Proposed response of Redditch Borough Council to CLG consultation on 'Improving Permitted Development'

The following comments represent Redditch Borough Council's overarching response to the CLG consultation on 'Improving Permitted Development' and should be borne in mind when reading through the more specific responses to the consultation questions.

This Council raises concerns that the proposed changes to the regulations seem to engender a general acceptance that extensions to the rear can be accepted in principle and that there is no need to control their appearance nor the resultant visual impact that they cause. It has always been considered in the planning process that good design should always be pursued, and simply because a development is at the rear and therefore *less* visible, does not give an excuse for poor design. Indeed, it is rare for rear extensions to be completely unseen, even if they are only visible from a limited number of other rear elevations, or a restricted vantage point.

From a logistical perspective, this authority has concerns regarding the likely increase in workload for enforcement and compliance officers, especially where a retrospective application is refused, or where one follows the refusal of a CLEUD or CLOPUD. This would result in an increase in enforcement and monitoring caseload which does not generally attract any fee income and thus would strain further existing resources within the planning team without recompense.

In terms of enforcement, it is noted that some of the proposals appear not to meet the Hampton principles, however these are not enshrined within the planning framework and thus have less weight than other considerations when responding to the consultation.

Following are Redditch Borough Council's responses to the consultation questions. There is inevitably some repetition of comments because the same issues recur in different question categories.

Q1: What are your comments on the proposals for shops?

The maximum height imposed in the draft legislation of 5m seems very high for a single storey extension – domestic extensions are limited to 4m, and many shops, especially in residential areas, are no larger in size and scale. Further, there could be a difficulty in establishing whether extensions have been added before or after these proposed changes come into force and measuring existing premises and recent extensions when dealing with enforcement complaints. 5m in height is also very difficult to measure from ground level.

It is difficult to see how the loss of turning and manoeuvring space could be assessed and argued satisfactorily, and thus how the enforcement of this condition could be implemented. However, this stipulation appears to be sensible and welcomed in principle.

The draft legislation does not include definitions of 'original building', 'floor space' or 'principal elevation' which could lead to a difference in implementation nationally, or unnecessary difficulties for LPAs in terms of enforcement. Similarly, it is not clear whether the rights would be cumulative or one-off.

There is no exemption for premises in Conservation Areas, which is considered a drafting oversight that should be corrected. Clearly the legislation should seek to protect sensitive areas such as these.

There appear to be no restrictions on the use of the additional floor area to be created – should it be for the main use of the premises or for ancillary uses too? For example, a corner shop in a residential area could build a rear extension and use all of this as additional retail sales area, or all as storage, or some of each (or even for staff facilities). Are all of these acceptable, relative to other planning issues, such as the revised PPS4 and the current PPS6 which seek to limit increase in retail floorspace outside of defined centres? These concerns lead this authority to consider that the extension of shops is not a matter that should be given permitted development rights, due to a lack of control that could result in development contrary to the objectives of the planning system.

Similarly, any kind of extension that can be erected without the need for planning permission has the potential to be of a poor design, even given the conditions proposed here. This could harm both visual and residential amenity.

Guidance on the enforcement of the conditions attached would be beneficial. Whilst it can be possible to serve a Breach of Condition Notice in relation to conditions within the PD Order, the resolution of the planning issue usually falls to the magistrates court, which can be very time consuming, costly to the LPA and unsatisfactory in outcome on the ground. (Magistrates cannot require the removal of a building; only impose a fine sufficient to encourage the perpetrator to remove it.) Guidance on whether it is appropriate to serve an enforcement notice on an unauthorised extension should also be included.

The interpretation that appears at the end of Class B partly relates to Class A, and it is suggested that it be moved to the end of Part 42 to cover all of this part of the revised order. It could be put with the existing definition at para F.

Trolley stores
A 20m^2 trolley store seems an excessive size – it is larger than most car parking spaces in store car parks. Also, the lack of a limit on how many trolley stores can be installed raises concerns over their likely proliferation. This could be limited by a number of trolley stores per number of parking spaces, for example. There would be no control over the design and materials of these features, which can be quite intrusive in an open surface car park setting.

2.5m in height also seems overly large for such a structure, and could be visually intrusive across a surface car park, for example.

This Council would also seek a restriction where these trolley stores are to be (on article 1(5) land) located in Conservation Areas, or within, or affecting, the curtilage of a Listed Building.

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Q2: What are your comments on the proposals for offices?

The condition that an office extension should not be visible from the highway is questioned, as whether a proposal will be visible from a highway or not may be affected by seasonal foliage changes, or where development is viewed from. This can be difficult to assess on paper, and there is a concern that development will occur under the premise of PD and once completed be visible from a highway. This could result in retrospective applications and/or costly and time consuming enforcement work, which would not be welcomed by this authority.

