

Report to	Sustainable development panel 25 September 2013	Item
Report of	Head of planning service	6
Subject	Greater flexibilities for change of use – Response to government consultation	

Purpose

This report is about the recent consultation by the Department for Communities and Local Government (CLG) which seeks views on further prospective changes to planning rules removing the need for permission for particular changes of use, following on from wide ranging planning deregulation already introduced earlier this year. A response to this consultation is proposed on behalf of the city council.

The report also considers recent requests to the council to use their powers under the Sustainable Communities Act to seek greater regulatory control over certain planning matters. It suggests that rather than seeking to make a formal proposal to the government under the Sustainable Communities Act to achieve this, a letter should instead be written to the planning minister expressing support for some of the proposals put forward and suggesting that the government considers them alongside the response to the change of use consultation.

Recommendation

To consider the report and:

- (1) recommend cabinet to endorse the proposed council response to the CLG consultation on greater flexibilities for change of use, as set out in Appendix 1,
- (2) suggest that an appropriately worded covering letter to the planning minister to accompany this response be prepared, pointing out that in addition to considering greater flexibilities within the use classes order, a more balanced view of the operation of the order should be taken, to enable local communities to influence the development of their retail areas and neighbourhood facilities.

Corporate and service priorities

The report helps to meet the corporate priority a prosperous city and the service plan priority to respond appropriately and effectively to ongoing legislative changes.

Financial implications

None.

Ward/s: All

Cabinet member: Councillor Stonard – Environment and development

Contact officers

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Background documents

None

Report

Introduction

1. On 6 August 2013 the Department for Communities and Local Government (CLG) published a consultation on further reforms to planning regulations – *Greater flexibilities for changes of use* – which would build upon those reforms already introduced in 2012 and 2013. Comments are invited on the proposals before the closing date of 15 October. The report sets out the proposals and summarises their implications, proposing a response on behalf of the city council (attached as Appendix 1). The consultation can be found online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226632/Greater_flexibilities_for_change_of_use.pdf
2. Whilst the government has been pursuing an agenda aimed solely at introducing greater flexibilities in the planning system the city council has also received recent approaches from organisations requesting that the council uses their powers under the Sustainable Communities Act to put forward proposals to the government for greater planning restrictions on various matters. In particular:
 - the Campaign for Real Ale (CAMRA) has requested that the council should seek greater planning restrictions on the demolition or change of use of pubs; and
 - Unlock Democracy has requested that the council should seek greater controls over the establishment of betting shops.

Background

3. The government has recently introduced a wide ranging package of deregulation of national planning rules affecting new development and changes of use of premises, enacted through the Town and Country Planning (General Permitted Development) (England) Orders 2012 and 2013. The most recent round of deregulation came into force on 30 May 2013 and is discussed in more detail in a separate report to the panel. The 2013 order has significantly extended the scope of “permitted development” by removing the need to apply for planning permission for many changes of use that previously required it, and increasing the size limits for permitted changes of use of business premises in planning use class B.
4. Of particular concern are the new provisions in the 2013 Order removing the need for planning permission to convert offices to housing until May 2016 (new Class J). This will tend to impact emerging local policies seeking to protect existing high-quality office space and requiring new offices to be provided on key development sites in the city. Members will recall that in February this year the city council submitted an unsuccessful bid for three areas of Norwich to be exempted from this part of the 2013 Order. Work is currently being undertaken to assess the extent of developer interest in office to residential conversion as part of an evidence update supporting the emerging local plan. This work is referred to in a separate report to Sustainable Development Panel (‘Local Plan and Joint Core Strategy update’).
5. The proposals now being consulted on would further extend the scope of permitted development so that the following would no longer need permission:

