



**Prosperous Communities
Committee**

Tuesday, 26 January 2021

**Subject: Consultation Response to Supporting housing delivery and
public service infrastructure**

Report by:

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Purpose / Summary:

- To update on the content of the consultation; and,
- To share the draft technical consultation response for comment.

RECOMMENDATION(S):

- (a) Members are asked to endorse the conclusions of the report and the suggested response to each question.
- (b) Delegated authority be granted to the Assistant Director of Planning and Regeneration, Projects and Growth in consultation with the Chair of Prosperous Communities Committee to finalise and submit the response, on behalf of West Lindsey District Council, in the line with the content of this report and any comments made throughout the debate.

IMPLICATIONS

Legal:

(N.B.) Where there are legal implications the report MUST be seen by the MO

Financial : FIN/127/21/TJB

Whilst there are potential financial implications for the authority if the proposals result in updates to legislation, there are no financial implications in making the response to this consultation.

However, the consultation does propose a number of initiatives which may have a detrimental financial impact on planning fees;

- Greater flexibility in permitted development rights
- Introduction of more Prior Approval applications which attract a reduced fee

Statutory Planning Fees were last increased in January 2018 by 20% (previous increase 2012). The total budgeted income from Planning Fees is £950k

Staffing :

Whilst there are potential resource implications for the authority if the proposals become national policy, there are no resource implications in making the response to this consultation.

Equality and Diversity including Human Rights :

There are no impacts as a result of making a response to this consultation.

Data Protection Implications : None from this report

Climate Related Risks and Opportunities :

Whilst there are potential implications for how the Local Planning Authority plans for and manages development in the future and as a consequence of these proposals becoming national policy, there are no climate related implications in making the response to this consultation.

Section 17 Crime and Disorder Considerations :

N/A

Health Implications:

N/A

Title and Location of any Background Papers used in the preparation of this report:

Government Open Consultation

Supporting housing delivery and public service infrastructure -

<https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure>

Risk Assessment :

N/A

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1. Introduction

- 1.1. The Government launched the consultation on 3 December with a closing date for comments on 28 January 2021. The consultation seeks views on a further changes to the Planning System, related specifically to approaches to Development Management.
- 1.2. The Government proposes these changes in order to support and speed up housing delivery, economic recovery and public service infrastructure.
- 1.3. The consultation adds to a long list of planning related consultations and changes seen throughout 2020 including: the Planning White Paper, changes to calculating housing need (now confirmed), the Business and Planning Act 2020, the revision of the Use Classes Order and new permitted development allowances.
- 1.4. In all, 2020 was been a very dynamic year of change and adaptation in terms of planning, and 2021 also promises change with the recent MHCLG Chief Planner's quarterly letter reflecting that following assessment of the responses to the Planning White Paper, a programme towards legislative change will commence.
- 1.5. The current consultation relates to the following three themes:
 - Supporting housing delivery through the introduction of a national permitted development right to change the use of commercial, business and service use class (Class E newly introduced in September 2020) to residential; and,
 - Supporting public service infrastructure through the planning system; and,
 - Consolidation and simplification of existing permitted development rights.

This paper will briefly highlight some of the key issues and attached at **Appendix 1** are the draft responses to the consultation questions.

- 1.6. The introduction to the consultation document, like the Planning White Paper, is critical of the planning system, though perhaps more proportionate in terms of the commentary, and makes the case for the need for change being about delivering certainty and flexibility. But again, it also references that it wants a faster planning system that does not cause delays to the provision of public service infrastructure or housing delivery.
- 1.7. Decisions made quickly are not necessarily good decisions and there is always a caution, that the legacy of a decision on the built or natural environment has a long lasting effect and so should not be rushed, particularly in the context of Climate Change considerations, and in specific regard to these proposals – the vitality and viability of local retail centres.

2. Supporting housing delivery

2.1 In September 2020, the Government introduced a new use class E – Commercial, Business and Service Uses. This consolidated many of the existing retail and commercial uses, including shops (formerly A1), restaurants and cafes (A3), and offices (B1a) and assembly and leisure (D2) into a single new use class. This allows a building already in use for one of these purposes, to freely change to another use under class E without requiring the planning permission of the local planning authority to “provide greater flexibility and enable businesses to respond rapidly to changing market demands”. Drinking establishments such as pubs (A4) and hot food takeaways (A5) were not subsumed into the new use class E, and are no longer classified, becoming instead “sui generis” uses.

2.2 The consultation proposes a new permitted development right –for the change of use from any use within the new Commercial, Business and Service use class (use class E) to residential (use class C3), without requiring planning permission from the Local Planning Authority. This would come into effect from 1 August 2021.

2.3 Before changing the use of the building, an applicant would still need to seek the “Prior Approval” of the local planning authority only for specified elements of the development before work can proceed. A local planning authority cannot consider any other matters when determining a prior approval application. The consultation proposes the following matters for “prior approval” should apply to the new permitted development right:

- *Similar to other permitted development rights for the change of use to residential:*
 - *flooding, to ensure residential development does not take place in areas of high flood risk*
 - *transport, particularly to ensure safe site access*
 - *contamination, to ensure residential development does not take place on contaminated land, or in contaminated buildings, which will endanger the health of future residents*
- *To ensure appropriate living conditions for residents:*
 - *the impacts of noise from existing commercial premises on the intended occupiers of the development*
 - *the provision of adequate natural light in all habitable rooms*
 - *fire safety, to ensure consideration and plans to mitigate risk to residents from fire*
- *To ensure new homes are in suitable locations:*

- *the impact on the intended occupiers from the introduction of residential use in an area the authority considers is important for heavy industry and waste management*

2.4 The right would replace the current rights for the change of use from office (B1a) to residential (C3)¹, and from retail etc. with up to 150sqm floorspace to residential (C3)² which remain in force until 31 July 2021.