This condition needs further clarification if it is to be adopted. A definition of a highway should be included to specify whether this refers only to those used by vehicles, or any PROW (public right of way). Similarly, the condition needs to stipulate from where an extension should not be visible, for example is visibility assessed at ground level, or the top of a double decker bus – this should be made explicit to avoid confusion.

Again, the size limits of 5m in height, and 50m^2 or 25% seem excessively generous for some kinds of typical office development.

It is difficult to see how the loss of turning and manoeuvring space could be assessed and argued satisfactorily, and thus how the enforcement of this condition could be implemented. However, this stipulation appears to be sensible and welcomed in principle.

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The insertion of windows and doors becoming PD would be welcomed, but it is not clear within the draft legislation whether this is to be the case or not.

The loss of applications of this nature will result in a loss of income and caseload to this authority. Whilst this can be dealt with in the longer term, in the short term this could have HR implications.

An element similar to that proposed at Part 42 Class F is recommended to cover the whole of Part 41, as currently the draft only has this in relation to Class A and not the whole of Part 41. Thus Class B has no such definition. For example, is this part only related to offices in Class B1, or would those in Class A2 also benefit from them?

In terms of the definition of 'original building' it will be almost impossible for an LPA to determine whether extensions have been added before or after these proposed changes come into force, and therefore to establish the position in relation to enforcement in terms of what is and is not authorised and what action to take.

Again, the lack of exemption for sites on article 1(5) land gives rise to concern regarding the protection of the historic environment.

There appear to be no restrictions on the use of the additional floor area to be created – should it be for the main use of the premises or for ancillary uses too? For example, an extension to an office could be used as additional office accommodation, but reduce the amount of car parking available despite increased demand; or an extension could be used for ancillary facilities such as canteen, or ancillary storage. It would be beneficial if the legislation were to clarify which, if any of these uses, was acceptable within the PD extension, in order to ensure that it follows the objectives of the spatial planning system as a whole.

Further, there appears to be no recognition of the permitted changes of use between B1 and B8 and thus that the PD rights proposed for either type could actually be used for both.

Q3: What are your comments on the proposals for institutions?
Q4: What are your comments on the proposals for schools?

These two questions have been answered jointly, as most of the response is applicable to both uses.

There appears to be no exemptions for institutions or schools in Conservation Areas (or other Article 1(5) designations), which is an issue this authority would seek to have addressed in order to protect the historic environment. Similarly, some private schools occupy listed premises, and again, appropriate protection should be afforded to these.

Doubling the number of buildings allowed, even on a large site, seems excessively generous. Concerns are also raised over the significant additional bulk and scale of development that may be possible over which an LPA could have no control at all, potentially to the detriment of the visual amenity of surrounding neighbours (often residential).

The increase in student capacity of schools as a result of PD extensions is an issue that the LPA could (especially within two-tier authority systems) find difficult to monitor and enforce, and some guidance on this would be beneficial.

Guidance on the enforcement of the conditions attached would be beneficial. Whilst it can be possible to serve a Breach of Condition Notice in relation to conditions within the PD Order, the resolution of the planning issue usually falls to the magistrates court, which can be very time consuming, costly to the LPA and unsatisfactory it outcome on the ground. (Magistrates cannot require the removal of a building; only impose a fine sufficient to encourage the perpetrator to remove it.)

In cases such as schools and institutions, it should also be taken into consideration that often the 'developer' is a government or related body which has unintentionally breached the regulations, often as a result of a simple misinterpretation of the legislation, and thus care is needed in the rectification of these situations.

Q5: What are your comments on the proposals for industry and warehousing?

Previously, 1000m^2 of additional floorspace represented a major application, in the recognition that this size of built form has significant visual, environmental and potentially traffic impacts. To go from being such a significant development to being PD seems too big a jump to this Council. Thus the threshold is not supported in this case, and, as a minimum, a review of the threshold is requested. Similarly, half this area within a Conservation Area could also have devastating effects, and thus the thresholds for Article 1(5) land should also be revised and scaled downwards.

The condition that industry and warehousing extensions should not be visible from the highway is questioned, as whether a proposal will be visible from a highway or not may be affected by seasonal foliage changes, or where development is viewed from. This can be difficult to assess on paper, and there is a concern that development will occur under the premise of PD and once completed be visible from a highway. This could result in retrospective applications and/or costly and time consuming enforcement work, which would not be welcomed by this authority.

It is difficult to see how the loss of turning and manoeuvring space could be assessed and argued satisfactorily, and thus how the enforcement of this condition could be implemented. However, this stipulation appears to be sensible and welcomed in principle.

Q6: Should permitted development be expanded to include air conditioning units?

