

Report of Chief Planning Officer

Report to Development Plan Panel

Date: 19th January 2021

Subject: Open consultation - Supporting housing delivery and public service infrastructure and changes to permitted development rights

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name(s) of ward(s): ALL	
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number: Appendix number:	

Summary

1. On the 7th December 2020 the Government commenced consultation on 'proposed measures to support housing delivery, economic recovery, and public service infrastructure'. The focus of the consultation is on the planning process in particular in relation to the delivery of public infrastructure and also on permitted development rights.
2. The consultation sets out 3 main areas for consideration and a number of questions are set out for response. The consultation is open until 28th January 2021. This paper sets out a summary of the main issues raised and a draft response from the Local Planning Authority, as set out in Appendix one.

Recommendations

3. Panel Members are asked to:
 - (i) Consider and provide any comments on the draft consultation response.

1. Purpose of this report

1.1.1 On the 7th December the Government commenced consultation on proposed measures to support housing delivery, economic recovery, and public service infrastructure. The consultation focuses on three main areas;

- Supporting housing delivery through a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential.
- Supporting public service infrastructure through the planning system.
- Consolidation and simplification of existing permitted development rights

1.1.2 For each of these 3 areas a number of questions are set out for consultation response. This report provides a summary of each of the 3 areas, with an overall response. Appendix 1 lists consultation questions and detailed responses.

2. Background information

2.1.1 As part of a continuing series of reforms to the planning system the Government announced on the 20th July 2020 that new regulations would come into force on the 1st September 2020, making radical changes to the 1987 Use Class Order. These changes sit alongside the recent additions to permitted development rights, forming part of the Government's "Project Speed", with the aim to support high street revival and allow greater flexibility to change uses within town centres without the need for planning permission. In addition there are also existing wide ranging permitted development rights which have been introduced gradually over time, this consultation seeks to consolidate these changes.

3. Main issues

3.1.1 The first area of the consultation relates to the New 'E' use Class only. From 1st September 2020 a new Commercial, Business and Service use class (known as 'Class E'), was introduced grouping together a range of uses commonly found in town centres (although not exclusively in town centres), precluding the need for a planning application. The new 'E' Class includes retail, restaurant, office, financial/professional services, indoor sports, medical and nursery uses along with "any other services which it is appropriate to provide in a commercial, business or service locality", such as light industrial. This current consultation now seeks to build on this providing further flexibility to allow premises falling within the 'use Class E' to change to residential use without the need for a planning application.

3.1.2 It is proposed that the right would allow for the change of use from any use, or mix of uses, within the Commercial, Business and Service use class (Class E) to residential use (C3). Some change of use to residential use is already permitted in the existing order but the new right would replace these which are change of use from office to residential (Part 3, Class O of Schedule 2 to the General Permitted Development Order), and from retail to residential (Part 3,

Class M of the General Permitted Development Order) which remain in force until 31 July 2021.

- 3.1.3 A number of questions are set out in the consultation which relate to conditions which would apply to widening of permitted development rights to residential use, these include appropriate size restrictions, where the right should apply and matters for local consideration through prior approval.
- 3.1.4 In terms of the Councils overall response, the Council's view is that the introduction of Use Classes E introduced in September 20 has created difficulty in the application of existing permitted development rights associated with the use classes superseded by classes E. This has also caused difficulty in the application of some local plan policies which in line with national guidance at the time refer to the previous use classes. Clarity is therefore welcomed. In relation to the additional permitted development rights to change to residential use, whilst the principle of this is to allow flexibility of uses on the high street, there are concerns about further loss of retail in town and local centres.
- 3.1.5 The second theme for consultation relates to supporting public service infrastructure through the planning system. Further to the National Infrastructure Strategy which (published on the 25 November 2020), this section focuses on proposed planning reforms to speed up the delivery of schools, colleges, hospitals and other NHS buildings, both for existing sites in terms of permitted development rights and also for new sites. The intention is that permitted development rights will ensure that expansion of existing sites will be streamlined. This seeks to create a new faster process for applications for planning permission with a view to encouraging greater prioritisation of decision making for these public services. This new process would include, but not be limited to, shorter timescales for determination of applications for these sites and shortening the statutory publicity and consultation periods.
- 3.1.6 The consultation proposes amending the existing Class M permitted development right (Part 7, Schedule 3, GPDO) to allow schools, colleges, universities and hospitals to expand their facilities by up to 25% of the footprint of the current buildings on the site, or up to 250 square meters, whichever is greater. The buildings may be no higher than 6 meters, except where it is within 10 meters of the boundary or curtilage in which case the height limit will be 5 metres.
- 3.1.7 Where permitted development rights cannot be applied, a faster planning application process for public service developments is proposed. Proposals include the development within 'scope of the modified process' such as hospitals, schools and further education colleges, prisons, young offenders' institutions, and other criminal justice accommodation. In relation to 'the scope' a shorter determination period (of 10 weeks), modified consultation and publicity requirements and measures to increase transparency are proposed.
- 3.1.8 In terms of the Councils response, public service infrastructure tends to be on complex sites and raise multiple planning issues, including highway considerations; it tends to be located within tight urban areas and have complex design solutions, often these require up to 13 weeks to determine as major planning applications. To reduce this, may cause difficulties in delivering projects which fully address all of the planning issues. Timescales in terms of

delivery should be realistic and achievable. A reduction in the period of consultation also may not give local residents adequate time to respond, raising equality concerns.

