

Report for Resolution

Report to Cabinet
24 November 2010
Report of Head of Planning and Regeneration
Subject Response to consultation on planning for schools
development

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Purpose

To consider the Council's response to the government's consultation on planning for schools development.

Recommendations

To agree the proposed response in appendix 1 to this report.

Financial Consequences

The financial consequences of this report are that the proposals for 2010-11 will be met from agreed budgetary provision

Risk Assessment

None.

Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority "Strong and prosperous city – working to improve quality of life for residents, visitors and those who work in the city now and in the future".

Executive Member: Councillor MacDonald - Environment

Ward: All

Contact Officers

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Background Documents

None

Report

Background

1. On 14th October the government launched a public consultation on 'Planning for Schools Development'. The consultation invites views on proposed changes to the planning General Permitted Development Order in relation to schools development, to complement the Government's 'free schools' policy. This consultation follows the Ministerial Statement made to Parliament by the Secretary of State for Communities and Local Government on 26 July.
2. This consultation is of particular interest to Norwich City Council as one of the initial proposals for free schools announced by the Secretary of State for Education is within the City Council area. Under current legislation a Planning Application of this nature would fall to be determined by the City Council.
3. The full text of the consultation document is available via the link below: <http://www.communities.gov.uk/publications/planningandbuilding/planningschoolsconsultation>. The closing date for responses is Friday, 10 December 2010. A number of specific questions are asked in the consultation document and these are attached as appendix 2 for clarity.
4. In summary the consultation seeks views on a number of options to change the planning system with the aim of reducing the hurdles faced in bringing forward school development and particularly "free schools". A number of possible options for doing this are proposed which by and large seek to removing the requirement for planning permission to obtained for changing the use of existing buildings in a wide range of uses to schools or "free schools".
5. A proposed response to the consultation is attached at appendix 1. The proposed response is critical of the basis for the consultation considering it to:
 - be based on a misunderstanding of the planning system;
 - be inconsistent with government policy towards localism and decentralisation;
 - potentially provide a perverse disincentive against building new schools;
 - fail to adequately control the impact of new schools; and
 - fail to adequately protect new schools from risk or disturbance arising from neighbouring uses.
6. None of the options for the changes proposed are considered likely to lead to an improvement on the current system. The response also seeks to suggest two further potential options for resolving any conflict that may exist.

Appendix 1 – Proposed Response to the Consultation Document

Response of Norwich City Council to the Planning for Schools Development consultation October 2010.

Background

Norwich City Council is a local planning authority. As a City Council in an area with two tiers of local government, it is only partly responsible for the planning of school development within its area. Planning matters concerning the development of schools in the control of the local education authority (Norfolk County Council) are generally dealt with by the County Council.

However, the City Council does have considerable experience of planning for school development. There are a significant number of private schools, nurseries and colleges which operate within the City. Norwich City Council also has a particular interest in this matter as one of the initial proposals for free schools announced by the Secretary of State for Education is within the City Council area and certain initial discussions with the promoter of the free school have been held in relation to a possible planning application which, under current legislation would fall to be determined by the City Council

Response to Consultation

The Consultation document sets out 4 options under consideration and asks 11 consultation questions. However, the range of options considered and questions asked appear unduly narrow to allow the issues raised to be properly considered. Therefore a response is given on these more general points before the detailed questions are responded to.

In summary, Norwich City Council is of the view that the consultation is seriously flawed. It appears to be based on a misunderstanding of the planning system, is inconsistent with government policy towards localism and decentralisation, may provide a perverse disincentive against building new schools, would fail to adequately control the impact of new schools and would fail to adequately protect new schools from risk or disturbance arising from neighbouring uses.

None of the options for changes proposed are considered likely to lead to an improvement on the current system and the document fails to consider two further potential options for resolving any conflict that may exist. These points are explained further below and are supplemented in the response to the consultation questions.

Operation of the planning system

The consultation is based on a misunderstanding of the planning system and how it operates. The system does not seek to put unnecessary bureaucratic hurdles in the way of development. It seeks to ensure that potentially conflicting land uses are adequately reconciled and workable solutions to problems are identified to ensure that land is managed in the public interest.