No. The central thread of the planning system is one of sustainability, and the use of air conditioning units does not sit well with this principle of development. Further, the visual impact of such units is often cause for concern and mitigation which would not be possible if they were granted PD rights. Thus, its encouragement by granting PD rights is opposed by this authority. This Council does not consider that this element of the proposals complies with the guidance and objectives of PPS1.

It is not considered appropriate to suggest that the planning system is the right method for measuring and enforcing environmental health issues such as noise. Planning enforcement officers are not trained to deal with such matters on site, and nor should they be.

$8m^3$ is exceedingly large and considered overgenerous for this debate, and this is a further reason why this Council cannot support this proposal.

It seems unfair that these units would be subject to less rigorous requirements in some locations than others, and there is no perceived planning reason for this.

Q7: 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;**
   If there are no planning hurdles to get through, then it is considered highly likely that a proliferation of such installations would occur in preference to other solutions to internal temperature control.
b. **The energy efficiency and carbon footprints of buildings;**
   This would decrease as more air-conditioning systems were introduced, to the detriment of the environment in its widest sense, and probably to the visual amenity of local communities too.
c. **The ability of residents and businesses to meet future carbon budgets; and**
   The installation of technologies such as air conditioning units would be a hindrance for future occupiers of premises who sought to improve their carbon budget and footprint.
d. **The impact upon alternative means of dealing with extreme temperatures, e.g. passive cooling?**

It is likely that demand for these more sustainable options would reduce, and thus would supply also. This would be a disincentive for the future and is therefore not supported in terms of the likely long term impact on the environment, as it is seen as a step backward.

Q8: 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?

As noted above, this Council does not consider that such units should be granted permitted development rights at all, and therefore does not wish to consider further any size limits. However, it would comment that the size proposed would be particularly difficult to monitor if units were mounted high on tall buildings such as industrial units. As a result, any size limits should be kept very small in the opinion of this Council.

Q9: What are your views on the proposed prior approval regime described above?

For planning professionals the proposed prior approval regime seems similar to those found at other parts of the PD order, and therefore is understandable. However, it is not a clear process for members of the public, it is often not a transparent one, decisions are rarely made in a public forum such as a committee, and this would not be aided by the 28 day timescale for decision-making.

Given that the matters for consideration are largely the same as they would be for planning applications, then it seems unwise and incomplete to choose such a short period of time.

This Council therefore raises concerns about the accountability of the process proposed, and the likely visual impact of such development. For example, there would be no opportunity to seek and obtain amendments under this process, either legally or practically given the 28 day limit. Therefore, whilst it would be possible to refuse applications where the appearance is not considered to be acceptable, it would also not be possible to negotiate better alternatives to schemes that are not sufficiently bad to refuse.

The suggestion of compiling SPDs to aid in the decision making process is considered a good one, however given the 28 day process it may be difficult politically to gain enthusiasm, support and resources for compiling these, particularly within authorities that receive few such applications. Also, as the issues are likely to be similar nationally, it might be more appropriate to have an appendix to PPS1, for instance, than for each LPA to write their own. This could be a more streamlined way forward.

The unfairness of the decision-making process relating to where these installations will be is also a matter of concern to this Council. For example, an ATM in a bank or a shop would take 28 days for a decision, whereas at a hotel or a leisure centre a full planning application would be required, subject to the usual 56 day full process. This seems unaccountable in terms of justification to the public.

The only perceived benefit of this scheme to this Council is the additional fee income that would be received.

Q10: What are your comments on the proposals for shopfronts?

There are some procedural queries relating to shopfronts that this Council would like to raise. For example, does the PD right to extend or alter a shopfront also include the creation of a shopfront, for instance where a change of use to A class has been granted but not implemented?

Again, there is no definition of 'original building' in the draft legislation, which will result in inconsistent implementation nationally.

This Council does not consider that shopfronts need to be part of the prior approval process, as the exemptions requiring full permission are sufficient, and therefore these could be allowed to be simply PD.

Q11: What are your comments on the proposals for ATMs?

There are often valid material planning considerations relating to ATMs such as highway safety and parking provision, or crime and the fear and risk of such, and these may not be able to be fully considered and addressed under the prior approval procedure. For example, there may be insufficient time to seek expert responses from Police colleagues. Also, the acceptance in principle that this process provides might undermine the determination process, as there can be issues of clusters of ATMs, for example, that mean that the principle of another one in a vicinity is NOT acceptable, and this could not be fully dealt with under the 'siting' consideration of a prior approval application.

28 days is not considered to be sufficient time to consider and process these applications properly, giving full consideration to the necessary factors, and therefore there seems no benefit in the prior approval process over the formal planning application route to this Council.

Should ATM proposals be taken further, it would be helpful if they included an indication as to whether the regulations related only to those in the external wall of a building, or also to freestanding ones which are often installed in locations such as restaurant car parks.