3.1.9 The third area of focus relates to consolidation and simplification of existing permitted development rights. The changes to the Use Classes Order introduced on the 1st September 20, have resulted in a mismatch and confusion around the application of existing permitted development rights and this has also created difficulties in terms of the application of some local plan policies. The intention in the consultation is to 'simplify and rationalise those existing rights' and bring forward the necessary amendments before 31 July 2021 (when the transitional provisions introduced by the new use class legislation will expire.) This will include revoking rights which have now become unnecessary as a result of the introduction of Use Class E. Four types of permitted development rights are identified as below;

- Category 1 - the right is no longer required. Example - Class D shops to financial and professional.

- Category 2 - the right is unchanged by the amendments to the Use Classes Order and therefore no amendment is necessary. For example - Class L small HMOs to dwellinghouse and vice versa.

- Category 3 - the right may be replaced by the new proposed permitted development right from the Commercial, Business and Service use class to residential. For example – Class O offices to dwellinghouses.

- Category 4 - the right requires detailed consideration. There are several rights that may fall into this category. For Example Class J retail or betting office or pay day loan shop to assembly and leisure.

3.1.10 In terms of the Council's general response, the proposed alignment of the Use Class Order, and permitted development rights is necessary and welcomed given the complexity. However any other widening of existing permitted development rights should be the subject of further consultation. There are already a wide range of permitted development rights, if these are increased and added to this should be the subject of further consultation and should not undermine the planning application process. The review and update is a significant and complex exercise requiring consideration of those rights affected across the entire Order and potentially this may require amendment of 49 individual rights and additional paragraphs and articles. The proposal is that in updating these rights at the same time the opportunity will be taken to simplify and rationalise those existing rights, and then to bring forward appropriate legislative amendments before 31 July 2021. Appendix one sets out full consultation questions and responses to be submitted by the 28th January.

4. Corporate Considerations

4.1 Consultation and engagement

4.1.1 This Government consultation is currently open and ends on the 28th January. Following consultation there may be a technical consultation or it is expected that appropriate legislative amendments will be introduced. This draft response

has been produced in conjunction with colleagues in Development Management.

4.2 Equality and diversity / cohesion and integration

4.2.1 An EDCI is not required for this report. Public sector equality duty assessment and impact assessment are set out as part of the consultation paper. Any reduction in the statutory period of consultation from 21 days to 14 days may reduce the scope and opportunity for public comment.

4.3 Council policies and the Best Council Plan

4.3.1 Planning is relevant to the delivery of all the priorities in the Best Council Plan. This consultation seeks views on changes to the planning process. It is not policy but a consultation, however the 'Best City Priorities' of sustainable infrastructure, inclusive growth and housing in particular are delivered as part of the planning process.

4.4 Resources, procurement and value for money

4.4.1 There are no specific implications to this report as the outcome of the consultation is not yet known. However there may be implications for planning fees shorter and determination periods which may be impacted as part of a streamlined process for the consideration of planning application for public infrastructure or permitted development rights.

4.5 Legal implications, access to information, and call-in

4.5.1 There are no legal implications arising from the recommendations in this report.

4.6 Risk management

4.6.1 This paper considers a consultation in relation to changes to the planning process, until the detail of this is known, it is difficult to assess the impact. Any changes to permitted development rights may have implications for planning application activity and also reduce the scope of control from the Local Planning Authority.

5. Conclusions

5.1.1 This report considers a current Government consultation in relation to 3 areas of the planning process. The changes largely relate to streamlining and fast tracking the planning process by use of permitted development rights and the delivery of large scale public infrastructure. It is proposed the Council support some of the changes such as the consolidation of permitted development rights into one 'document' for simplicity. Other proposals have more overarching implications such as the potential introduction of more permitted development rights, and faster decision-making for some types of public infrastructure for example for hospitals and schools. There are concerns that the proposals do not go far enough in ensuring that local impacts are accounted for in terms of infrastructure requirements, and affordable housing, or in ensuring that local participation in the planning process is safeguarded. Greater emphasis and

obligation to undertake pre application engagement, in place of extensive, controversial permitted development rights would help to maintain confidence in the locally democratic role of Planning and provide more successful schemes for developers and the community.

