



Historic England

Supporting Defence Infrastructure and the Future of Time-Limited Permitted Development Rights.

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Digital, Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to submit a response to *Supporting Defence Infrastructure and the Future of Time-Limited Permitted Development Rights*.

Future of temporary permitted development rights

Right for markets by or on behalf of local authorities

Q.1.a. Do you agree that the right allowing markets to be held by or on behalf of local authorities for an unlimited number of days per year (Part 12, Class BA) should be made permanent?

Historic England recognises the importance of supporting communities and the value of using outdoor public spaces for markets in response to public health initiatives and re-opening high streets.

The proposals to make permanent the right to allow markets to be held by or on behalf of local authorities presents the following opportunities for historic high streets:

- Outdoor markets offer a cost-effective way for small businesses or businesses with limited indoor space to serve a wider audience. They offer a regular business outlet for artists, makers and other creatives.
- Allowing the operation of markets supports the cultural heritage offer and economic future for historic high streets.
- Markets can form the commercial heart of historic towns. Revitalising the use of historic market squares benefits those historic centres whose unique character is the product of a long market tradition.
- The principle of markets being allowed as a permanent right aligns with the objectives of Historic England's High Street Heritage Action Zones programme to reinvigorate historic town centres and invest in cultural assets.

Allowing markets to be held for an unlimited number of days per year would provide flexibility for local authorities, but also presents challenges for historic high streets, and it is important potential impacts are fully considered:

- The location of markets on ‘open field’ sites away from high street locations may detract from town centre uses and the contribution existing markets make to the character of a market town.
- A constrained historic high street, without space for a market, could be challenged economically by a market locating elsewhere. This would re-direct footfall and retail activity away from the historic high street.
- Allowing markets to operate for an unlimited number of days per year could reduce the viability of existing businesses that occupy buildings within historic high streets resulting in buildings becoming unoccupied and unviable as retail units.
- The right for unlimited use could result in a permanent market set-up, which is contrary to the idea of temporary, mobile structures being in place. This sense of permanence risks the character and appearance of historic high streets which are often designated as conservation areas. It could also impact setting which contributes to the significance of heritage assets.

Historic England considers the potential impacts of the temporary right of Class BA, Part 12 are not yet fully understood. As outlined above there is the potential for both positive and negative impacts. Time for robust monitoring and evaluation is suggested to better understand the impacts on the historic environment before the PDR is made permanent.

If provision was made for markets to operate for an unlimited number of days per year, the licencing process (at the discretion of local authorities) would need to set parameters for operating hours and days per year.

Q.1.b. Do you have any evidence as to any benefits and impacts as a result of introducing this right for markets, or have views of future impacts were the right made permanent?

The benefits of markets and possible future impacts for historic high streets are set out in the response to question 1a. As the Class BA right (under Part 12, Schedule 2 of the GPDO) was only introduced in June 2020 the potential impacts of the temporary right are not yet fully understood. Historic England has identified the following examples, where markets have offered opportunities for the historic environment:

- Blackpool – Historic England is funding, via the Cultural Programme, a creative market programme in Blackpool which offers safe high street trading and leisure. This is a priority following the pandemic. The diversity offered by markets (including food and drink, crafts, information and activities) means they can have wide appeal and provide outlets for new and emerging small businesses.
- Ormskirk – There is a popular market in the town centre which pre-dates the pandemic and continues to be beneficial for businesses. The presence of the historic market has supported the economic activity in the town and

maintained the viability of shops along the high street through the pandemic. The historic development of the town has created a 'natural' place for a market which is mutually beneficial to temporary and permanent traders.

Potential impacts to consider from the permitted development right are competing demands for access or other uses in that location. This includes displacement of parking and potential competing demands for outdoors space from cafes, restaurants, pubs and historic visitor attractions under Class BB (Part 4 of Schedule 2 of the GPDO). For example:

- Fylde – the local authority is developing a public realm scheme for Kirkham. The majority of residents would like to see parking taken out of Market Square so it can be used for markets more frequently and returned to a public square. The market would displace parking and may reduce accessibility. Therefore, disabled parking and accessibility to high street uses would need to be retained.