- change of use of small shops and financial and professional service premises to housing (permitted outside conservation areas only and subject to a prior approval process on design, economic impact and impact on town centre character),
 - change of use of shops to banks and building societies (use class A2), subject to there being no right to make further subsequent changes to any other type of financial and professional service use in the same class;
 - change of use of redundant agricultural buildings to housing, within certain size and numeric limits and with the proviso that the normal permitted development rights to erect new agricultural buildings within the same landholding would be suspended for ten years following the change of use'
 - change of use of offices, hotels, residential institutions, secure institutions and leisure uses to children's nurseries. This proposal; would extend the same change of use rights to children's nurseries as those which already apply to new state funded schools under the 2013 Order and would be subject to the same prior approval tests in relation to transport and highways, noise and contamination;
 - change of use of agricultural buildings (within certain size limits) to state funded schools and children's nurseries providing early years' childcare.
6. The proposed prior approval process for retail to residential conversions would be similar to that already introduced for permitted office to residential changes, but with some salient differences – and apparent anomalies (see below). The government's reasoning in extending the simplified prior approval system is that councils would retain a degree of control over proposals which did not comply with local plan policies on design or which, in their opinion, would have a significant impact on the economic health of the town centre or the provision of an adequate range of local services. Prior approval could be withheld, and a full application required, for schemes which failed to meet these checks.
7. It is expected that the changes now proposed, if agreed, would come into effect in April 2014 through a further revision to the General Permitted Development Order. The following section sets out the individual proposals in the consultation with officer comments on the implications for the council and a summary of the proposed response. The full response is attached to the report as Appendix 1.

Details of the proposals

8. **Proposal:** To introduce a permitted development right to change premises in use class A1 (shops) and A2 (financial and professional services to class C3 (housing) without planning permission, subject to a maximum floorspace of 150 sq.m, the housing to be provided as a single dwelling or a maximum of four flats, but not a house in multiple occupation. Building work "sufficient to allow the conversion to residential use" would also be permitted. The rights would not apply in Article 1(5) land (that is, conservation areas, National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites). Prior approval would be needed to ensure the proposal complies with local plan policies on design, materials and outlook; further prior approval would be needed allowing account to be taken of the impact of the loss of the existing retail or service use on the economic health of the town centre, on the provision of local services or on local character. Building work associated with the change of use would also become permitted development.

Comment: In Norwich the whole of the central shopping area and the large district centre of Magdalen Street/Anglia Square falls within the City centre conservation area. Accordingly, the proposals would not apply in the city centre and would not have a significant impact, since planning permission would still be needed for the change. Officers welcome the government's decision not to apply the new flexibilities in conservation areas since the attraction of Norwich and other historic towns depends very much on the retention of an attractive and vibrant range and choice of city centre shops and services, which the council's existing and emerging planning policies should help to maintain whilst allowing a responsive and flexible approach to change. However, notwithstanding the prior approval process we consider that the council's ability to resist such proposals in the city centre could be compromised to some extent, since permission would not be needed at all in other locations. Reasons for refusal of applications for retail to residential changes in the city centre might therefore need to be based more obviously on impact on the character and appearance of the conservation area rather than on impact of the loss of a shop on retail function or the range and choice of services.

We are concerned also that the proposals might have unintended consequences by encouraging opportunistic residential conversion schemes which could be more lucrative for property owners and could drive out viable local shops as well as encouraging the reuse of redundant ones. We consider that the proposed prior approval process on design does not pay sufficient attention to amenity considerations and might result in a poor standard of internal and external layout and poor living conditions for residents, particularly where neighbouring existing uses cause noise or odour nuisance (e.g. pubs, clubs and takeaways). We consider that a prior approval test on "design" should include a test of whether the proposal would deliver an acceptable standard of amenity and living conditions for residents, not just through its design, but through its layout, location and relationship to adjacent uses. Related to this, officers have significant concerns about inconsistencies in the prior approval process generally. For example, under these proposals, single dwellings provided through permitted change of use of small shops would have to meet prior approval tests on economic impact and impact on town centre character, whereas the wholesale conversion of large city centre office buildings to housing which is already permitted by the 2013 order does not need to meet such a test. These issues are expanded on in the detailed response in Appendix 1. We consider also that it may be difficult to define precisely what is meant by "building work sufficient to allow the conversion to residential use" when this may vary widely in different circumstances.

9. **Proposal:** To introduced a permitted development right to change premises in **use class A1 (shops)** to **banks and building societies** without planning permission, subject to there being no right to make subsequent changes to other financial and professional service uses in class A2. CLG are seeking comments on the most appropriate means of distinguishing banks and building societies from other A2 uses and an upper size threshold for such changes of use would be considered.