6. Recommendations

6.1 Panel Members are asked to:

(i) Consider and provide any comments on the draft consultation response.

Appendix 1:

1. Supporting housing delivery through a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential.

Q3.1 **Do you agree that in managing the impact of the proposal, the matters set out in paragraph 21 of the consultation document should be considered in a prior approval?** *We would not support this approach. A full planning consent should be required as loss of retail to residential may adversely affect vitality and viability in some centres, and prior approval avoids contributions to infrastructure through lost section 106 income, and affordable housing.*

Q3.2 **Are there any other planning matters that should be considered?** *The matters in para 21 need to be supplemented to include a requirement for national space standards to be achieved and external amenity space to be provided or contributions to provision of nearby green space if not possible on site*

Q4.1 **Do you agree that the proposed new permitted development right to change use from Commercial, Business and Service (Class E) to residential should attract a fee per dwellinghouse?** *Yes this is supported, the prior approval process can still be time consuming and this needs to be reflected.*

Q4.2 **If you agree there should be a fee per dwellinghouse, should this be set at £96 per dwellinghouse?** *The fees should be the same as for per dwelling for a planning application; the work involved in assessing the prior approval submission is not dissimilar.*

Q5. **Do you have any other comments on the proposed right for the change of use from Commercial, Business and Service use class to residential?** *Residential use can often be in conflict with commercial and retail use, and as such this should be the subject of a planning application to ensure that all issues are considered. The number of matters proposed to be considered in the prior approval proposed as suggested above requires full assessment and can be locally controversial. The prior approval process precludes third party and member involvement and erodes local democracy.*

Q6.1 **Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could impact on businesses, communities, or local planning authorities?** *LPA's apply different policies for town and local centres to include frontage policies for primary and secondary primary shopping areas. The introduction and widening of E class changes have created difficulty in the application of some local plan policies which in line with national guidance at the time refer to the previous use classes. Widening of permitted development rights will undermine policies. There are often objections from the community in relation to residential use in town and local centres and a full planning application process is supported.*

Q6.2 **Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could give rise to any impacts on people who share a protected characteristic?** *Yes there could be equality implications, all protected characteristics could be impacted. And there would be little opportunity for those with protected characteristics to comment on or influence proposals dealt with by the permitted development right.*

2. Supporting public service infrastructure through the planning system

- Q7.1 Do you agree that the right for schools, colleges and universities, and hospitals be amended to allow for development which is not greater than 25% of the footprint, or up to 250 square metres of the current buildings on the site at the time the legislation is brought into force, whichever is the greater?** *This is not supported and is a matter of concern. This is a significant step change and should only be allowed providing there is sufficient supporting infrastructure to accommodate such an expansion for example additional staff will require extra car parking or the likelihood is that this will be displaced onto any surrounding streets. A positive is that school playing fields will continue to be protected from development.*
- Q7.2 Do you agree that the right be amended to allow the height limit to be raised from 5 metres to 6?** *This assumes that the existing PD right does not cause any planning harm, clearly it can have a negative impact. The greater the flexibility the more potential there is to cause more harm without some form of control. Often, these types of public buildings are nestled closely to other, often residential land uses where space is at a premium. To ease increase the height of building albeit except where it is within 10 metres of the boundary or curtilage, is still a considerable change and where no consideration is given to aspect or changes in land levels.*
- Q7.4 Do you agree that prisons should benefit from the same right to expand or add additional buildings?** *On the face of it, this would seem less harmful as these buildings are already usually secured by high and extensive solid perimeter boundary treatment, therefore, public views tend to be limited or restricted. For obvious reasons, there is usually sufficient separation space from other surrounding land uses.*
- Q8. Do you have any other comments about the permitted development rights for schools, colleges, universities, hospitals and prisons?** *Public service infrastructure tends to be on complex sites and raise multiple planning issues to include highway considerations, tend to be located within tight urban areas and have complex design solutions, often these require up to 13 weeks. To reduce this down, may cause difficulties in delivering positive projects. Timescales in terms of delivery should be realistic and achievable.*
- Q9.1 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could impact on businesses, communities, or local planning authorities?** *The proposals for public buildings are not supported as these will result in a further erosion and squeeze on the planning process reducing / removing the democratic element of planning with more PD rights going hand in hand with shorter consultation periods both for statutory consultees and the public.*
- Q9.2 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could give rise to any impacts on people who share a protected characteristic?** *A reduction in the period of consultation may not give local residents adequate time to*

respond, raising equality concerns. Often large scale public infrastructure can cause local concern, and this needs to be considered.

