the planting and maintenance of shrubs and trees. As the right allows for demolition it will further provide for consideration of the impacts on heritage and archaeology.

It is important that local consideration is given to the impacts of such development on sensitive areas. The right therefore will not apply in article 2 (3) land such as National Parks, Conservation Areas, the Broads, and Areas of Outstanding Natural Beauty, or sites of special scientific interest. The right does not apply if the building is a listed building or scheduled monument, or if the land on which the building is sited is within the curtilage of a listed building or scheduled monument. We would also ensure necessary safeguards for example in respect of aerodromes, safety hazard areas, military explosive storage areas, and in the case of buildings that are extended upwards on air traffic and defence assets and on protected vistas in London.

All development, whether granted permission following a planning application or through a national permitted development right is legally required to comply with the Building Regulations 2010 (S.I. 2010/2214), as amended ("the Building Regulations"), including in respect of fire safety.

The right will apply to England only.

2. Policy rationale

The government is committed to boosting regeneration, supporting our high streets and town centres and delivering the housing the country needs. The Covid-19 crisis has magnified the problems facing our town centres and high streets. To support recovery and regeneration, the government continues to demonstrate its commitment to simplifying and speeding up the planning system to make effective use of land, support high streets and town centres, and deliver more homes through a raft of planning reforms including the introduction of new and amended permitted development rights.

In the response to the 2018 '*Planning Reform: Supporting the high street and increasing the delivery of new homes consultation'* the government committed to give further consideration to the scope of a permitted development right to demolish commercial buildings and redevelop as residential, and to consult further on the detail. Subsequently, the Secretary of State announced on 12 March 2020 in '*Planning for future'* that the proposed right would allow "vacant commercial buildings, industrial buildings and residential blocks to be demolished and replaced with well-designed new residential units which meet natural light standards". In his 30 June 2020 economy speech (Build, Build, Build) the Prime Minister announced a package of planning reform, of which the new right is part, to support the economy and to boost construction and housing delivery.

The aim of the right is to support regeneration through the redevelopment of vacant and redundant buildings that no longer effectively serve their original purpose, make effective use of previously developed sites, support housing delivery and boost housing density. It will support economic recovery through providing a simplified planning process which provides greater planning certainty.

3. Economic analysis

Summary

The measure is expected to primarily result in additional housing supply through the demolition of vacant buildings and the replacement construction of housing. The number of office buildings, buildings used for research and development, and light industrial buildings that have also been vacant for 6 months or more, below 1,000 sqm and older than 1990 (and therefore potentially in scope of this measure) is estimated at 26,400 to 27,800 as of today, though to note uncertainties outlined below. Further, evidence of free standing residential blocks of flats that the measure will also apply to suggest that the impact of the measure on these types of buildings is expected to be small because there are likely to be few buildings covered by the scope of this measure. Sensitivities are presented around these estimates focusing on key uncertainties in the analysis, as well as providing estimates of the number of buildings within scope at different thresholds, for example varying the cut off of sqm, and the length of time needed for a building to be vacant to fall within scope. Wider impacts are both positive and negative and are outlined below qualitatively.

Government is addressing market failures that restrict housing supply with this measure. The measure will increase the certainty the market has to develop these sites for housing, where

there is a clear rationale for increasing supply and therefore affordability. Currently, developers of these sites face imperfect information because they cannot be sure whether the site will secure planning permission and subsequently whether the site represents a viable opportunity to build new housing or otherwise. This certainty can only be gained by progressing the site through the planning system, which involves time and expense, therefore leading to some of these sites not coming forward, where developers are also balancing the risk that planning might not be secured. The measure will also reduce the transaction costs (e.g. time, process) of developing these sites thereby supporting their re-development. The measure will address these market failures, and support increasing housing supply.

Methodology for estimating buildings within scope of the measure and analysis

In order to estimate the potential scale of change an estimate is needed of the number of buildings within scope of the measure. The department does not directly hold this data, and therefore data sources used, and assumptions are outlined below.

B1(a) – B1(c) uses

The number of eligible buildings under this measure is estimated at 26,400 - 27,800. This is the current estimate of the number of buildings in B1(a)-B1(c) use classes, that have been vacant for 6 months or more, are built before 1990 and have a footprint below 1,000sqm.

Table 1 provides estimates of the number of buildings falling eligible at different thresholds for footprint and at different requirements for vacancy period.

