

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT

TO:	PLANNING APPLICATIONS COMMITTEE		
DATE:	9 <sup>th</sup> January 2019	AGENDA ITEM:	8
TITLE:	MHCLG CONSULTATION ON PLANNING REFORMS		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 The Ministry of Housing, Communities and Local Government (MHCLG) published a consultation document entitled "Planning Reform: Supporting the high street and increasing the delivery of new homes," at the end of October, 2018. A copy of the document can be viewed at <https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes>.
- 1.2 The document covers a number of issues but of most interest to this committee are proposed changes to permitted development rights and use classes, in particular proposed new permitted development rights to extend upwards.
- 1.3 This report briefly outlines the main changes proposed in the consultation being undertaken by the Ministry of Housing, Communities and Local Government (MHCLG). It sets out initial officer views on these proposed changes. The report asks Committee to note the consultation document, agree the initial offer response to the proposed changes to permitted development rights and use classes, and to delegate authority for final representations to be agreed by the Chair of Planning Applications Committee and the Lead Councillor for Strategic Environment Planning and Transport for submission by the consultation end date of 14<sup>th</sup> January 2019.

2.0 RECOMMENDED ACTION

- 2.1 That the Committee notes the publication of the Planning Reform consultation Document by MHCLG in October 2018.
- 2.2 Agree the initial officer commentary on the proposed changes to permitted development rights and use classes; and
- 2.3 Delegate authority for final representations on the consultation to be agreed by the Chair of Planning Applications Committee and the Lead Councillor for Strategic Environment Planning and Transport.

### 3. BACKGROUND AND ISSUES

3.1 (MHCLG) published their latest proposed “Planning Reforms” for consultation at the end of October 2018. The consultation will end on 14<sup>th</sup> January 2019. The consultation document is in 4 parts:

- Part 1: Permitted development rights and use classes;
- Part 2: Disposal of local authority land;
- Part 3: Canal & River Trust: Draft listed building consent order;
- Part 4: New town development corporations: Draft compulsory purchase guidance

This report concentrates on Part 1, which is the area of most relevance to responsibilities of this committee, but deals briefly with the other parts.

3.2 Coinciding with the Autumn budget, MHCLG published a detailed consultation paper which proposes various extensions to existing PD rights, plus some new ones. The two most contentious proposals in the consultation paper are those that relate to the upward extension of existing buildings using the airspace above existing buildings for additional new homes and extensions and the suggested creation of a PD right to allow the demolition of existing commercial buildings and the redevelopment of the sites for housing. The consultation also seeks views on:

- new permitted development rights to allow greater flexibility for change of use;
- removal of the right to install new public call boxes and the associated advertising consent;
- increasing the height threshold for the installation of off-street electric vehicle charging points.
- making other existing time-limited rights permanent, and
- making an update to the Use Classes Order to reflect changes in high streets.

#### *Upward extensions*

3.3 The government is proposing a new PD right, subject to prior approval by the LPA, to allow additional storeys to be built above certain buildings, in particular those in commercial or residential (C3) use. A number of options for such pd are put forward. The corresponding potential criteria and rules for qualifying for this pd are imprecise and quite complicated. They raise a number of issues that need to be considered.

3.4 For example, under one option, this PD right could apply to the airspace above premises in a terrace of two or more joined properties where there is at least one higher building in the terrace. The roof of the premises extending upward would be no higher than the main roofline of the highest building in the existing terrace. This would have the advantage of providing a fixed local point against which any proposal could be considered and offer greater certainty on what is permitted.

3.5 An alternative approach would be to permit upward extensions more widely to a height no higher than the prevailing roof height in the locality. While this may extend the proposed right to a greater number of properties, it would not be possible to define the prevailing roofline in regulations; it would be a matter to be considered by the local authority as part of the prior approval. In doing so, the local authority would be able to define what it considered to be the prevailing roofline taking account of the local building types and heights and the extent of the area over which it should be determined. But this offers less certainty.