The right does not currently specify the design, scale, size and temporary nature of structures in use for markets. While reference is made to moveable structures, further clarification in this regard would be welcomed in order to minimise the potential impact from inappropriate structures being in place which could harm the significance of heritage assets.

As the right has only been in place since March 2020, further evidence will become available over the coming years in relation to the location and number of days a market can operate. Historic England supports further monitoring of the benefits and impacts of this right on the historic environment before further consideration is given to it being made permanent.

Q.1.c. Do you think that there should be a limit on the number of days that this right can be used for in a calendar year?

Unlimited use over the course of the year would indicate a degree of permanence to outdoor markets and risk impacting the character and appearance of conservation areas or the significance of heritage assets. Having markets in place alongside rights under Class BB for moveable structures will have a cumulative impact on outdoor spaces, potentially reducing accessibility of historic high streets, and detracting from heritage that makes such places special. Establishing a time limit for markets would also encourage a balance between market operations and other business needs.

While it is not considered appropriate to have an unlimited number of days for Class BA Part 12, there may be scope for an increase in the number of days from the pre-Covid position. A small increase in the number of days could be considered positive.

Q.1.d. Do you have views on whether there should be additional restrictions on the use of this right to mitigate against potential impacts of making this permanent, including proximity to scheduled monuments?

If permitted development rights allow markets to operate throughout the year, without an allowance for the number of days of use, then additional mitigation measures are needed. This could be addressed through prior approval arrangements whereby local authorities can consider the impact on the historic environment, such as markets located in conservation areas or as part of the setting of listed buildings.

Matters to consider could include:

- The size, height, design and use of materials for market stalls.
- Accessibility of market stalls and their relationship with surroundings so as not to impact on access, amenity and light of surrounding dwellings.
- Extent of the market area and cumulative impact, taking account of permitted development rights for moveable structures associated with cafés, restaurants, pubs and historic visitor attractions.
- Displacement or alteration of the existing historic landscape from market structures and activities (for example, to take account of impact on registered parks and gardens).
- Noise, visual impact and management of waste from market activities.

In addition to restrictions on land within or on sites of special scientific interest, restrictions are suggested in relation to the proximity of markets to scheduled monuments and world heritage sites, and within the curtilage of listed buildings or other heritage assets where the location of the market would result in substantial harm to, or loss of, the significance of that heritage asset. These matters could be considered as part of the prior approval process.

Right for the provision of moveable structures

Q.2.a. Do you agree that the right allowing for the provision of moveable structures (Part 4, Class BB) should be made permanent?

Historic England is supportive of the original aims of the time-limited PDR which were to encourage economic stimulus and vibrancy within the context of a sympathetic approach to the conservation and protection of the historic environment. Class BB was introduced as a special measure in response to unique circumstances relating to the coronavirus pandemic. The intention of the fixed-term provision was sector recovery with an emphasis on income generation and community access to heritage. The rights have enabled businesses, including those in the heritage sector, to evolve and adapt by permitting continued operations within a safe setting.

Historic England's support for the principles of Class BB were based on the premise that these rights did not include provisions likely to cause permanent harm to heritage assets or their fabric, and that any harm would be reversible and temporary. For historic visitor attractions it was considered that temporary harm was outweighed by the public benefit of re-opening, securing future use and contributing to economic revival.

In proposing a permanent right, it is important that consideration is given to protection of the environment (one of the three essential components of sustainable development). This can be realised through evidence-based analysis and the assessment of impacts on the historic environment resulting from the introduction of Class BB through the coronavirus PDR measures.

Before Class BB is made permanent, Historic England would welcome efforts to collect further evidence to aid understanding of potential impacts and identify mitigation measures for the historic environment. As an alternative to making Class BB permanent, consideration should be given to the potential to renew a time limited approach. This would allow evaluation of the impacts on historic high streets, historic visitor attractions and other heritage assets.

Historic England would also welcome discussions with DLUHC on the outcome of this consultation, alongside the evaluation of Class BB, to ensure the introduction of permanent rights does not lead to unintended consequences for the historic environment.

Q.2.b. Do you have any evidence of benefits and impacts as a result of the introduction of the right for moveable structures (Part 4, Class BB), or have views on potential future impacts were the right made permanent?

