

# planning regulation, development flexibility and the extension of PD rights

**Ben Clifford and John Henneberry** report the key findings of research funded by the RICS Research Trust into the extent, usage and implications of permitted development rights for industrial and commercial and agricultural building conversion to residential use that have been introduced over recent years

To avoid administrative sclerosis, much small-scale development has long been exempt from the need to obtain formal planning permission. Permission for certain categories of development is instead granted via permitted development (PD) rights. These rights have been expanded significantly in recent years (and particularly in 2013 and 2014). New or extended categories of PD include:

- large extensions, residential annexes and other alterations to houses;
- the conversion of commercial buildings, including offices, to residential use;
- the conversion of agricultural buildings to residential use;
- changes between different industrial and commercial uses; and
- the extension of industrial and commercial buildings and the construction of new buildings on their sites.

The main argument in favour of PD rights is that they remove unnecessary administrative impediments to development that may be imposed by the planning system.<sup>1</sup> From the local planning authority's perspective, it is presumed that PD rights will reduce the number of applications for minor and uncontentious developments.<sup>1,2</sup> In addition, in the face of an acute housing shortage in England, PD is seen as a way of accelerating the supply of new dwellings.<sup>3</sup> However, concerns

have been raised about both the principles and the specific impacts of the various extensions to PD: about the balance between the advantages and disadvantages arising from greater development flexibility and reduced planning regulation. What is the quantity and quality of development – particularly housing – that has resulted? What has been the effect on local authorities' ability to pursue long-term strategies for their areas?

These debates prompted the RICS Research Trust to fund research into the extent, usage and implications of new PD rights, the results of which we report here. Further detail is available in the full reports, available from the RICS website.<sup>4</sup>

## **The extent of the exercise of permitted development**

There is only patchy evidence of the pattern and scale of the use of the extended PD rights and of the financial implications that this has for local authorities. Bibby *et al.*<sup>5</sup> addressed this lacuna. They estimated the amount of development that was realised between the introduction of the new rights in May 2013 (for B1/C3 and industrial and commercial PD) and in April 2014 (for agricultural building to residential PD) and the situation in 2017 in England.<sup>6</sup>

Separate analyses of changes of use from B1 (offices) to C3 (dwellings) were made for large and small schemes (see Table 1 on the next page). Large

**Table 1**  
**Estimate of the exercise of PD rights in England 2013/14-2017**

Category of PD	Sub-type	Result
Conversions from commercial to residential	Large developments, including student accommodation	12,094 units
	Large developments, excluding student accommodation	6,797 units
	Small developments	36,778 units
Conversions from agricultural building to residential		16,941 units
Industrial and commercial: change of use, extension and on-site construction		8,246,000 square metres

schemes involve 'locally significant change', i.e. schemes that necessitate the creation of new unit (i.e. full) post codes. The large-schemes category includes the conversion of office blocks to some form of residential use. When student accommodation is included, an estimated 12,000 new units have been created through conversion of B1 buildings, whereas when student accommodation (including self-contained flats) is excluded, this estimate falls to around 7,000.

Although much attention has focused on larger schemes, it is also important to assess the scale of more dispersed conversions of individual office and business units to residential use. This is captured in the second category of conversions from commercial to residential in Table 1 – smaller developments involving change of use from B1 to residential. A total of around 37,000 dwellings have been created in this way. In aggregate, therefore, a significantly larger volume of B1 to residential conversion has occurred in small rather than large schemes.

Overall, the conversion of B1 to C3, in both large and small schemes, is estimated to account for about 49,000 dwellings (or 44,000, excluding student accommodation) between 2013 and 2017. Large-scale conversion schemes are overwhelmingly concentrated near the cores of major urban areas, in particular in London and the South East (when discounting student accommodation). The areas of locally significant change that have been identified are the most striking visible indication of what is termed 'studentification', and of a broader tendency for non-residential uses of property to be relinquished in favour of residential use. Small schemes have been broadly distributed: largely in locations in cities and towns with relatively low property values, without any marked regional patterning.

In rural areas, the liberalisation of the PD system has reinforced a shift in policy from one that deliberately sought to secure non-residential uses for agricultural conversions, to one that far more

readily accommodates domestic use. In the order of 17,000 additional dwellings are estimated to have been created in England between 2014 and 2017 through changes from agricultural buildings to residential use. In terms of geographical distribution, there is a concentration of agricultural to residential conversions in the South West that reflects the significance of historically dispersed settlement patterns. It appears that more liberal PD rights facilitate the continuing trend of converting agricultural buildings that runs alongside a very long-term agricultural decline and the emergence of localities given over to retirement and holiday accommodation.<sup>7</sup>

An estimated total of 8,246,000 square metres of floorspace was added to existing commercial and industrial buildings and sites in England in the period 2013 to 2017, whether through extensions, new build on-site, or change of use. Unsurprisingly, industrial and commercial PD is concentrated in areas with the greatest endowments of business property. But in only a very few locations has occupiers' ability to expand using PD rights made a substantial contribution to a net increase in floorspace. On the contrary, absolute volumes of PD are very modest in most such locations. PD thus appears to accommodate new uses in a context of static aggregate industrial and commercial floorspace.