3.6 Local amenity impacts would have to be considered when reviewing a proposal to construct additional storeys. The government is therefore proposing that there should be a maximum limit of 5 storeys from ground level for a building once extended, with anything

higher requiring a planning application. (This would be based on an additional storey not exceeding 3 metres in height). There would also be potential issues where premises are not on level ground. The impact of adding additional storeys in these cases could be significantly greater on the amenity of neighbouring premises, for example from overlooking and overshadowing and on the character of the area.

- 3.7 The government would also like a permitted development right to apply to purpose built, free-standing blocks of flats (within Use Class C3) over 5 storeys in height they see this as providing an opportunity to deliver additional new homes through upwards extensions, but it would have to be determined whether there should be a limit on the number of additional storeys that could be added.
- 3.8 The government proposes that upward extensions should be permitted on premises in a range of uses that are compatible with C3 residential use. These could include existing C3 residential premises, those high street uses that can already change use to housing under a permitted development right (shops (A1), financial and professional services (A2), restaurants and cafes (A3), betting shops, pay day loan shops and launderettes (which are *sui generis*), offices (B1 (a)), and buildings in mixed use within these uses. The government also wants to explore whether there may also be other buildings whose use is compatible with the introduction of new homes. Given that they are usually located in residential areas or high streets, would premises such as health centres and buildings used for community and leisure purposes be suitable for inclusion in the permitted development right? It is suggested that out-of-town retail parks with a mix of shopping and leisure uses may also be suitable for upward extensions to provide additional homes.
- 3.9 Prior Approval would be required for these upward extensions. These would include matters such as flooding and contamination risks, transport and highways and the impact of additional new homes on existing occupiers and businesses, especially those that create noise and odours which may be a statutory nuisance. The prior approval would also assess the impacts of any works external to the building and within the curtilage, including fire escapes. Prior approval would also require consideration of the design, siting and appearance of the upward extension and its impact on the amenity and character of the area, taking account of the form of neighbouring properties. This may include considering whether the proposed development is of good design, adds to the overall quality of the area over its lifetime, is visually attractive as a result of good architecture, responds to the local character and history of the area and maintains a strong sense of place, as set out in paragraph 127 of the NPPF. But the government expects prior approval on design to be granted where the design is in keeping with the existing design of the building.
- 3.10 Prior approval would also consider the impact of the development on the amenity of neighbouring premises, for example, from obscuring existing windows, reducing access to light or resulting in unacceptable impact on neighbours' privacy from overlooking. It would also consider measures to mitigate these impacts, and enable the neighbours, including owners and occupiers of premises impacted, to comment on the proposal.
- 3.11 There would be an application fee calculated per extra dwelling created, to recognise the range and complexity of issues for local authority consideration.
- 3.12 An additional idea, which seems to have been almost afterthought, is that the proposed right to build upwards might possibly be drafted so as to allow householders to extend their own homes. However, the consultation simply throws the idea open for discussion and asks whether the PD right for upward extension of a dwelling should allow for the enlargement of an existing home and, if so, what considerations should apply.
- 3.13 *Commentary: It is very difficult to see any reason for this or how it might work. The list of considerations is little different to the considerations that would be made in a planning application. The planning fee would be reduced but it looks as though prior approval could be refused on design or amenity grounds which would be the more significant concerns in such developments. The main benefit for the development industry would be*

*that a local planning authority could not seek affordable housing and such pd would avoid any other Section 106 requirements (under current regulations it will usually be liable to pay CIL). This therefore becomes another form of development unnecessarily excluded from contributing to much needed affordable housing. A cynic might say that this is the only reason for this unnecessary change. Widening permitted development rights to the extent that is now canvassed by the government makes rather a nonsense of the whole concept of "permitted development".*

- 3.14 *The permitted development right would need to allow for the physical works required to construct or install additional storeys on a building. These could include works to strengthen existing walls, engineering works to strengthen existing foundations to support the additional storeys and works to provide safe access and escape for any additional new homes within the building's footprint. Separately it should also allow for works within the curtilage where it is necessary for access to the additional new homes.*