Table 1: Estimated number of buildings within scope at different thresholds of footprint, holding vacancy requirement constant at 6 months

	Buildings eligible
Less than 500 sqm	24,100 - 26,800
Less than 1,000 sqm	26,400 - 27,800
No restriction	c. 28,400

Table 2: Estimated number of buildings within scope at different thresholds of required vacancy period, holding footprint constant at 1,000 sqm

	Buildings eligible
1 day – 6 months	33,000 – 34,700
6 months or more	26,400 – 27,800
9 months or more	24,000 – 25,200
12 months or more	20,800 – 21,900
18 months or more	17,100 – 18,000

Table 1 shows that the effect of restricting buildings to those with a footprint below 1,000 sqm does not have a significant effect of reducing the scope of buildings eligible because most buildings are already below 1,000 sqm.

Table 2 shows that varying the vacancy period for the measure would have more of an effect on the number of buildings falling within scope. We would flag uncertainty particularly around vacancy rates, given the current downturn as a result of Covid-19. In the short term, the vacancy rates of buildings may be expected to increase due to a structural decrease in demand for office spaces related to the economic downturn and social distancing measures. Given the uncertainty in the extent of any potential fall in demand for office spaces, sensitivity analysis has therefore been undertaken showing the number of buildings falling in scope at different levels of vacancy period. For example, those that have been vacant for 1 day – 6

months are more likely to be on the cusp of becoming eligible should they continue to remain vacant. Table 2 shows that should these buildings continue to remain vacant, an additional 5,200 – 8,300 buildings could be brought into scope of the measure. Furthermore, properties currently occupied, but then become vacant over time would then brought within scope. This introduces a flow of buildings that could become eligible, depending on the relative supply and demand for B1(a)-(c) spaces. As such, the estimate presented above should be interpreted as a point in time estimate (as of now) of the number of buildings within scope of the measure.

Data used and assumptions made

B1(a) – B1(c) uses

An estimate of the number of B1(a)-(c) buildings was created by sourcing data from Sqwyre[1]. Sqwyre hold data on office, retail, leisure, and industrial premises within England and Wales. These premises are defined into sub-categories, that do not directly match the B1A-B1C use class definition. Therefore, a best estimate of the relevant sub-categories was conducted by MHCLG officials reviewing the sub-categories of premises available in the data and choosing those thought most likely to be in within B1(a)-(c) than other use classes. The categories chosen were Office – General, and Light Industrial. 365,000 thousand premises were selected using this approach in England. R&D is not a category available on its own and was therefore not accounted for in the analysis but will in part be covered in Office – General and Light Industrial but also potentially spread in other categories not selected.

An estimate of the number of premises above that have been vacant for 6 months or more was then required. Sqwyre hold data on the vacancy rates of the above premises which is used in the analysis and is derived by Sqwyre using information collected from local authorities. From this it is estimated that of the 365,000 thousand premises above, 40,000 have been vacant for 6 months for more.

An estimate of the number of premises above that have a footprint below 1,000 sqm metres is then required. Sqwyre hold data on the floor area of registered premises, but not footprint of the buildings. This introduces uncertainty in the analysis because where registered premises are based in buildings of one storey and are the only registered business in the building this measure will be broadly comparable to building footprint, but not so when there are multiple storeys in a building with multiple premises. However, we would note that tall buildings are generally an outlier with most buildings being low rise or similar. At this stage, floor area has been used as a proxy for footprint.

To address this uncertainty, a validation check of these results has been conducted by estimating the footprint of buildings using Ordnance Survey data. Ordnance Survey data allows us to estimate the actual footprint of buildings, but not other variables important for the measure, such as vacancy rates. Using Ordnance Survey, the department has estimated that approximately 93% of office buildings have a footprint of below 1,000 sqm compared to 98% as observed in the Sqwyre data. Of the 40,000 buildings above identified in the Sqwyre data, 39,200 have a floor area of below 1,000 sqm using Sqwyre data. The ranges provided in Table 1 and 2 above are by using 93% from Ordnance Survey and 98% from Sqwyre data (37,200 – 39,200).

An estimate of the number of buildings above was needed for buildings built before 1990. This data is not available from Sqwyre. However, the department requested this information from the VOA, and they provided data which shows 71% of office buildings are estimated to have been built before 1990. The estimate above of the 37,200 - 39,200 buildings eligible is

[1] Sqwyre (2020) https://sqwyre.com/.

therefore scaled down by 29% to arrive at a central estimate of 26,400 - 27,800 thousand buildings in B1A-B1C uses eligible under the PDR.