Comment: Banks and building societies are currently part of the financial and professional services use class (A2) and planning permission is needed to change a shop (Class A1) to a bank or building society. This proposal would make changes of use from shops to banks and building societies permitted development, although they would remain in the A2 use class and there would be no right to use the premises subsequently for any other purpose in Use Class A2.(e.g. betting shops, pay day loan stores, estate agents and pawnbrokers or "cash for gold" type businesses) . The government's reasoning for this change is that banks and building societies are

becoming much more “retail” in character. They now provide attractively designed shop fronts appropriate to the high street and offer their services direct to the public in a modern retail-style environment rather than, as previously, being characterised by blank office-like frontages which were considered to break up the retail character of a street. In 2007 the city council successfully defended a refusal of permission for a building society branch in the Haymarket on appeal on this basis. Under these proposals that same scheme would now be permitted development.

Officers accept the reasoning for the proposal but consider it could be problematic in practice. The purpose of the use classes order is essentially to group uses with similar characteristics and impacts into the same class so that changes can be freely made between them without planning permission. In seeking to treat banks and building societies as a “special case” within class A2 the government is departing from that principle and arguably introducing less flexibility, not more. The intention is to “closely define” banks and building societies through regulation, but any such regulation might need to specify in some detail which A2 uses were sufficiently distinct from banks and building societies to require permission and there could be significant “grey areas” subject to dispute. The effect would be that there could be more pressure to change the use of bank and building society premises to other uses in class A2 which could be significantly more harmful, even though that is not the intention.

It is evident that the government now considers modern high street banks and building societies to be essentially similar in character and impact to shops. Therefore, we suggest that rather than retaining them within use class A2 and framing a complicated definition which might be regularly disputed, it might make more sense to reclassify banks and building societies into a retail subcategory within class A1. For example, traditional shops might be use class A1(a) and retail banks/building societies offering a service to the visiting public A1(b). Post offices, which are already classed as shops, could also be put in the latter group. Under this model changes from traditional shops could be made freely but a limit could still be applied which would prevent changes between A1(a) and A1(b) over a certain size threshold. Permission would still be needed for external alterations to the building and full planning control would be retained over subsequent changes to other financial and professional services, which would remain in use class A2 and thus still need permission in all cases. This would achieve the same result as the government’s current proposal with potentially fewer complications. However this may be a risky strategy given that there would be no control over the proliferation of banks and building societies in shopping areas.

Accepting that banks and building societies are analogous to shops would be a clear departure from the council’s policy approach up to now, which has in some cases successfully resisted them in shopping areas as potentially harmful. Members’ views on this issue would be welcome.

It should be noted that banks and building societies would be affected by the proposed permitted development rights to change A1/A2 uses to housing, but those rights would not apply in conservation areas (including the city centre) and would not apply to the majority of larger branches because of the 150 sq.m maximum size limit proposed.

10. **Proposal:** To introduce a permitted development right to change **redundant agricultural buildings** to housing without planning permission, subject to limits on

size and numbers and prior approval on design and layout, transport and highways impact, contamination and flooding. The existing permitted development rights to construct new agricultural buildings within the same landholding would not apply within a period of 10 years after the residential conversion took place.

Comment: *Officers do not propose to comment on these proposals as they would not affect Norwich as a predominantly urban authority.*

11. **Proposal:** To introduced a permitted development right to change the use of **offices** (use class B1), **hotels** (C1), **residential institutions** (C2), **secure institutions** (C2A) and **leisure uses** (D2) to registered **children's nurseries** providing early years childcare. Such proposals would be subject to the same prior approval tests as those applying to state funded schools provided through change of use of these categories of premises, which became permitted development by virtue of the changes to planning regulations in May 2013. The relevant prior approval tests are noise, highway and transportation impact and contamination. Building work associated with the change of use would also become permitted development.