The suggestion of compiling SPDs to aid in the decision-making process is considered a good one, however given the 28 day process it may be difficult politically to gain enthusiasm, support and resources for compiling these, particularly within authorities that receive few such applications. Also, as the issues are likely to be similar nationally, it might be more appropriate to have an appendix to PPS1, for instance, than for each LPA to write their own. This could be a more streamlined way forward. This would be beneficial even if PD rights are not granted at all to ATMs.

Q12: 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?

$50m^2$ seems a very arbitrary quantity – in some cases this might constitute more than the external space for some shops, but in other circumstances may represent only a small fraction of a large industrial site, and this seems unfair, as well as there being no clear planning justification for the measure.

This Council has two different answers to this question, as it has two issues to consider:

On the one hand it is agreed that yes $50m^2$ of permeable hard-surfacing should be PD because it is better that it is permeable than it is not, as this is more sustainable.

However, on the other hand, the response would be no, in terms of visual impact. There are often grassed areas amongst parking areas designed into new developments to soften and landscape appearances, and to prevent a continuous sea of hard-surfacing which is visually beneficial. This effect could be lost with the proposed changes.

The use of the hardstanding is unclear – would it be for ancillary uses such as car parking, or only for the same use as the premises, for example a hard surface on which to manufacture?

Such PD rights would be likely to lead to more consents for development, including conditions removing these rights in order to protect the visual amenity, character and appearance of areas, as well as longer term landscape management plans.

There is a major practical concern relating to where there is, or is not, a risk of groundwater contamination. For example, the hard-surfacing at a petrol filling station should clearly be impermeable, to prevent diesel and/or petrol, oil etc from leaching through the surface and into the ground water. However, in an office car park, this would be a minimal threat, but whether there could be any other sites with the potential for contamination is not something that the LPA would know or be aware of. Contamination is normally dealt with by a separate team of experts within the Council, and thus this responsibility should NOT rest with the development management team.

There appear to be two issues here – the source of the risk of contamination and how to assess its potential effects. LPAs are not equipped with the relevant expertise to identify potential sources of risk, and therefore should not be the authority with the corresponding powers.

There also appears to be a difficulty in terms of enforcement relating to these. How to determine whether what has been laid *is* porous or not, and also, *whether it should be* or not.

Q13: 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)?

On the basis that it is unreasonable to attempt to remove PD rights that previously existed, and thus reduce the quantity of hard-surfacing that is possible without LPA control, then at least if it has to be appropriately drained and/or porous then that is a better solution than the current situation.

However, it would be helpful to have some clarification on the use of the hardstanding – what does 'for the purpose of the undertaking' mean?

Whilst the Council would support the concept that porous surfacing is generally preferable on sustainability grounds, the exceptions to this principle are sufficiently difficult to specify that it would be simpler to make all hard-surfacing require planning permission in order that LPAs can establish which is most appropriate in each situation. Seeking permeable surfacing should not be done at the risk of other factors.

Q14: 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?

This Council considers that these proposed changes are of benefit, as they retain the principles already adopted that action should only be taken in exceptional circumstances, however where action is necessary, they simplify the process sufficiently so as not to deter Councils from using them.

Q15: Do you think that Section 189 of the Planning Act 2008 (which limits LPA liability to compensation up 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?

The proposed reduction in financial risk to the Council is likely to encourage the appropriate use of the tools provided in the legislation.

Q16: Do you agree that LPAs should be able to make Article 4 Directions without the approval of the Secretary of State?

Yes, because Councils will be put off by an expensive, complex and lengthy process and thus are more likely to seek protection through the simpler process, and whilst retaining the principles of circular 9/95. The recognition that the Secretary of State retains their reserve powers is also welcomed.

Q17: Do you agree that LPAs should be required to consult before making Article 4 Directions?
Q18: 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?

The requirement to consult appears to be an extension of the ongoing process of including stakeholders and relevant consultees in the planning process at all stages, and where time allows and benefit can be gained, such as in this case, then this is considered to be appropriate by this Council. However, where the threat is more imminent and protection is necessary more urgently, the powers are also given to ensure that features of importance are not lost for a temporary period, whilst the full procedure can then be followed and fully considered.

However, the proposal to publicise new article 4 directions appears to suggest that newspaper advertisements are proposed, and this appears to contradict the current consultation regarding the publicity of planning applications, which appears to suggest that such a method of publicity is inadequate and ineffective, and that alternative methods should be used either instead or as well.

Impact assessment questions
Q19: Do you think impact assessment work undertaken broadly captures the types and levels of costs associated with the policy options?

No comment

Q20: Do you think that impact assessment work undertaken broadly captures the type and levels of costs associated with the policy options?

No comment