

Housing, Communities and Local Government Committee – Permitted Development Rights Inquiry

Joint evidence submission from the Chartered Institute for Archaeologists (CIfA) and Council for British Archaeology (CBA)

Summary

Thank you for the opportunity to provide evidence to the Committee on this important subject. We have been concerned with the pattern of relaxation of planning control for several years and welcome, for the first time, an opportunity to directly address the question of whether this is the right approach for English planning.

Our response specifically considers the impact that permitted development has on the management and protection of the historic environment. The planning system is central to the management of this resource and provides the only effective protection for many heritage assets with archaeological interest. The overwhelming majority of the historic environment is undesignated and its precise nature and extent (and in some cases, even its existence) can be unknown prior to the consideration of development proposals.

About our organisations

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,800 members and more than 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

The Council for British Archaeology (CBA) is the UK's leading archaeology charity, working throughout the UK to involve people in archaeology and promote appreciation of the historic environment, through its focus on "archaeology for all". The CBA seeks to achieve this by developing research, conservation, and education, and by widening access to archaeology through effective communication and participation.

Founded in 1944, the CBA today takes the form of a membership organisation, bringing together institutions and individuals to create a unique forum for the British archaeological community. The organisation is represented nationwide by twelve CBA English Regional Groups, CBA Wales/Cymru and Archaeology Scotland, along with Branches of the Young Archaeologists' Club. The CBA holds an annual programme of events, including their flagship event "The Festival of Archaeology, which takes place in July.

General comments

The conservation and enhancement of the historic environment (including heritage assets with archaeological interest) has been recognised as a material consideration in the planning process since

the 1970s. Planning policy has been developed over the years to define heritage assets (which are not dependent upon designation), significance and archaeological interest, and provides decision-makers with a coherent framework for consideration of the impact of development upon the significance of heritage assets with archaeological interest.

That framework generally remains fit for purpose. However, its effective operation is being undermined by changes in the wider planning system. Planning reform has been presented in the guise of 'streamlining' and 'simplification' but with very little evidence that the observed slow rate of housebuilding and inconsistencies of the system are the fault of overregulation. Generally, this trend over the last 10 years has been fuelled by a perception in Whitehall and town halls that planning and environmental regulation are part of the problem and not part of the solution when meeting the challenges of delivering housing and economic growth. We disagree with this premise for the continued extension of permitted development.

The reason why this trend is so concerning for the historic environment is that many of the safeguards for the historic environment currently enshrined in the National Planning Policy Framework (NPPF) assume that there will be an application for planning permission which will allow the decision-maker to require information and analysis to take place before the application is determined and provide opportunity to impose conditions on any permission granted.

Without an application for planning permission, legal mechanisms to impose archaeological safeguards are often lacking, and heritage assets are vulnerable to loss and damage. For example, the key policy requirement in paragraph 189 of the NPPF:

'Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation'

This key requirement is unenforceable in the absence of an application for permission.

Our response below outlines further evidence of the adverse impacts of PDR on the historic environment, but we also echo support for the wider body of evidence produced by others which shows the impacts of PDR on the quality of new development, and wider aspects of placemaking and sustainability.

1. What role should permitted development rights (PDR) play in the planning system?

Fundamentally, Permitted Development Rights (PDR) are a legitimate and potentially useful planning tool where they are used to enable the streamlining of planning processes in instances where development is *minor* and *uncontroversial* or for changes to existing development which are not subject to special sensitivities. Where this is not the case, the ability to understand impact is vital, and is a process which PDR, in its present form, is incapable of delivering.

Permitted development can be, and often is, subject to general conditions and exclusions and will not override EIA requirements. Even in these cases, there remains real scope for loss or damage to nationally important but hitherto undiscovered and therefore undesignated archaeological remains and wider damage to the historic environment.

For this reason, permitted development should both account for a relatively small proportion of all development and be subject to suitable protections (eg robust prior approval processes) which

enable development which is likely to have higher impact to be identified and potentially exempted from PDR (for example, areas of known below-ground archaeological interest).

By contrast, the continuing extension of permitted development rights which seek to remove increasingly more major development, in larger amounts, from the scrutiny that accompanies a planning application is not appropriate. In the case of major development, there is an increased likelihood of major archaeological discoveries, and increased likelihood that heritage assets could be entirely destroyed by development. This includes the discovery of human remains, for which there are other legal obligations and which can lead to costly delays to developers to observe.

Additionally, and critically, there is no process by which to monitor, measure, or report on the cumulative impacts of PDR. Recent expansions of PDR in England have shown that Government is continuing to push an ever greater scale of development through as permitted development, with the effect that developments which are liable to cause considerable impacts will not be subject to planning oversight, and the cumulative impacts of smaller development will be higher.