Comment: *Officers are sceptical about the merits of this move. We acknowledge the theoretical benefits of this proposal in terms of increasing opportunities for childcare. However, experience in Norwich shows that nurseries and other such childcare facilities attract a high number of car trips and lead to significant problems of traffic congestion and vehicular conflict during morning and afternoon peaks. This is felt more strongly when such additional peak trip movements occur in busy and already heavily congested residential and mixed use areas. Since the permitted changes would now extend to offices, there would be few safeguards to prevent childcare nurseries being set up in former offices on industrial estates, for example. The prior approval process associated with these changes is not sufficiently robust and has not been adequately tested in relation to those changes of use already permitted by the 2013 order. We consider in particular that the tests in relation to "transportation and highways impacts" are concerned mainly with the overall impact of a proposal on traffic on the local highway network and not necessarily with maintaining highway and pedestrian safety in and around the site (especially the safety of young children, which would be a key issue here). We also feel that the lack of any opportunity to assess flood risk through the prior approval process for permitted changes to schools already introduced and changes to nurseries now proposed is a major anomaly. In certain circumstances schools and nurseries provided through the new change of use rights could result in the increased exposure of children and other users to flood risk compared to a previous lower density use - and there would be no opportunity at any point to assess and mitigate those risks through planning powers.. We would urge the government to refrain from extending these provisions to childcare facilities until any adverse impact of the 2013 changes have been properly assessed.*

As is the case with the proposed retail to residential changes (paragraph 8 above) we consider that it may be difficult to define what is meant by "building work connected with the change of use". This is likely to be more of an issue with nurseries as (unlike the proposed rights for A1/A2 uses to change to housing) there is apparently no upper size limit proposed and building works might need to be more extensive. We would urge the government to clarify this if it is decided to proceed with the proposal.

12. **Proposal:** To introduced a permitted development right to change the use of **agricultural buildings** to children's nurseries (as above) and state funded schools, subject to prior approval checks on noise, contamination and highway and transportation impacts, and subject to an upper size limit of 500 sq.m . Building work associated with the change of use would also become permitted development.

***Comment:** Officers do not propose to respond in detail on this proposal as it would not directly affect Norwich as a predominantly urban authority. However we consider that to introduce a permitted development right to change the use of agricultural buildings to state funded schools and nurseries in addition to the uses already allowed through the 2013 Order would tend to encourage an unsustainable pattern of development and increase the need to travel by car, contrary to the advice in the NPPF. We also consider it anomalous that there should be an upper size limit on the conversion of agricultural buildings to nurseries but none on conversion of commercial buildings to the same use.*

Requests for additional restrictions on the change of use of certain premises

13. On 28 August 2013 the city council received an approach in writing from the Campaign for Real Ale (CAMRA), requesting the council to make a proposal to central government under the Sustainable Communities Act 2007 for greater planning restrictions on the change of use or demolition of local pubs. Under CAMRA's proposal, planning regulations would be amended so that planning permission would be needed before community pubs were allowed to be converted to betting shops, supermarkets, pay day loan stores or other uses, or were allowed to be demolished.
14. The Sustainable Communities Act gives councils the power to make proposals to the Secretary of State, as to how government can 'assist councils in promoting the sustainability of local communities'. Schedule 2 of the Act lists a wide range of matters that can potentially contribute to local sustainability and may be the subject of such proposals, among which are "the provision of local services", "the increase in social inclusion", "measures designed to increase community health and well being" and "planning policies which would assist with the purposes of this Act". Local services are defined as including public houses.
15. Sustainable Communities Act regulations which came into force in July 2012 require councils to consult representatives of interested local persons on proposals and try to reach agreement with them before submitting proposals for consideration by government. The Secretary of State must then consider proposals and decide whether to implement them in full or in part, and to issue decisions on proposals with reasons, and to explain the action that would be taken to implement the proposal.
16. The current approach by CAMRA is part of a campaign to raise awareness among councils of the powers available under the Sustainable Communities Act to propose reforms to planning rules affecting pubs. There are a number of other CAMRA campaigns running in parallel, including lobbying for a reduction in beer duty, pressing for reforms to the legislation on restrictive covenants on pubs, highlighting those local authorities which have progressive planning policies on pub protection and urging local communities to register their local pub as an Asset of Community

Value, enabling the local community to challenge the disposal of pubs and bid to acquire and run them in certain circumstances.