#### **Demolition of commercial buildings and replacement with housing**

- 3.15 In the Autumn Budget of 2017 the government committed to consulting on introducing a permitted development right that would allow the demolition of commercial buildings and their replacement with residential development.
- 3.16 The government now suggests that a PD right focused on smaller sites may be more practical. For example, in formulating such a PD right it might be necessary to consider the size of the site; the height and density of new buildings; the existing use of the site, the relationship with local plan policies for key sites and areas where the right should apply.
- 3.17 This would be subject to prior approval (possibly requiring the wider range of matters mentioned above to be considered than under current PD rights, including any necessary mitigation measures). Higher application fees would probably be payable.
- 3.18 *Commentary: The consultation proposal ignores the vital issue of loss of employment land. Many authorities, including Reading, protect such buildings through policy in the strongest possible terms. A situation that enabled such units to be lost to housing without consideration of the impacts on the wider economy would run directly counter to the national emphasis on economic growth, and particularly enabling small business growth.*
- 3.19 *The proposal is unrealistic in operational terms since a host of exceptions would be needed to mitigate the risk of homes being provided in unsuitable locations through noise, fumes, traffic, etc., and employment uses being constrained in their operations through having to have regard to the amenity nearby residential uses.*
- 3.20 *This would involve an overly complex and confusing system of control which will be unacceptable to developers, local communities and planning authorities. The planning fee would be reduced but it looks as though prior approval could be refused on design or amenity grounds which would be significant concerns. There would also be concerns over the impact of such developments on the local economy from loss of employment and from residents being introduced that could curtail existing operations through complaints etc. However, the consultation does seem to allow for consideration of the existing use of the site and planning policy considerations.*
- 3.21 *Again it is very difficult to see any reason for this or how it might work other than that this becomes another form of development unnecessarily excluded from contributing to much needed affordable housing.*

#### **Change of use from storage or distribution (B8) to residential**

- 3.22 Class P in Part 3 introduced a PD right for change of use from storage or distribution (within certain limits) to residential use in 2015 for a period of three years. The right was

extended in April 2018 for a further 14 months. At present Class P allows applicants to secure prior approval on or before 10 June 2019, and gives those with prior approval three years from the prior approval date in which to complete the change of use. The government now proposes that this PD right should be made permanent and that the existing conditions, including the matters requiring prior approval, should remain unchanged.

- 3.23 The consultation document does not, however, mention any intention to extend or make permanent the current PD right under Class PA for the residential conversion of light industrial buildings. This PD right is currently due to expire on 30 September 2020.
- 3.24 *Commentary: While these measures appear to have been little used in Reading, it is concerning that the government are proposing to make temporary measures permanent with no reference to any case studies or any justification for making these changes permanent.*

#### Larger extensions to dwellinghouses

- 3.25 The permitted development right for larger extensions to dwellinghouses, introduced in 2013, was originally intended to be purely temporary, but in 2014 this PD right was extended for three years, to May 2019. In view of its continuing popularity, the government now proposes that the right should be made permanent. The existing conditions would remain unchanged, but where prior approval of larger extensions is required under these rules, the government proposes to introduce an application fee of £96.

#### Public call boxes and advertisements

- 3.26 This is a subject that has proved to be controversial, and so the government is now consulting on the possibility that the right to erect phone boxes as PD might be ended. There is also a closely connected issue regarding advertising displayed on these boxes, and so an amendment of the Control of Advertisement Regulations is also on the cards.
- 3.27 *Commentary: This is a welcome measure.*

#### Increased size limits for off-street electric vehicle charging points

The Government proposes to increase the existing size limits for electric vehicle charging points located in off-street parking areas to facilitate rapid charging.