### **The direct costs and benefits of extending permitted development rights**

What are the direct financial implications for the public sector of a development being pursued under PD rights rather than one that has been granted full planning permission? To address this question we compared these two scenarios as they apply to identical schemes. Three differences were identified.

The first and potentially the most significant financial difference between PD rights and planning permission relates to affordable housing contributions. Where a development is conducted under PD there

**Table 2**  
**The direct costs and benefits to local authorities arising from the extension of permitted development rights (2013/14-2017)**

Cost category	Values
	£ million
Affordable housing	-£42.45
Planning fees	-£22.06
Officer time	£14.13
<b>Net financial outcome</b>	<b>-£50.38</b>

is usually no requirement for the developer to enter into a Section 106 agreement with the local planning authority. The loss of affordable housing contributions only applies in the case of (B1) office to residential conversions because these are the only category of exempt PD that potentially involves the creation of more than ten dwellings.

The second major financial cost to local authorities as a result of PD rights is a loss of planning application fees, which are not typically payable when PD rights exist. In cases where there is a requirement to obtain prior approval, there is a reduced fee. The scale of the loss to local authorities varies significantly between different categories of PD rights.<sup>8</sup>

There is one potential financial benefit for the public sector. Planning officers spend less time dealing with matters related to PD than with similar schemes requiring formal permission.<sup>9</sup> However, this effect is reduced by time spent on enquiries seeking clarification or written confirmation that PD rights apply to specific proposals. In addition, if a development requires prior approval and the local planning authority believes it could result in a 'material increase or a material change in the character of traffic in the vicinity of the site' then it must consult the relevant statutory consultees,<sup>10</sup> and issues about flooding, contamination and noise can also be checked through prior approval, leading to a workload effectively equal to determining a full planning application.

Our central estimates of the financial impacts of the introduction of the new PD rights are presented in Table 2. The most significant impact arises from the loss in affordable housing contributions. This amounted to about £42 million between 2013/14 and 2017. Local authorities have also missed out on planning fees of around £22 million. The benefits arising from savings in staffing costs of about £14 million are not enough to offset the loss of fees.

### Investigating the costs and benefits of office-to-residential PD in case study local authorities

Alongside the national calculations made by Bibby *et al.*,<sup>5</sup> a parallel research report looked in more depth at office-to-residential conversion through PD in five case study English local authorities: Camden, Croydon, Leeds, Leicester, and Reading.<sup>11</sup> Despite their different characteristics, all of these authorities have experienced quite high rates of use of the new deregulated process (with prior approval for 832 units in Camden, 3,330 in Croydon, 1,565 in Leeds, 1,035 in Leicester and 1,295 in Reading over the first four years of this change of use being PD, once we had removed duplicate approvals for the same building).

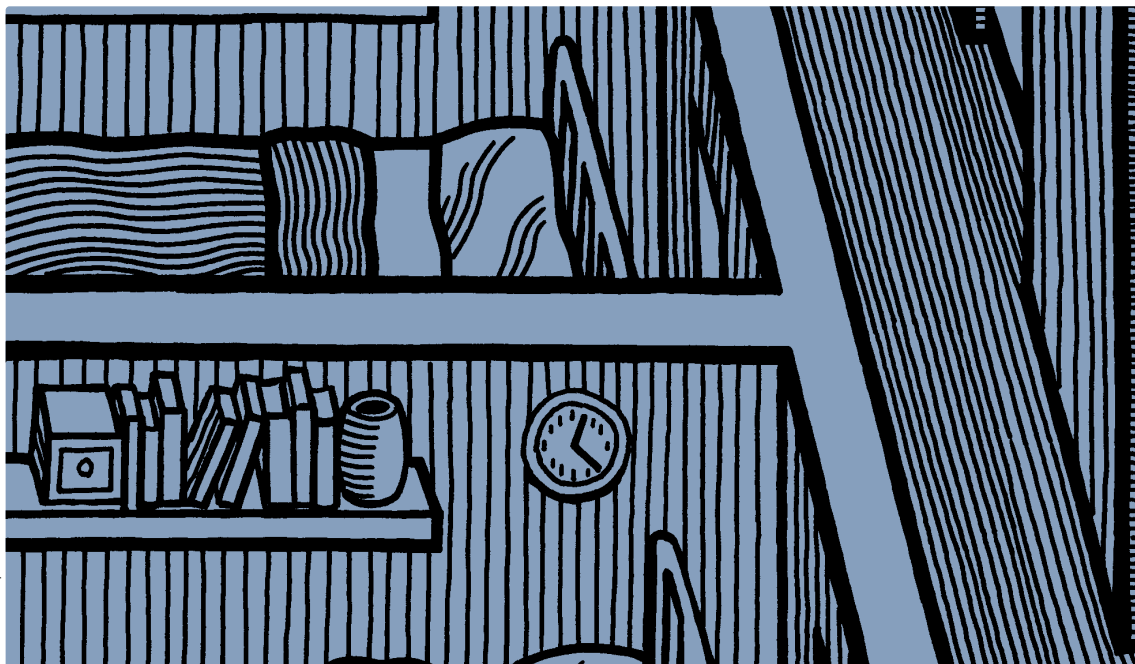
Looking in detail on a local basis confirmed the issues found at the national scale. For these five authorities alone we calculated that they had potentially lost out on 1,667 affordable housing units and £10.8 million in Section 106 payments between 2013 and 2017 because office-to-residential change of use was PD rather than requiring full planning permission. Similarly there was a loss of £4.1 million in planning fees.