It is apparent from paragraph 7 of the document that the planning system is regarded as bringing with it “unnecessary red tape”. However, there is no analysis to set out why schools development is more affected by this than any other form of development.

Currently Norwich City Council deals with between 900 and 1,000 planning applications each year. Of these applications around 90% are determined within eight weeks and the vast majority are approved. In view of the importance of education, securing local support for proposals and the cost of school proposals it is highly doubtful whether planning procedures will frustrate sound proposals.

Inconsistent with policy towards decentralisation and localism

Para 4 of the consultation document makes it clear the government is committed to decentralising power and putting communities in control. Yet the proposals appear to seek to remove powers from local authorities where central government has approved schools and deny local communities any opportunity to have their say on significant proposals affecting them.

Although clearly there will be a need for free schools to be approved by government it is notable that the information requested as part of this process to date by the Department for Education (DfE) has only required the views of the local education authority and the new schools network to be obtained and evidence of local parental demand to be provided. There does not appear to be any process for the DfE to have regard to the views of either the local council or the local community on proposals. There would be appear to be no process proposed by which any individual who may be concerned with any aspect of the proposals may have these concerns considered.

If the process for bringing forward free schools denied any practical opportunity for people to have their say on significant local developments this would not only run contrary to the governments’ stated intentions but would also be liable to legal challenge.

Perverse disincentive for new build

If the apparent premise of the consultation paper, that the current planning system would frustrate free schools with unnecessary red tape, is accepted, it must be asked why the proposals seek to remove the requirement for planning permission only for the change of use of existing buildings to schools?

It would appear illogical that a large warehouse building could be converted to a school without the need for a planning consent whereas the redevelopment of a derelict cleared site for a new school would require consent. The proposals, if implemented, could lead to a perverse incentive for promoters of free schools to be encouraged to look towards creating schools through conversion of existing buildings ahead of new build, believing this to be less onerous due to the absence of a requirement for planning permission.

An outcome of this may be buildings which may be perfectly viable in their current use end up being converted to schools (potential resulting in the loss of

employment or community facilities) while nearby vacant sites (which may provide better sites for a new school) remain derelict.

Although in many instances old buildings are perfectly capable of being adapted to educational uses (and there are a number of good examples in Norwich of sensitive historic buildings being adapted for school use) this can bring certain educational comprises. In Norwich recent experience would suggest that the great improvements in educational standards can result from investment in new purpose built education facilities.

Failure to adequately control spatial impacts of schools on their surrounding areas and on planning policy objectives

Schools can have significant impacts on the communities they are located in. Generally these impacts may arise from transport or noise. Currently there are a number of ways these impacts can be mitigated through the planning process, conditions on use can be imposed requiring travel plans, drop off points, parking provision, acoustic fencing and landscaping, legal agreements can be entered into to ensure the provision of off-site highway works.

The ability to do this may be lost through the new proposals. One of the options in the consultation document proposes that an amendment to the General Permitted Development Order be made to allow conditions to be imposed to any development taking place or prior approval to be refused on traffic grounds only. It is not clear why this route is proposed only in relation to one of the options as logically this could apply to any of options 2-4.

It should be stressed that there are some circumstances where the traffic impacts of schools cannot be adequately mitigated and refusal may be justified. To give an example of the sort of circumstances where refusal may be necessary Norwich City Council has recently refused an application to change the use of a building to a crèche. Although the proposed use was perfectly appropriate in policy terms and the building was suitable for adaption to the use, it was located on a narrow street regularly used by emergency vehicles particularly the nearby fire station to access much of the north of the City and had no off road parking or drop off facilities. In the circumstances the highway authority objected strongly to the application on safety grounds fearing the use would result in the delay of emergency service vehicles and the City Council considered this amounted to an overriding reason that justified refusal of an otherwise acceptable development.

The consultation also fails to have regard to the impact of the proposals on existing planning policy. In accordance with government policy it is a feature of the planning system that it seeks to protect the vitality of viability of retail centres through protecting retail uses. Residential and employment uses are also often protected to ensure an adequately supply of sites for these uses.