17. Furthermore the Council has also received a number of approaches from other organisations and individuals seeking that it use powers under the Sustainable Communities Act to request government to introduce restrictions to the planning system or new taxation regimes. A similar approach to that made by CAMRA has been made by Unlock Democracy, concerned about the proliferation of betting shops in shopping areas which has been in a significant problem in some areas in particular some of the London boroughs.
18. As any proposals made under the Sustainable Communities Act require extensive research, consultation and engagement with local communities there is some concern over the potential resource implications of seeking to undertake several of these. It also should be noted that submission of proposals under the Sustainable Communities Act provides no guarantee of timetable for a response or that the response will be positive.
19. In this context it has to be questionable whether the submission of proposals under the Sustainable Communities Act, irrespective of how well founded, is worthwhile particularly when they run against the general thrust of current government policy seeking to liberalise the planning system.

Issues to consider

20. Pubs are defined in planning law as “drinking establishments” within class A4 of the Use Classes Order. Class A4 does not just cover traditional local pubs of interest to CAMRA but a wide range of other leisure pub/bar formats (for example, many of the late night bars along Prince of Wales Road and Riverside which cannot be classed as nightclubs would fall within A4). Even before the most recent round of changes to the General Permitted Development Order in 2013, it was possible to permanently change the use of a pub to a restaurant/café (class A3) a financial and professional service use (class A2) or a shop (class A1) without requiring planning permission – longstanding permitted development rights which CAMRA are lobbying government to remove. The regulatory changes brought into force in 2013 introduced further flexibilities enabling pubs to change their use to offices (use class B1) for a temporary period of two years as part of general provisions on temporary flexible uses. Under the additional flexibilities now proposed it would also theoretically be possible to convert a pub to housing under the new permitted development rights, after first changing it – however briefly – to a shop or financial/professional service use.
21. Unless it is a listed building and/or in a conservation area there is nothing within planning powers to prevent the closure and total demolition of a local pub. In the case of pubs both within and outside conservation areas which are - or are proposed to be - locally listed, the city council’s adopted and emerging local plan policies require the heritage interest of the building to be respected. Under emerging DM policy DM9 that interest must be recorded on the Historic Environment Record and where practicable, safeguarded and protected in any development scheme affecting it. This may require the retention or recording of any notable features in the building, but does not and cannot require the building itself to remain in use as a pub or indeed require the building to be retained at all.

22. As noted in our response to the consultation, betting shops fall within the financial and professional service use class (Class A2) and permission to establish them through change of use of shops would still be necessary irrespective of whether the changes now proposed go ahead or not. The impact of betting shops on the retail function and the character and appearance of the city centre and local and district shopping centres can be controlled through existing and emerging planning policies seeking to manage the proportion of non retail uses in shopping areas as well as those on design and external appearance. Restrictive conditions may also be imposed in appropriate circumstances preventing the subsequent change of use of approved cafés, pubs and takeaways to A2 use, which could otherwise happen without permission. However we have noted in previous consultation responses to prospective changes to the use classes order that with the advent of in store gaming machines, many betting shops are assuming the characteristics of amusement arcades (which are a separate “sui generis” use in planning law and always need permission). There is certainly a case to be made that the very specific and potentially harmful impacts of betting shops on shopping areas may need special consideration.
23. It should be noted that the current government consultation on changes of use does not include any new proposals directly affecting pubs, although under existing permitted development rights (and the provisions for temporary change of use introduced in May), smaller pubs could in theory be lost to housing if owners first took advantage of the rights already available to change them to shops or financial and professional service uses and then convert them to housing with the additional retail-to-residential change rights now proposed. If members wish to pursue an initiative to lobby for a change in planning rules affecting pubs on this basis, officers consider that it would be more practicable to raise the issue in a response to this consultation which the government is committed to assessing before further changes are introduced next April. A proposal made under the Sustainable Communities Act would require extensive consultation and agreement with the local community on the content of any proposal before it could be submitted to government with no guaranteed timescale for a response. Officers are mindful that a request to introduce more stringent planning restrictions on the change of use of pubs would tend to run counter to the direction of travel in national policy, and the substance of this consultation, which favours further deregulation and greater flexibility.
24. National planning advice is that local planning authorities must have policies to “*guard against the unnecessary loss of valued community facilities and services, particularly where this would reduce the community’s ability to meet its day to day needs*” (NPPF paragraph 70). To this end, both existing local plan policies and emerging policies for Norwich seek to protect community facilities – including selected historic and community public houses - from loss or change of use. In relation to pubs, prospective developers are required to submit evidence on the viability and practicality of retaining the pub in its current use (or using it for an alternative community use) before permission can be granted for redevelopment or change. Consequently policies will give the council a degree of control over proposals which threaten identified pubs which are considered to have historic or community value, albeit that these policies can only be exercised where a change needs planning permission.
25. In theory, public houses can also be nominated by the local community for registration as Assets of Community Value (ACV) which would mean that designated community bodies could challenge their sale or disposal and bid to take over their running. Inclusion of a pub, or any other facility, on the statutory ACV register would