There has been some debate as to whether this is a real 'loss', as it is argued that these are just additional units encouraged by making office-to-residential change of use PD. By removing planning risk and reducing planning costs, the policy change has certainly encouraged more developer and investor interest in the potential of converting buildings. However, in some places this has actually been at the cost of fewer new build flats being developed with planning permission, so there is a real loss of affordable housing.

In addition, the loss of planning fees further constrains local authority resources, reducing their capacity to undertake planning functions. And although some infrastructure is needed for office buildings, things like play space for children and community facilities are not required. Consequently, a large quantum of new residential units has placed additional demands on local authorities for services that are now not being properly funded, even if there is an uplift in local council tax revenue from the new dwellings.

### Wider impacts on local communities

Beyond financial considerations, we found a range of other consequences arising from office-to-residential change of use being made PD. In terms of local planning, the ability of local authorities to take proactive spatially- and community-informed decisions has been diminished. They can no longer stop conversions in locations which might have very poor residential amenity – for example, conversions of office buildings in the middle of industrial estates – as we saw on some site visits. Nor can they stop conversions of occupied office space. Although there



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have been plenty of vacant office buildings converted, there have also been many instances when office tenants have been evicted from occupied buildings to allow their conversion to residential use. In some cases such tenants have struggled to find suitable alternative accommodation for their businesses.

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As well as the principle of conversion, the local authority has no control over its design under the prior-approval system. We visited more than 568 buildings that were awaiting conversion or had been converted and where the works were PD or had formal planning permission. Although we found

some high-quality conversions, in our case study local authority areas there had been a noticeable lowering of residential quality standards in those schemes produced via the deregulated PD route. In terms of space standards, 94% of units with planning permission met them, but this was the case for only 30% of PD units; 77% of units with planning permission had access to amenity space (such as a balcony or roof terrace) but only 14% of PD units did; and 77% of PD units were studio or one-bedroom flats compared with 37% of those with planning permission.

Given the high demand for housing relative to supply, people are not able to exercise a completely unconstrained choice over where they might live. It was clear that overcrowding was resulting from people being forced to live in the much smaller, lower-quality units created through PD. This raises very real concerns about the quality of life for residents and the lasting impacts of low-quality conversions for neighbours. Evidence from some of those living in low-quality conversions suggests that housing pressure has led to people now inhabiting very small units without access to green space and feeling unhappy with their housing conditions as a result. This is despite the apparent profitability of conversions for many developers and building owners.

We noted that there had been applications for office-to-residential conversion to all our authorities before it became PD in 2013, and from 2009 to 2013 81% of these had been approved. We also

noted that in Glasgow, where this change of use is not PD, full planning permission had still been granted for office-to-residential conversions, producing 282 units in 2013-17, and that these were of much higher quality than those resulting from PD in England. We also visited Rotterdam, where, instead of planning deregulation, the Netherlands central government has concentrated more on producing best-practice toolkits to encourage office-to-residential conversion. In tandem, local government has produced a spatial vision of where they would and would not like to see office change of use and has appointed an official to work proactively with developers on the issue.

All of this led us to question whether the deregulatory approach was really necessary and whether an uplift of adaptive re-use of vacant office buildings might have been achieved through other means instead.

### Conclusions

Permitted development has existed ever since the statutory planning system was introduced in the UK. There are positives to allowing some types of minor development to avoid the delay and cost of obtaining planning permission. These delays and costs are, however, a reasonable price to pay for the appropriate regulation of more substantial development that has significant impact. Only in this way can we ensure that affected communities and other stakeholders may engage with the development process and that the dwellings which result are of an acceptable standard.