In addition, we have not been able to factor in the height of the buildings and limit those to 18 metres or below. However, as noted above, tall buildings are generally an outlier in the stock. The department will continue to investigate any potential data sources as part of the development of the Impact Assessment (IA) for the measure to see if certainty can be increased for the IA.

The analysis of B1(a)-(c) does include buildings that are in conservative areas, National Parks, the Broads, Areas of Outstanding Natural Beauty, or sites of special specific interest whilst they are exempt from the measure. However, their inclusion is expected to have a minimal impact on the conclusions. This is because planning permissions for such uses may have been restricted historically within these areas.

C3 uses

The C3 classification applies to free-standing residential blocks of flats. An estimate of the number of flats in blocks of these types was estimated using English Housing Survey (EHS). As of 2018 we estimate that there are 2.5m flats in low rise purpose built residential free standing blocks providing housing accommodation. However, there will be a requirement that the entire block will have needed to be vacant for 6 months or more. The data currently doesn't allow us to estimate how many blocks contains these flats, however, we are seeking alternative approaches for the IA.

As of 2018, English Housing Survey estimates show that 6.9% of (171,000) low rise, purpose built flats were classified as vacant, though this includes short term vacancies and properties vacant because they are in between lets or sales. As of 2019, MHCLG council taxbase statistics estimates show that 2.0% of the dwelling stock was classified as empty (substantially unfurnished and vacant). However, both EHS and council tax base statistic estimates are at dwelling level (for example, individual flats that are empty). It is therefore reasonable to assume that the number of residential free-standing blocks of flats where all flats within them are vacant and for more than 6 months is less than both the EHS estimate and the empty estimates from council tax base statistics (2.0%). Therefore, the impact of including these types of buildings in the measure is expected to be small, and affect a small margin of commercially viable and long-term empty buildings, where viability may also be increased by the ability to go up to two storeys higher (subject to an overall height limit of 18 metres) and likely affects a small number of buildings that are vacant because they are derelict and providing no current housing accommodation to any households. There would be a reasonable expectation that while the right will incentivise development to come forward, the majority of flats of this type could progress through a planning application in the absence of the measure and therefore eligible buildings from C3 uses have not been monetised at this stage.

In estimating the above, the English Housing Survey definition of low rise housing has been used as a proxy for the requirements for buildings to be below 18 metres to fall in scope and for their footprint to be below 1,000 sqm[2]. This is primarily because the height impacts of the measure are likely to correlated with smaller sites. However, as a validation check, the department has used Ordnance Survey data to estimate the number of residential buildings

[2] Definition (EHS 2018-19) Purpose built flat, low rise: a flat in a purpose built block less than six storeys high. Includes cases where there is only one flat with independent access in a building which is also used for non-domestic purposes.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860076/2018-19_EHS_Headline_Report.pdf

with a footprint above 1,000 sqm. Using this dataset, the department estimates that only 0.05% of buildings used for residential purposes are above 1,000 sqm. Therefore, as almost all residential buildings are below 1,000 sqm, the EHS definition of low rise housing is considered to be a reasonable proxy. In addition, it can be expected that high rise buildings (excluded from the estimates above) are those buildings more likely to have a footprint above 1,000 sqm.

Similarly, the low rise measure from English Housing Survey includes buildings with less than 6 storeys. Typically, the department assumes an average height of 3.2m per storey in Impact Assessments which would lead to an estimate of around 6 storeys (given the requirements of the measure for buildings to be below 18 metres). Therefore, the EHS classifications are considered a reasonable estimate of supporting the conclusions of the estimated number of residential buildings within scope (limited due to an expected limited number of buildings falling within scope and low rates of additionality).

Impacts

The key impacts of the measure are described below. At this stage, they are described qualitatively, though consideration to potential scale is provided. In developing the Impact Assessment for this measure the department will seek to monetise these benefits where feasible and proportionate to do so.

Benefits

1. *Additional housing supply and associated land value uplift*

The proposal is deregulatory: providing greater planning certainty and reducing the planning burden and costs on business (developers), may result in additional development than would otherwise have come forward under a planning application, and give rise to land value uplift. Land value uplift is potentially substantial under this measure given the estimated number of buildings within scope.

Obtaining planning permission adds uncertainty and can lead to delays compared to obtaining prior approval. Secondary legislation will remove the requirement on developers to submit a full planning application for demolition of certain vacant and redundant buildings and replacement build as residential, by introducing a new national permitted development right for such development. As with the permitted development right for the change of use from office to residential, the greater planning certainty afforded by the right and the simplified planning process will result in some additional development that might not otherwise have come forward under a planning application.