We note that senior professional planners have voiced concerns about Government's 'obsession'¹ with permitted development, and have questioned the efficacy of recent expansions of permitted development as a tool to increase the rate of housebuilding and decrease delays. This concern, which we share, relates to the fact that government has not convincingly justified that planning regulation causes these problems. This is supported by, for example, the Letwin Review which concluded that planning regulation was not responsible for low build-out-rates, the fact that planning permissions have been consistently high, and figures from the LGA which demonstrate that planning permissions for over a million homes exist but are not built out.

It is also notable that Government has recently confirmed that it intends to include certain categories of Article 2(3) land (Conservation areas) in new PDRs for Class E conversion to residential use, and has been increasingly proscriptive about the matters that local authorities can consider in the prior approval process, and has consulted on restricting the use of Article 4 directions. This indicates an ever-growing pressure on sites which are currently agreed to be either too sensitive, or too complicated to be subject to PDR.

As well as not helping with the stated goals, expanding PDR impacts on the quality of planning (which we address below), eroding the capability of the planning system to deliver good quality placemaking and enabling low quality and unsustainable development.

In summary, we believe that the role of PDR should be expressly limited by principles which restrict where it can be used to bypass traditional planning consideration. We would support additional prior approval powers and exemptions to ensure that development of sensitive sites was appropriately controlled. In any new planning system, we would support more nuanced procedures which might enable impact assessment while also granting certainty for the principle of development, as envisioned by design codes, new local plans, and growth areas under proposals in the Planning White Paper.

2. What is the impact of PDR on the quality and quantity of new housing, including affordable and social housing?

¹ <https://www.planningresource.co.uk/article/1681023/newly-retired-chief-planner-steve-quartermain-engage-government>

There is a substantial and growing body of evidence, including evidence from Government itself, which suggests that PDR delivers poor quality outcomes. Much of this evidence has been focussed on housing quality^{2,3,4} but some also considers impacts on placemaking and landscape, including the setting of heritage assets and historic character⁵.

In broad terms of impact, PDR removes the ability of local authorities and communities to ensure the sustainability of the location of new or expanded development. The typical Local Plan-led approach allows local authorities to plan strategically, to direct the location, architectural and construction quality of new housing to sustainable locations, and to plan for the increase in residents as a result of the new housing. Local authorities have no ability to assess or manage cumulative impacts of PDR development on species, habitats, accessible green spaces, or wider community infrastructure. This has led to inappropriate development, such as conversion of existing buildings to residential use on industrial estates with inappropriate infrastructure and amenities. In accordance with our expertise, we are focusing on the historic environment impacts in this response, however, wider impacts are myriad.

Evidence of the impact of PDR on archaeological evidence (including both below ground heritage assets and evidence derived from the fabric of historic buildings) as well as similar issues such as ecological impacts, is hard to ascertain. This is because there is no opportunity to assess the impact of development on the historic environment, as would have been required under a traditional planning application (NPPF para 189). As a result, it is impossible to know what has been lost.

We are aware of examples where applications for full planning permission have triggered requests for archaeological evaluation, but which have subsequently been revised to come under PDR, thus removing the ability to request such evaluation.

We can anticipate the types of archaeological discoveries that are being lost as a result of PDR, by comparing examples of similar developments which have gone through full planning processes. For example;

The conversion of a redundant cinema and 1970s office block to a new library in Chester revealed significant archaeological discoveries as a result of pre-determination archaeological assessment and investigation secured through the use of pre-commencement planning conditions.

As a result of evaluation, significant archaeological constraints were identified, requiring careful redesign of foundations to minimise the damage to archaeological deposits. Subsequent fieldwork revealed evidence of stone and wooden buildings and a road associated with the Roman fortress.

Had this site been converted to housing under the new Class E to residential PDR, there would have been no way to secure archaeological evaluation, despite the fact that the site was within an Area of Archaeological Importance (AAI) within the north-western corner of Chester's Roman Fortress, recognised as a 'primary zone' within the Chester Archaeological Plan.

² <https://www.cpre.org.uk/resources/housing-design-audit-2020/>

³ <http://offlinehbpl.hbpl.co.uk/NewsAttachments/RLP/RICSExtendingPermittedDevelopmentRights.pdf>

⁴ <https://www.gov.uk/government/publications/living-with-beauty-report-of-the-building-better-building-beautiful-commission>

⁵ <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=db495779-2fe6-4f3f-9c6d-6fc63b993489>

We can also estimate impacts by extrapolating from the known rate of archaeological evaluation on planning application, which is approximately 4% of all planning applications, with roughly one quarter of these applications subsequently requiring planning conditions to enable mitigation of harm to heritage assets or activities which offset that harm (ie 1% of all planning applications).