2.1. The proposals to allow commercial, business and service uses (Class E as of 1 September 2020) to change to residential use has its roots in the Prime Minister's 'Build, Build, Build' statement in June 2020 wherein he advocated such changes should be enabled without the need for planning permission. The consultation question is therefore somewhat stark in that respondents are not being asked if they agree, rather the permitted development proposal is somewhat of a *fait accompli*. That said, there are existing (more limited) provisions in place now and until July 2021 for retail, financial and professional service and offices to change to residential under the permitted development regime. In effect, the proposal would consolidate the existing regime but then widen it to allow restaurants, indoor sports venues and creches to benefit, as well as the amount of development permissible. It also proposes to remove the 150sqm existing cap in place on retail uses, and proposes that there will be no size limit on the buildings that could benefit from the new permitted development right, or number of new homes that could be created as a result.

2.2. The consultation focuses on the benefits to housing delivery from such changes but not on the economic impacts that may arise through the loss of commercial uses. Whilst some commercial premises become and remain vacant, there is some merit in approaching the potential for alternative uses, and there are benefits that can arise from new residential use within or in close proximity to existing retail / commercial centres.

2.3. However, the nationally prescribed right will further diminish the stock of commercial premises without any consideration given to the impact on the vitality and viability of an existing retail / commercial centre, or the potential loss of services upon the community. It will also be indiscreet and not concern itself with those premises that are economically important to a local renewal and/or recovery strategy, for example retail premises in the core of our towns. Class E already raises several questions about the permitted changes allowed in terms of a strategic and sustainable approach to appropriate land use though in broad terms its aims are understood. Further changes are a concern in that they could fundamentally undermine the stock of commercial premises within the district and any economic development strategies we may have or develop in the future.

3. Supporting public service infrastructure

¹ [Part 3, Class O](#) of Schedule 2, to the General Permitted Development Order (as amended)

² [Part 3, Class M](#) of the General Permitted Development Order (as amended)

3.1. Turning to the second element of the consultation, here it is proposed to assist public service infrastructure through the planning system and is directly linked to the Spending Review on 25 November 2020 in terms of new hospitals, schools, FE colleges and prisons. Reference here is also made to the “Project Speed”. And sadly, though consistent with other Government messages about the planning system, it is opined that securing planning permission for public sector infrastructure projects “can often take significant time, leading to project delays and cost increases”. There is no informed debate however on other aspects of the process such as commissioning, procurement, the efficacy of the applicants’ own internal project programme and processes, their decision taking etc.

3.2. The proposals in essence are to “ensure there is faster delivery immediately” and to this end the proposals are: to enable additional capacity on existing sites through amending permitted development allowances subject to certain parameters; to introduce permitted development provisions for existing prisons; and, to consider flexibility for MOD facilities where they are ‘behind the wire’.

3.3. Further proposals, again solely citing the length of the planning process as the justification, are made in respect of faster planning applications for public service developments. An average of 8 months to determine new prison development is cited; however, the time take to commission, evidence and procure the project is ignored but it is fair to say depending on the scale a project will take 6-24 months or more before an application is made: why are we then artificially imposing a 10-week timescale (as opposed to 13-week) on such a project? There is here a better balance to be struck whereby the public sector should be working collaboratively, to embed the planning process early on and to have an effective rolling pre-application programme to resolve issues and tensions. Moreover the planning process can then be better reflected in the programme and has more chance to be delivered.

3.4. Whilst the consultation recognises “that it is right for local planning authorities to make planning decisions in the normal way on proposals for more substantive public service developments”, it nevertheless goes on to propose a revision of the statutory timescales to 10 weeks (from 13/16 weeks) and reduce the statutory consultation periods to 14 days (from 21 days) amongst other proposals. Accordingly, the public would have less time to comment on a new public infrastructure proposal such as a new school or prison (14 days), then they would a neighbour’s extension (21 days).

4. Consolidation and simplification of existing permitted development rights

4.1. Finally, reflecting on the changes to the Use Classes Order in September 2020, there is a need to revise the permitted changes of use between classes. Previously, although in different use classes, certain changes of use were permitted.

4.2. The consultation seeks to review references to use classes throughout the General Permitted Development Order and to update individual rights, and articles as appropriate and allow greater flexibility within these.

4.3. It proposes to categorise existing permitted development rights into four categories:

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. 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. Example – Class O offices to dwellinghouses

Category 4 - the right requires detailed consideration. There are several rights that may fall into this category. (Some examples are given)

4.4. In principle a wholesale review of the use class order is welcomed and indeed is necessary, in view of recent changes to planning legislation including the recent revision of the Use Classes. However, whilst the consultation sets out a broad approach to the review, it lacks detail particularly in regards to category 4 proposals, and as such it is difficult to determine the full implications and comprehensively comment on the approach and potential implications.

5. Responses to the Consultation

5.1. A series of questions are posed across the three areas that the consultation relates to. **Appendix 1** contains proposed responses to the questions as appropriate and comments are invited on the technical responses proposed.

6. Conclusion

6.1. Whilst it is evident the Government wishes to drive forward a specific agenda, based on sustained criticisms of an apparent failing of the planning system, which in the main is unsupported by evidence, it remains important to reflect back to Government that in terms of the built environment, the planning process is but a single part and that there are other considerations and guidance that the Government could seek to enact and impose that would be of benefit rather than just the headlong dash for speed in one part of the process. It also needs to ensure that some key development management considerations that would have implications for the District and local community are not lost.