Increased planning certainty will help to contribute to additional housing supply being released, by releasing sites that would have otherwise not come forward through the planning system. Typically, the welfare gain for additional housing can be estimated by comparing the value of land in its previous use compared to the value of land if used for housing, as supported by HMT Green Book. Where buildings have been long term vacant, there will generally be a gain in welfare from using the land for something more productive i.e. housing. Land value uplift is captured by landowners and freeholders even where buildings are not re-developed because the value of their asset will rise accordingly, which provides an incentive to sell or re-develop vacant sites given the measure will provide increased certainty of the returns from doing so. The level of additional housing generated will also be supported by allowing sites to be developed at an additional 2 storeys, subject to an overall height limit of 18 metres.

The level of additional housing that might reasonably be expected to be supported by this measure will be estimated by the department as part of the development of the Impact Assessment. The level of additional housing depends on the interaction with previous PDRs to allow office buildings to convert into residential. As a result of this measure, landowners and freeholders will have increased choice with how to re-develop vacant buildings, either using existing rights to convert the existing building into housing or re-develop the site with new, purpose built housing. Both landowners and freeholders will be incentivised to maximise the land value uplift of the site, i.e. weighing up the relative additional costs of new development (which will also incur demolition costs) compared to the costs of conversion, whilst purpose built new development may result in higher sales values. The relative balance of these factors as well as risk will affect how many vacant buildings are converted or sites re-developed. When estimating additional housing supply, consideration also needs to be given to the relative demand for office space and the prospect for some vacant buildings to be re-let as offices. There are a number of complicating factors that need to be worked through before providing estimates of additional housing supply resulting from the measure.

Where sites are re-developed, there may also be a net welfare gain relative to conversions because the housing will be purpose built, and the associated benefits of that brings e.g. more suitable layouts, amenity benefit of the building, and maximising the efficient use of space and land.

2. *Externalities (positive) – amenity value*

There is scope for externalities to be realised from the development of additional housing. Where sites are on the tail end of distribution of vacancy, i.e. having been long term vacant they may be a source of blight to existing businesses and households located nearby to the site. The re-development of these type of sites may therefore bring an amenity benefit to existing households and businesses located nearby to the site being developed, with the benefit likely capitalised into property values.

3. *Savings to local authorities and businesses.*

Applicants will make fee and administration savings from not having to submit a full planning application. Where a full planning application is no longer required there will be a saving to the applicant from the reduced fee and preparatory / administrative work avoided even where prior approval is required. This is consistent with RPC13-FT-CLG-1809(2) and RPC14-FT-CLG-147(3). In no circumstances will a prior approval be more burdensome than the full application process it replaces. The extent of the savings will depend on the original cost of preparing and submitting the application, and the cost of any new prior approval requirements. There will be a fee per dwelling house to be delivered. The rates will be less than those for planning applications for new dwellings, reflecting the lighter touch planning process: £334 per new dwelling up to a maximum of 50 units, and a fixed fee of £16,525 plus £100 for each dwelling in excess of this, compared with £462 per dwelling up to 50 units and a fixed fee of £22,859 plus £138 per dwelling under a planning application. There is therefore expected to be an overall net saving to businesses from planning fees and associated reduced burden for local authorities in respect of resource required to support planning applications and decisions.

4. *Supporting the construction industry in a period of economic downturn*

The measure will support output in the construction industry at a challenging time for the sector, as part of the economic response to the downturn. ONS GDP (2020) shows that in the period March to May 2020, construction contracted 29.8% compared to the three months

prior and relative to a decline of 19.1% in the whole economy[3]. Supporting output in the construction sector will also support wider jobs in the industry and it is for these reasons the government's current policy is to look to accelerate construction and infrastructure projects, which this measure does.

There is potential for scarring effects in the economy as outlined in scenarios in the OBR's most recent coronavirus scenarios[4]. The measure could support limiting scarring effects in this part of the construction industry both in terms of overall output in housing and for those employed within the construction labour market, where scarring would occur if some of the workforce permanently left the sector as a result of sustained unemployment.