Taking an example of the PDR for residential home extension, where below-ground heritage assets are likely to be impacted, we can extrapolate that the number of cases where damage to heritage assets would be likely to have been caused due to a lack of mitigation is 1,428 since 2014 (1% of 142,817⁶ prior approval notification – excluding those refused – for home extensions made under PDR since April 2014).

This is just one example of a PDR where impacts on the historic environment are somewhat quantifiable. In many cases, there is no requirement to notify the LPA of the intention to undertake development under PDR, and it is therefore not possible to know the extent of potential impacts.

3. What is the impact of PDR on local planning authorities, developer contributions and the provision of infrastructure and services?

As stated above, because developer contributions to undertake archaeological work are levered through planning conditions, this means that no archaeological evaluation or mitigation can be achieved through PDR routes, resulting in loss of archaeological work (which is valued at £218m per year⁷). Furthermore, because permitted development carries no requirement for s.106 obligations, planning authorities cannot secure contributions to infrastructure and local services. This is a potential financial benefit for developers but comes at a direct cost to local residents and local authorities who see amenities spread more thinly.

There is also a direct financial cost to planning authorities who do not receive planning fees for processing applications but still need to undertake significant amounts of work to review applications for prior approval.

4. Is the government's approach to PDR consistent with its vision in the Planning White Paper?

No. PDR is being used by Government to deliver greater speed and certainty for developers, but without any attempt to ensure sustainability, good design and place-making, and enhanced democratic sustainability. While the proposals in the PWP need further work to ensure sustainability and fitness for purpose (eg to ensure that archaeological evaluation takes place within streamlined consent regimes), it is at least recognised that the goal of the proposed new system is to deliver certainty for developers without undermining the processes by which we assess and mitigate the impact of development on heritage assets. The agenda set out in the PWP, and the wider agenda influence by the Building Better Building Beautiful Commission's report, for the democratic cocreation of beautiful places to live and work is also entirely undermined by PDR.

⁶ Gov.uk (2021) Live tables on planning application statistics, Table PDR2. <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics#permitted-development-rights-tables>

⁷ ALGAO (2019) Archaeology in Development Management. https://www.algao.org.uk/sites/default/files/documents/Archaeology_in_Development_Management.pdf

5. What is the impact of PDR on the ability of local authorities to plan development and shape their local communities?

PDR prevents LPAs from delivering wider placemaking strategic objectives as well as seeking goals related to health and wellbeing of people, which may include setting, design aspirations and enhancing historic character. These strategies are informed by environmental sensitivities and social needs and subject to democratic oversight. PDR which is not sensitive to individual spatial strategies undermines all these processes which enable sustainable communities to be planned.

6. Is the government right to argue that PDR supports business and economic growth?

There is no evidence that we are aware of that suggests that PDR boosts economic growth. Rather, it comes at a direct cost to local residents and local authorities – both in terms of needing to pick up the costs of infrastructure, and living with the consequences of poorly planned developments.

7. What is the impact of PDR on the involvement of local communities in the planning process?

As stated previously, PDR results in the loss of opportunities for public involvement in shaping planning decisions and the loss of scrutiny over land use changes and development applications. Even where prior approval provides for some public consultation, the scope of matters for consideration are very limited and may not address the issues that are of most importance to local communities. There is also a more limited timeframe for response. By restricting the control of local communities in shaping development in their areas, PDR reduces their opportunities to create development which enhances their areas (following local design codes or neighbourhood plans) and erodes their trust in the planning system and decisions, limiting the possibility of future community participation. Furthermore, it removes all the benefits that knowledge gain resulting from archaeological investigation and public engagement with the historic environment can bring; inspiring better understanding of the history of a place, local identity, sense of place, excitement, and health and wellbeing benefits.

8. Should the government reform PDR? If so, how?

Yes. Government should introduce a statutory purpose for PDR which limits its use to development types which are minor and uncontroversial. Any PDR regime should include additional mechanisms for identifying sensitive sites and either providing flexible exemptions from PDR, or robust assessment processes. Prior approval may represent a starting point for this, but an ideal system would be capable of delivering a rationale for the variance of PDR based on site specific sensitivities and the mitigation of adverse impacts.

We would support the development of additional mechanisms which seek to improve housebuilding rates without undermining planning controls – as envisioned by the Planning White Paper (e.g. growth/renewal areas). Existing PDR for major development should be phased out under any new planning system, replaced with other more appropriate mechanisms which can deliver certainty on the principle of development without undermining the ability to adequately understand sites and deliver sustainable development.

If existing PDR are retained, they should be subject to more robust prior approval mechanisms, should be subject to proportionate planning obligations or developer contributions yielded via other means, and should have a system of exemptions which recognises where sensitivity merits the oversight of a full planning application. An updated statutory framework for permitted development should set clear delimitations on where and how permitted development rights can operate, and which takes full account of sensitivities such as the presence of buried heritage assets.