As Part 4, Class BB was introduced in April 2021 there has been limited time to monitor and review the benefits and impacts on the historic environment. As such, the following evidence is anecdotal.

- Oxford Street, Reading – Temporary outdoor trading shelters have been used in the curtilage of shops, cafes and restaurants to extend retail and hospitality space. Private investment has been made on these substantial moveable structures which extend across the entire frontage of the ground floor building. There is sufficient space within the curtilage to accommodate awnings and extend the commercial space of these buildings.

The retractable shelters have a sense of permanence due to the addition of necessary services for lighting and guttering, along with the design of support columns. The provision of these structures has been economically beneficial, supporting businesses during the pandemic. In the longer-term, considerations regarding impact on the character and appearance of the conservation area need to be taken into account. As does the impact on access, amenity and light for neighbouring residential dwellings.

- Broad Street, Oxford – Outdoor planters with seating were introduced on Broad Street to provide an attractive space to visit and enjoy the surroundings. The moveable structures were positively received by residents and businesses with the scheme winning an award. The lessons learnt from the project were:
 - A scheme with positive impact can be delivered in a sensitive heritage context through effective planning and engagement.

- Adding structures which have the potential to constrain, or ‘clutter’, open space can be done accessibly.
 - Offering a flexible space creates possibilities in what can be offered, but also demands resource time and cost.
- Stalybridge, Tameside – there is insufficient space in parts of Stalybridge for outdoor seating provision and other moveable structures for hospitality businesses. To address this, the local authority is planning to widen the pavement to extend the curtilage of retail and hospitality premises, offer outdoor seating and encourage increased footfall and dwell times. This supports the economic sustainability and vitality of the town.

In terms of future impacts the cumulative and consecutive year-round presence of moveable structures could risk impacting the significance of heritage assets in the long-term. Under current PDR provisions limitations around consultation with the heritage sector, assessment of significance and the national grant of permission for moveable structures could lead to unintended consequences for the historic environment.

Q.2.c. Do you think the right for moveable structures (Part 4, Class BB) should be limited to 56 days per calendar year?

Limiting the right to 56 days per calendar year aligns with the temporary use of land right and the combined provisions for Class B (28 days per year) and Class BA (28 days per year) in Part 4 of Schedule 2 of the GPDO.

This approach also reinforces the temporary rather than permanent nature of the moveable structure, offering a sensible mitigation where the structure risks impacting the significance of heritage assets. While harm to the historic environment should be avoided, limiting the right ensures any harm that does occur can be temporary and reversible.

A further consideration relates to the cumulative impact from moveable structures, potentially resulting in a year-round presence. To address this the PDR could specify operating hours and times of year.

Q.2.d. Do you think that the right for moveable structures (Part 4, Class BB) could be greater than 56 days, or allowed for an unlimited number of days, in the curtilage of non-listed buildings?

An allowance for unlimited days would create a sense of permanence. Even if the structures are moveable, they could remain in situ for long periods of time or on a permanent basis. While this would only be applicable for structures in the curtilage of non-listed buildings, there is still a risk of the historic environment being impacted. Having moveable structures in situ on a long-term basis can impact the character and appearance, detracting from the historic qualities of the place and harming the significance of heritage assets.

It is also important that the erection of temporary structures under PDR should not become justification for the grant of planning permission.

Q.2.e. Do you agree that there should be a height limit for the moveable structures of 4 metres?

Historic England considers a height limit should be specified for moveable structures; however this should be lower, with a provision to take account of local context. A maximum height limit of 4 metres is substantial and could have implications for the setting of heritage assets. For example, a 4 metre high structure within the curtilage of drinking establishments in smaller scale areas such as high streets, or within areas of a more domestic scale and character, may be visually intrusive for long parts of the year. Larger assets such as Registered Parks and Gardens, which form the curtilage of historic visitor attractions, can be particularly vulnerable to development of this scale.

Consideration also should be given to the visual impact on setting which contributes to the significance of heritage assets located beyond the curtilage of a café, restaurant, pub or historic visitor attraction. Therefore, the PDR should consider limiting both height and siting of the structure in terms of distance from the curtilage boundary.