Costs

1. *Supply of office space*

As noted above, the increase in land value (land value uplift) is a benefit to businesses and also drives land to be used for more productive uses. However, costs fall on different groups of people resulting in distributional outcomes. By allowing office, R&D buildings, and light industrial the right to more easily convert into more productivity uses the incentive to do so for landowners and freeholders is higher. Where land is re-developed into housing as a result of this measure, the associated reduction of this type of office and industrial space may result in the rents of such properties increasing. However, we would expect this impact to be small for two reasons. The first is the requirement for the building to have been vacant for 6 months or more meaning that such spaces are not generally a good supply of business space, and therefore the reduction in supply by this measure is limited given it is targeted at buildings not being used. There is however scope for the measure to incentivise leaving some buildings vacant that might otherwise be used for office space so that they can fall in scope of the measure which would lead to more of an impact on supply of office space. The second is any changes in rents would represent transfers– i.e. increased rents by leaseholders are also a direct benefit to freeholders of these types of buildings, putting aside distributional outcomes. The key point is that land should be used in its most productive use, and if housing generates a higher return than office, use for R&D, and light industrial then there will generally be a net gain to society from changing the use of the land into housing, subject to the other impacts described below.

2. *Externalities (negative) – new housing developments*

There is some scope for some small negative externalities typically considered through the planning system, such as increased congestion from new housing or overshadowing of existing properties. We generally expect any effects of this type to be small because the measure provides limits on the extent that new housing that can be produced (through height and footprint restrictions) and therefore localised congestion from new households should similarly be small (and the individuals in those households have moved from elsewhere, resulting in any net decrease in congestion from where they have moved from).

Overshadowing effects can also be mitigated by local considerations through matters for prior approval. Overshadowing effects will also be mitigated by the limit imposed that buildings can go two storeys higher than the current height of the building and subject to an overall 18 metre height limit.

[3] ONS (2020) https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/gdpmonthlyestimateuk/may2020
[4] OBR (2020) Coronavirus analysis https://obr.uk/coronavirus-analysis/

The local planning authority can consider construction management plans in respect of the period of demolition and construction. However, this will provide a more limited constraint on mitigating externalities than a full planning application, a potential cost of the measure. This is also because sites will not contribute through section 106 to mitigate against externalities, which might typically be secured through the planning system. Sites will also not be required to provide a contribution to affordable housing, which generally offers higher value to society than an equally equivalent home for open market sale only.

Small business assessment

1. *SME builders*

As noted above, the downturn in the construction sector has been particularly severe and steeper than the general fall in economic activity. Following the 2008 recession, the number of SME housebuilders declined and has not recovered since[5]. This is generally because smaller housebuilders have less resilient cashflows than large ones, who account for most of the production of new housing in England. The measure will support Government's intentions to avoid a similar contraction and permanent loss in SME builders that was seen during the 2008 recession. This is because smaller sites, such as those in scope of this measure, are disproportionately more likely to be built out by smaller builders, and therefore they are more likely to benefit from this measure. These are likely to be direct impacts from the measure and are expected to be positive.

2. *General SME business population*

In respect of general SME businesses, they may be disproportionately affected by the loss of office space. These are likely to be in-direct, knock on impacts from the measure than direct impacts described above. We expect that, smaller businesses are more likely to be tenants of smaller office buildings (and those therefore falling within scope of this of measure) seeing as larger businesses will have more employees and therefore demand more office space. The Longitudinal Small Business Survey (2020) shows that, whilst SME employers are relatively diverse across different sectors, most are likely to use office space. 80% of SME employers use a separate premises to home as their business premises, though varying across the size of SMEs. For example, 23% of micro businesses (1-9 employees) work from a domestic residential address compared to 1% of medium businesses (50-249 employees)[6]. As larger SMEs are more likely to use a premises separate to their home for their businesses they are more likely to be affected by this measure, though only marginally more than micro businesses.

The loss of supply of office space may subsequently lead to an increase in rents, as more tenants compete for space becoming scarcer. There are however a number of interactions, including that whilst the supply of office space may decrease, there may a fall in demand for such space, particularly in the short term, related to the current downturn and social distancing measures. Neither the supply nor demand of office space is fixed. In the longer term, if office space became scarce to the point that the returns from building offices was higher than housing in particular areas, then the market would be more likely to build offices than housing. This would be a signal of markets operating efficiently and using land for its most productive use.

Where additional costs to SME businesses are more likely would result from any incentive created for freeholders to end the leases of tenants than renew, because the returns to a

[5] https://www.hbf.co.uk/documents/6879/HBF_SME_Report_2017_Web.pdf

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889656/LSBS_2019_employers.pdf

freeholder or landowner are higher by leaving the building vacant for 6 months and re-developing the site. Where this happens, small businesses would also face disruption otherwise not incurred as leases come to an end and they face transaction costs of searching and finding new premises. For buildings already vacant, there are no additional costs of this type (as there are no tenants in the premises), but additional costs would be incurred when the measure incentivises the building to become vacant.