- Q10.1 Do you think that the proposed amendment to allow prisons to benefit from the right could impact on businesses, communities, or local planning authorities?** *This would be negligible for the reasons set out above.*
- Q10.2 Do you think that the proposed amendment in respect of prisons could give rise to any impacts on people who share a protected characteristic?** *Often large scale public infrastructure can also cause local concern, and this needs to be considered. Impact of projects should be given due regard as part of the planning process, this will allow the public and those affected to participate in the planning process.*
- Q11 Do you agree that the new public service application process, as set out in paragraphs 43 and 44 of the consultation document, should only apply to major development (which are not EIA developments)?** *This is not supported as non major schemes can be as equally contentious to local communities and such developments need to provide appropriate supporting infrastructure to mitigate against potential impacts.*
- Q13 Do you agree the determination period for applications falling within the scope of the modified process should be reduced to 10 weeks?** *This is not supported, as set out above, large public infrastructure projects are often complex and contentious, and can also be on sites which are often in tight urban areas and public facing.*
- Q14. Do you agree the minimum consultation/publicity period should be reduced to 14 days?** *A reduction in the period of consultation may not give local residents adequate time to respond, raising equality concerns. In addition 14 days is too short a period of consultation to allow the community to comment. Impact of projects should be given due regard as part of the planning process.*
- Q15 Do you agree the Secretary of State should be notified when a valid planning application is first submitted to a local planning authority and when the authority it anticipates making a decision?** *If the process is streamlined to include adequate and meaningful pre application discussion and can be automated as to not place an extra burden on the LPA, then this is supported.*
- Q16 Do you agree that the policy in paragraph 94 of the NPPF should be extended to require local planning authorities to engage proactively to resolve key planning issues of other public service infrastructure projects before applications are submitted?** *Para 94 of the NPPF states 'It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education; a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and b) work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted'. This is supported and is key to ensure that complex planning issues are considered prior to the approval of a planning application and not left to be resolved at the planning application stage.*
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Q17.1 Do you have any comments on the other matters set out in this consultation document, including post-permission matters, guidance and planning fees? *No*

Q17.2 Do you have any other suggestions on how these priority public service infrastructure projects should be prioritised within the planning system? *Local democracy and public involvement should not be removed / diminished as these tend to be complex and locally contentious issues. Early dialogue and pre application guidance with the LPA is encouraged.*

Q18 Do you think that the proposed amendments to the planning applications process for public service infrastructure projects could give rise to any impacts on people who share a protected characteristic? *Often large scale public infrastructure can cause local concern, and this needs to be considered. Impact of projects should be given due regard as part of the planning process, especially if the consultation period is to be reduced. Public Infrastructure projects play an important role in local communities in providing vital infrastructure and public engagement should be a part of that process.*

3. Consolidation and simplification of existing permitted development rights

Q19.1 Do you agree with the broad approach to be applied to the review and update of existing permitted development rights in respect of categories 1,2 and 3 outlined in paragraph 76 of the consultation document? *The proposed alignment of the UCO and Permitted Development Rights is necessary, given the complexity. However any other widening of the existing rights should be the subject of consultation as these can have a significant impact on local communities.*

Q19.2 Are there any additional issues that we should consider? *All efforts should be made to further rationalise the permitted development rights to provide greater clarity and certainly for developers and third parties. Complex Prior Approval processes does little to address the perception of a bureaucratic planning system and does not streamline processes.*

Q20 Do you agree that uses, such as betting shops and pay day loan shops, that are currently able to change use to a use now within the Commercial, Business and Service use class should be able to change use to any use within that class? *This would be reasonable given the range of commercial uses all now uses within class E including shops and financial services that are typically found on the high street. Changes to uses no longer in the assembly and leisure class and not within new class E may have more impact and so permission should be required. Changes to betting shops and pay day loan shops should continue be the controlled through the planning application process.*

Q21 Do you agree the broad approach to be applied in respect of category 4 outlined in paragraph 76 of the consultation document? *Yes the broad approach of trying to simplify PD rights is supported, and that should be the main aim; as paragraph 49 points out, the review and update is a complex exercise due to the existing number of rights and articles involved.*

Q22 Do you have any other comments about the consolidation and simplification of existing permitted development rights? *Previous attempts*

to 'streamline' the planning system by introducing PD rights have led to a far more complicated system that is difficult for applicant and the local authorities to engage with. The simplification should include greater clarity and certainty by the reduction of complex prior approval processes. There are concerns that the proposals do not go far enough in ensuring that local impacts are accounted for in terms of infrastructure requirements, and affordable housing, or in ensuring that local participation in the planning process is safeguarded. Greater emphasis and obligation to undertake pre application engagement, in place of the extensive, controversial permitted development rights would help to maintain confidence in the locally democratic role of Planning and provide more successful schemes for developers and the community.