To take account of local context and environmental or heritage sensitivities one approach would be to specify:

- A maximum height;
- That the height of the structure should not exceed the roofline or eaves of the original building; and
- Take account of the prevailing height of surrounding buildings.

This approach has been used for other PDR for temporary structures.

Q.2.f. Do you agree that there should be a size threshold on the moveable structures allowing them to be up to 50% of the footprint of the existing building on site?

Historic England considers that there should be a size threshold, however the indicated scale would permit structures of a substantial size. This has unintended consequences for the historic environment, given that buildings such as historic houses are within the definition of historic visitor attractions.

For example, Wentworth Woodhouse in South Yorkshire would have permission under PDR to erect a moveable structure of approximately 7,700 m² area (amounting to 50% of the building footprint). Such a structure would cover around 5% of the formal gardens, which is a substantial area. This would have a harmful effect on appreciation of the architecture and landscape, both of which are highly graded.

The scale of moveable structures could be considered by local authorities under prior approval arrangements to take account of the impact of the proposal on the significance of heritage assets, so that the size and scale of the moveable structure avoided or minimised harm to the historic environment. There may also be cases where Listed Building Consent is also required.

Q.2.g Do you have any evidence of impacts specifically on heritage assets, including listed buildings as a result of the introduction of the right for moveable structures (Part 4, Class BB). Do you have any views on potential future impacts on heritage assets were the right made permanent?

As Part 4, Class BB was introduced in April 2021 there has not been the opportunity to fully evaluate and understand the impacts on the historic environment. Historic England identifies potential for impact on heritage assets such as conservation areas, registered parks and gardens and locally listed or non-designated heritage assets. As a consequence, it is important to consider evidence offered as part of this consultation and also continue to monitor and assess the success of measures in supporting income generation and visitor access, while avoiding or minimising harm to the historic environment. Historic England would welcome further discussion with DLUHC on this matter.

Prior to the introduction of Class BB, Historic England has seen numerous applications for large marquees in registered parks and gardens. Most have resulted in harm to significance being identified and have only been successful as a result of careful negotiation on siting and mitigation. This has been negotiated through the planning process. Our experience shows large and small moveable structures can potentially be accommodated within historic designed landscapes and in the setting of important listed buildings, however they benefit from the planning process to ensure an outcome that is beneficial for both the business and the heritage assets.

The removal of consideration from the planning process and inclusion as part of PDR could result in adverse impacts to the historic environment, with little or no scope for consultation and engagement with statutory consultees (such as Historic England and the Gardens Trust) and a lack of community engagement in the process.

In the case of registered parks and gardens and other historic landscapes certain types of temporary structures may have unintended consequences. For example, unknown archaeology risks being impacted from ground compaction, fixings and associated ground preparation works.

Q.2.h. Do you have views on whether there should be any other additional restrictions on the use of this right (Part 4, Class BB) to mitigate against potential impacts of making this permanent?

As part of the proposal further clarification on prior approval matters would be beneficial, such as how Article 2(3) land and registered parks and gardens would be treated. Conditions under the prior approval process can be an effective way to help manage and mitigate impacts on the significance of heritage assets and apply a local perspective on the changes proposed.

Historic England considers a clear definition of moveable structures under Schedule 2 of the GPDO would be beneficial, providing further clarification. Therefore, a moveable structure could be considered as any structure which does not meet the definition of a building. This leads to a broad definition of moveable structures and the potential for a combination of different structures including outdoor seating and dining, awnings, gazebos, marquees, huts, kiosks, portacabins and shipping containers being set up. In addition to these structures there are surface cables and associated equipment for lighting, power and internet purposes, water run-off and drainage, facilities for those with less mobility and facilities for cycling. The potential for multiple moveable structures of varied scale, design and construction risks harming the significance of the heritage assets.

While proposals include conditions on size and scale of moveable structures, the parameters for number of structures, hours and days/months of operation and managing the sterilisation of space are not specified. Conditions taking account of design, site preparation, servicing, and ground fixings are also absent.

There is the potential for loss or damage to historic landscapes, areas of archaeological interest and non-designated heritage assets due to ground penetration from fixings, and the potential for ground servicing or surface remodelling to accommodate temporary structures. Therefore, conditions to limit ground penetration, preclude below ground servicing or surface modelling, and address the need for land restoration and reinstatement after the removal of temporary structures should also be considered.