An important consideration is where the balance between permitted development and development requiring planning permission should lie. Over recent years in England there has been a marked increase in the types and amount of development granted PD rights. Those which allow new dwellings to be created through change of use of existing buildings such as offices have been particularly controversial. Although the change of use of buildings is a natural part of a dynamic built environment, the scrutiny of such development in England has been much reduced as a result of the extension of PD rights.

Our detailed case studies have produced ample evidence to suggest that harm is being caused by this policy change. There has been an increasing use of Article 4 directions to exempt areas from the policy and, although central government was initially reticent about this, they now seem more accepting. Restoration of planning control seems the best way to help safeguard standards.

● **Dr Ben Clifford** is Senior Lecturer in the Bartlett School of Planning, University College London, and **John Henneberry** is Professor of Property Development Studies in the Department of Urban Studies and Planning, University of Sheffield. This article draws on research funded by the RICS Research Trust. The views expressed are personal.

### Notes

- 1 *Review of Permitted Development Rights*. Lichfield & Partners, for Department of the Environment, Planning Service of Northern Ireland, Sept. 2003. [www.planningni.gov.uk/index/news/news\\_policy/nonhouseholder\\_2003\\_consultants\\_report.pdf](http://www.planningni.gov.uk/index/news/news_policy/nonhouseholder_2003_consultants_report.pdf)
- 2 *Planning Applications: A Faster and More Responsive System*. Final Report of the Killian Pretty Review. Department for Communities and Local Government, Nov. 2008. Available at [www.planningportal.gov.uk/uploads/kpr/kpr\\_final-report.pdf](http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf)
- 3 M Derbyshire and T Havers: 'Office-to-residential conversions under permitted development: de-regularising the planning system'. *Journal of Building Survey, Appraisal & Valuation*, 2015, Vol. 3 (4), 311-16
- 4 P Bibby, P Brindley, A McLean, J Henneberry, D Tubridy and R Dunning: *The Exercise of Permitted Development Rights in England since 2010*. Royal Institution of Chartered Surveyors, May 2018. [www.rics.org/uk/knowledge/research/research-reports/the-exercise-of-permitted-development-rights-in-england-since-2010/](http://www.rics.org/uk/knowledge/research/research-reports/the-exercise-of-permitted-development-rights-in-england-since-2010/); and B Clifford, J Ferm, N Livingstone and P Canelas: *Assessing the Impacts of Extending Permitted Development Rights to Office-to-Residential Change of Use in England*. Royal Institution of Chartered Surveyors, May 2018. [www.rics.org/uk/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england/](http://www.rics.org/uk/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england/)
- 5 *The Exercise of Permitted Development Rights in England since 2010* (see note 4)
- 6 The most important limitation of this analysis was that householder PD rights, the most familiar category of PD, were excluded. Such an estimation was not feasible at the national level because of inadequate data
- 7 See P Bibby: *Land Use Change in Protected Landscapes (AONBs and National Parks): A Guide to the Tabulations*. Department of Town and Regional Planning, University of Sheffield, for the Department for Environment, Food and Rural Affairs, Feb. 2014. [http://scienceresearch.defra.gov.uk/Document.aspx?Document=13894\\_UnivSheffieldLUCSGuidetotheTabulations.pdf](http://scienceresearch.defra.gov.uk/Document.aspx?Document=13894_UnivSheffieldLUCSGuidetotheTabulations.pdf)
- 8 Another potential public sector cost due to the impact of PD rights relates to the Community Infrastructure Levy (CIL). Most types of development involving the exercise of PD rights are treated in the same manner for the purposes of CIL as those that require formal planning permission. The law relating to CIL is complex, and there are conflicting interpretations that have resulted in some local planning authorities exempting PD from CIL. However, overall it is likely that there will be no significant losses of CIL revenue for local authorities as a result of PD rights per se, although the CIL charging regime is not well set up for new dwellings created by change of use through either planning permission or PD, with most schemes able to claim exemption
- 9 *Resourcing in Planning Services: A Benchmark Round-up*. Planning Advisory Service, Jun. 2015. [www.local.gov.uk/sites/default/files/documents/resourcing-planning-servi-e76.pdf](http://www.local.gov.uk/sites/default/files/documents/resourcing-planning-servi-e76.pdf)
- 10 N Cameron: *Recent Changes to the General Permitted Development Order*. Landmark Chambers, Oct. 2013. [www.landmarkchambers.co.uk/userfiles/documents/resources/NC\\_PD\\_RTP1\\_October\\_2013.pdf](http://www.landmarkchambers.co.uk/userfiles/documents/resources/NC_PD_RTP1_October_2013.pdf)
- 11 *Assessing the Impacts of Extending Permitted Development Rights to Office-to-Residential Change of Use in England* (see note 4)