Although it may be that the number of potential school sites would be such that they would be unlikely to have an impact on the overall supply of sites for housing or employment it is conceivable that the loss of certain key retail units to school use would have a severely detrimental effect on the vitality of certain local centres.

The consultation also fails to consider whether the establishment of schools without the need for planning permission could jeopardise the continued or future use of certain employment sites.

If schools are allowed to set up through conversion of existing buildings without the requirement for planning permission there would appear to be no process in place to ensure that schools are not created in places which will over time give rise to complaints about the impact of adjoining uses on the school. It could be easily envisaged how complaints from a newly established school could effectively force the closure of long established manufacturing or other industrial plants that result in noise, dust or other forms of environmental disturbance unacceptable to the school.

Even where no conflict is apparent at present if land around a proposed school has a consent allowing industrial uses, the presence of a school is going to significantly restrict the range of uses the site can be put to.

Failure to have adequate regard to the potential impact of other uses on schools

Under key matters for consideration, the proposals only address the impact of schools on their surrounding areas (through transport and noise particularly) and makes no mention how other factors may impact on schools. Although the consultation recognises (in para 27) that the planning system is broad in nature and about building functioning neighbourhoods, it appears to have no recognition of how it does this or some of the broader risks should schools be allowed to be created without the requirement to seek planning permission.

Among other things the planning system seeks to restrict the establishment of particular uses within areas where there are known risks due to neighbouring industrial uses/flooding or noise disturbance. It does this for practical reasons and in order to ensure UK compliance with EU law on major accidents (Seveso II Directive 96/82/EC).

Many industrial plants have safeguarding zones around them designed to minimise these risks and the requirement for planning consent ensures that these risks are properly considered in consultation with bodies such as the Environment Agency and the Health and Safety Executive. Schools would generally be regarded as inappropriate uses in areas where there is a residual risk of accident from hazardous installations or there is a significant risk of flooding. In many instances there may be existing development in these areas under which it is proposed no consent would be required to establish a school.

Without the requirement for planning consent there is no process where these risks can be systematically assessed and considered.

A related point also arises in relation to article 3 para 11 of the General Permitted Development Order which makes it clear that nothing can be considered as permitted development if an Environmental Impact Assessment is required. The consultation document makes no mention of this requirement. Proponents of school development should be required to consider this issue at an early stage in promoting development and seek the advice of the local planning authority as

appropriate. Although likely to be rare it is quite possible that the change of use of an existing building to a school will be sufficiently significant to require an Environmental Impact Assessment so could not be considered to be permitted development.

Two Further Possible Options

Two further possible options could be considered if it is accepted that the planning system is currently likely to frustrate delivery of educational policy objectives.

1. Consideration could be given to publishing further guidance (possibly in the form of a circular) in relation to treatment of free school proposals by local planning authorities. Such a document could make clear what weight was to be attached to Ofsted/DfE processes in relation to particular matters, what matters were to be addressed by these process and what issues were to be addressed by planning and also to make clear how community benefits offered by free schools were to be assessed.

Any such document would clearly be a significant material planning consideration in the handling of planning applications and although there would still be a requirement for planning permission for change of use it could make the process much clearer and more predictable in outcome. Provision could also be made for consideration of planning applications alongside DfE approval processes so that proposals for free schools should not be unduly delayed.

2. Consideration could be given to merging the DfE/Ofsted approval process with the planning process. Although this would run contrary to the stated intention of devolving decision making down to local communities it would provide a more robust technically sound process which the government would control and could readily limit to free school proposals only (see point in relation to Q10 below).

This would work if free school proposals were exempt from the need to apply for planning permission and DfE/Ofsted approval processes carried a deemed planning consent. This would require DfE/Ofsted processes to be amended to require consultation with the local planning authority and to give the public an ability to comment on proposals but would at least provide a workable consent framework to which conditions could be attached, legal agreements could be entered into and responsibilities under European legislation could be clearly discharged.