The current exclusion of scheduled monuments and advertisement displays is welcomed. It is hoped that specified exemptions are retained in any further versions of this PDR provision. Historic England notes that provisions under the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990 also apply alongside the Part 4, Class BB rights in the GPDO.

Under PDR conditions and exclusions are fully effective when accompanied by enforcement measures. Therefore, enforcement measures should be considered prior to the permanent provision of Class BB.

Supporting Defence Infrastructure

Q 5. Do you agree that new rights should be created that will enable MOD to develop more single living accommodation within the perimeter of their sites up to 25% of the existing floorspace for single living accommodation at a Defence site to support service personnel?

Historic England considers the rights should be accompanied by prior approval in order to scrutinise any potential consequences and cumulative impacts upon the historic environment, including the impact on non-designated heritage such as archaeology.

Q 6. Do you agree that new rights should be created that will enable MOD to develop other types of workspace up to 35% of the existing floorspace within the perimeter of their sites?

Historic England considers the rights should be accompanied by prior approvals in order to scrutinise any potential consequences and cumulative impacts upon the historic environment, including the impact on non-designated heritage such as archaeology.

Q 8. Do you agree that the permitted development rights should be applied to the wide range of buildings needed by MOD?

Please give your reasons

Permitted development rights are a national grant of permission. This approach does not allow for local circumstances to be taken into account. The MoD estate includes numerous listed buildings, scheduled monuments and other heritage assets. Extending permitted development rights to a wide range of buildings could result in unintended consequences for the historic environment. The planning process incorporates an assessment of impact on the historic environment, allowing for harm to the significance of heritage assets to be avoided or minimised. It takes account of considerations such as location, siting, design and relationship with the historic environment.

The provision of PDR measures to support priority needs for the MoD (such as living accommodation and workspace) could be acceptable subject to prior approval matters to assess and mitigate the impact of development on non-designated heritage assets, including locally listed buildings and below ground archaeology. The exclusion of some designated heritage assets (as detailed in question 15) is welcomed.

Q11. Do you think there is scope to raise the 4000 sqm footprint trigger for prior approval on the very largest operational military sites?

Please suggest what would be an appropriate alternative limit, and give your reasons.

The 4000 sqm footprint trigger for prior approval is already significant. Historic England considers a reduced limit of 250 sqm in line with PDR for public services infrastructure may be appropriate.

Q12. Do you agree that locating taller buildings together would be a good idea?

Please give your reasons

Historic England considers locating tall buildings together in a cluster can have less of an impact, as opposed to a dispersed distribution of tall buildings across a wide area (our advice in [Historic England Advice Note 4: Tall Buildings](#) provides further details). In the right location and within the right context clusters can be a positive response. In all cases it is important the significance of heritage assets is understood, and the impact of tall buildings proposals on this significance is taken into account.

Matters to consider include identification of suitable locations for tall buildings and management of the tall building cluster and its profile in order to achieve a better relationship with lower density surroundings and the wider historic environment. This includes incorporating a stepped cluster profile and seeking other cluster locations to discourage excessive densities or building heights within a given location.

Q 15. Do you think it is appropriate that only SSSI, Article 2(3) land, listed buildings and Scheduled Monuments should be excluded from the permitted development rights?

Please give details if you think it is appropriate or if not.

Historic England supports the continued conservation of the historic environment through the safeguards applied to these PDR to ensure their exclusion for listed buildings, scheduled monuments and on article 2(3) land. In addition, Historic England would welcome the exclusions to be extended to designated heritage assets including registered parks and gardens and battlefields.

The MOD is responsible for over half of the government's historic environment assets. The estate falls within 10 UK World Heritage Sites and a number of conservation areas. There are over 800 listed buildings, 700 scheduled monuments, in excess of 10,000 archaeological monuments, 8 registered parks and gardens and

registered battlefields within the MOD estate¹. Extending the exclusion to designated heritage assets is a positive way to the conserve and enhance the historic environment, with development proposals managed through the planning process.

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¹ <https://www.gov.uk/guidance/defence-infrastructure-organisation-estate-and-sustainable-development>