*Commentary: This is also a welcome measure.*

#### Changes to the Use Classes Order?

- 3.28 The consultation paper indicates that the Use Classes Order might be amended in relation to the various Class A uses. This might involve the amalgamation or adjustment of some of the existing town centre uses (A1, A2, A3, A4 and A5). It isn't a new idea, and has been mentioned several times in the past.
- 3.29 *Commentary: Any changes may result in local authorities losing control over drinking establishments takeaways and other town centre uses and make established town centre policies relating to town centre uses redundant. The proposed change would have very significant negative implications, in terms of increasing tensions between potentially incompatible uses, in terms of not adequately addressing significant impacts such as on traffic, and in terms of unacceptable loss of employment land, which could affect economic growth. The Council's strong view has always been that the change as proposed should not proceed.*

## **Part 2: Disposal of local authority land**

- 3.30 There are well established consent procedures in place where local authorities seek to dispose of surplus land at less than best consideration. The government are proposing to extend local authorities' freedoms to do so without seeking consent from the Secretary of State, thereby providing greater flexibility to dispose of surplus land in support of local development objectives.

## **Part 3: Canal & River Trust: Draft listed building consent order**

- 3.31 The government are proposing to make the first listed building consent order which will allow minor, routine works to the Canal & River Trust's listed waterway structures without the need for individual listed building consent applications. This will remove unnecessary applications from the system while ensuring that appropriate protection for listed buildings and their settings is maintained.

## **Part 4: New town development corporations: Draft compulsory purchase guidance**

- 3.32 The government are seeking views on draft guidance on the compulsory purchase powers of new town development corporations. It sets out, amongst other things, the factors which Ministers will take into account when deciding whether or not to confirm new town compulsory purchase orders. This is intended to provide additional clarity to those with an interest in proposed new settlements, including promoters, investors, infrastructure providers, landowners and local communities.

## **4.0 COMMENTARY**

- 4.1 Local planning authorities have never been happy with the significant widening in the scope of permitted development under the GPDO since 2013, particularly those provisions that permit various residential conversions. They are unnecessary, remove essential controls but, most importantly, besides significantly reducing planning fees, they remove developer contributions to the provision of much needed affordable housing and some essential infrastructure provision that would otherwise be sought through Section 106 agreements
- 4.2 Under the proposals in this consultation it looks as though issues that would have to be considered in relation to a prior approval application for these developments would be substantially similar to those that would apply to a planning application. It is difficult to really see what advantage is to be gained from making such developments PD, so why make the change? Widening permitted development rights to the extent that is now canvassed by the government makes rather a nonsense of the whole concept of "permitted development." The consultation seems very ill thought-out, designed to implement sound bites in the 2018 budget, and appears to almost be putting ideas out for consultation to see what comes back.
- 4.3 This report has provided limited initial commentary on the main changes proposed in the consultation. The 47 pages consultation document contains a total of 45 consultation questions on which the government is seeking a response. Officers are currently working on draft responses to a relevant selection of these questions. Committee is asked to delegate authority for final representations on the consultation to be agreed by the Chair of Planning Applications Committee and the Lead Councillor for Strategic Environment Planning and Transport. The deadline for responses to the consultation is 14<sup>th</sup> January 2019.

## **5. CONTRIBUTION TO STRATEGIC AIMS**

- 5.1 The Planning Service contributes to the Council's strategic aims in terms of:

- Seeking to meet the 2018 Corporate Plan objectives for “Keeping the town clean, safe, green and active.”
- Seeking to meet the 2018 Corporate Plan objectives for “Providing homes for those in most need.”
- Seeking to meet the 2018 Corporate Plan objectives for “Providing infrastructure to support the economy.”

## **6. COMMUNITY ENGAGEMENT AND INFORMATION**

6.1 There is no reference to these matters in the changes proposed.

## **7 EQUALITY IMPACT ASSESSMENT**

7.1 Where appropriate the Council must have regard to its duties under the Equality Act 2010, Section 149, to have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.2 There are no direct implications arising from the proposals.

## **8. LEGAL IMPLICATIONS**

8.1 These are dealt with in the Report.

## **9. FINANCIAL IMPLICATIONS**

9.1 There are no direct financial implications resulting from this report.