Answers to Questions 1-11

Q1 – No. The impacts commonly arising from all these uses are frequently significantly different to those arising from schools and may need to be controlled. There are particular problems associated with A and B class uses and how they relate to other planning policies.

Q2 – No. Areas where B2 uses are acceptable will rarely be suitable for schools.

Q3 – There would appear to be no greater case for allowing reversion to previous use for schools than any other use.

Q4 – Yes. A number of examples are given above but these are only a few and there may be many more.

Q5 – It is surely reasonable for a local community to be able to control or mitigate the transport impacts of development in their midst. This should apply if any of options 2-4 are pursued. It should be noted there are some issues with proposed amendments to the GPDO which need consideration. In particular section J2 para 7 should be amended to allow refusal of the prior approval where applicants respond inadequately to any request under para 3b)ii). Also the definition of “school education” should be reconsidered, all sorts of foreign language schools etc could arguably claim to be providing full time education suitable for the requirements of persons 16-19. It would be much simpler if the definition were “full-time education of persons of above compulsory school age but under 19”.

Q6 – Yes. At the very least it would reasonable for noise mitigation measures to be controlled.

Q7 – No. If a local authority chose to restrict permitted development rights by way of an article 4 direction the risks would be quite significant. It is possible that they may be susceptible to applications from speculative developers seeking to claim the difference in value between the current use and school use of a building, even where there was no reasonable prospect of a school being created or any evidence of local demand.

Q8 – It is not clear how this could be achieved under any of the proposed options. If the government chose to pursue the first of the two additional options listed above it would have the opportunity to give guidance on this issue.

Q9 – Option 1. Options 2-4 are all regarded as unacceptable for the reasons outlined above.

Q10 – If these proposals were to be introduced it would be preferable to limit them to free schools only as free schools will be subject to more rigorous DfE processes. However, if any of options 2-4 are followed it will be difficult if not impossible to legally distinguish between free schools and other schools. Thus any new approach will almost inevitably apply to free schools, LEA schools, and private schools.

Q11 – No

If you have any queries on this response or need any further information please contact Graham Nelson on 01603 212530 or e-mail grahamnelson@norwich.gov.uk.

Norwich City Council
[Insert date]

Appendix 2 – Consultation Questions

Q1. Do you think that the uses listed under option 2 should be given a permitted development right to convert to a school?

- A1 – shops
- A2 – financial and professional services
- B1 – business
- B8 – storage or distribution
- C1 – hotels
- C2 – residential institutions
- C2A – secure residential institutions
- D2 – assembly and leisure

Q2. Do you think that the further uses listed under options 3 and 4 should be given a permitted development right to convert to a school?

- A3- restaurants and cafés
- A4 – drinking establishments
- A5 – hot food takeaways
- B2 – general industrial
- C3 – dwellinghouses
- C4 – houses in multiple occupation
- Sui generis uses

Q3. Should a use converting to a school for a temporary period retain the right to revert to the previous use if it does so within five years?

Q4. Would allowing the following uses to convert to a school use without the need to apply for planning permission have any unintended consequences?

- A1 – shops
- A2 – financial and professional services
- B1 – business
- B8 – storage or distribution
- C1 – hotels
- C2 – residential institutions
- C2A – secure residential institutions
- D2 – assembly and leisure
- A3 – restaurants and cafés
- A4 – drinking establishments
- A5 – hot food takeaways
- B2 – general industrial
- C3 – dwellinghouses
- C4 – houses in multiple occupation
- Sui generis uses

Q5. Should the local planning authority have to approve a transport assessment before the permitted development right can be activated for changes from some or all non D1 uses?

Q6. Do you think that there are any other matters that the conditions should address?

Q7. Should the compensation provisions contained in section 189 of the Planning Act 2008 be applied to change of use to a school, if a permitted development right is given?

Q8. The Government would like to permit schools to co-exist with certain dual uses, but not with others. Do you have views about whether and how this could be achieved?

Q9. Which is your preferred option and why?

- Option 1
- Option 2
- Option 3
- Option 4

Q10. Do you think these proposals should be applied solely to new free schools or to all schools? Why?

Q11. Are there any further comments or suggestions you wish to make?