need to be confirmed by the council. ACV legislation is entirely separate from planning. The fact that a pub may be registered as an asset of community value cannot be regarded as a material planning consideration in decisions on planning applications unless the pub is also protected by planning policy or has some other form of statutory protection (e.g. a listed building). Consequently the Assets of Community Value regulations in most cases might only be able to delay the sale or disposal of a pub and not prevent its loss.

Conclusion

26. There is a good case for supporting the introduction of certain restrictions on the change of use alongside the greater flexibilities being proposed. However, that in the circumstances it is considered preferable if this is done by way of response to the current consultation rather than formal submissions under the Sustainable Communities Act.
27. On balance, officers consider that in Norwich there may be sufficient safeguards in place in local planning policy and other mechanisms available to resist the loss of pubs and the proliferation of betting shops without lobbying for a wholesale change in national planning rules, which would present its own complications and financial risks for the council in the event of local orders and exemptions from permitted development regulations having to be introduced in future. It is suggested that members recommend to cabinet that
 - a general comment is included in the response to the current consultation urging the government to consider appropriate means of further restricting the change of use or loss of pubs and the proliferation of betting shops, and
 - a letter is sent to the planning minister expressing concern about these matters and urging the government to take a more considered approach to the issues raised, in particular highlighting the apparent contradictions between the drive for continuous planning deregulation and the initiatives to put decisions about what happens to the community assets that they value in the hands of local people;

APPENDIX 1 – Proposed consultation response



Department for
Communities and
Local Government

Consultation questions - response form

We are seeking your views to the following questions on the proposals to support sustainable development and growth through encouraging the reuse of empty and redundant existing buildings where the original use was no longer required or appropriate.

How to respond:

The closing date for responses is 15 October 2013

A response form is available on the DCLG website, and can also be submitted via Survey Monkey at:

<https://www.surveymonkey.com/s/NHXVK66>

Responses should be sent preferably by email:

Email responses to: Changeofuse.planning@communities.gsi.gov.uk

Written responses can also be sent to:

Saima Williams

Consultation Team (Greater flexibilities to change use)

Planning Development Management Division

Department for Communities and Local Government

1/J3, Eland House

Bressenden Place

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About you

i) Your details:

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ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response ☒

Personal views ☐

iii) Please tick the box which best describes you or your organisation:

District Council ☒

Metropolitan district council ☐

London borough council ☐

- Unitary authority ☐
- County council/county borough council ☐
- Parish /community council ☐
-
- Non-Departmental Public Body (NDPB) ☐
- Planner ☒
- Professional trade association ☐
- Land owner ☐
- Private developer/house builder ☐
- Developer association ☐
- Residents association ☐
- Voluntary sector/charity ☐
- Other ☐

(please comment):	
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**iv) What is your main area of expertise or interest in this work
(please tick one box)?**

- Chief Executive ☐
- Planner ☒
- Developer ☐
- Surveyor ☐
- Member of professional or trade association ☐
- Councillor ☐
- Planning policy/implementation ☒
- Environmental protection ☐
- Other ☐

(please comment):	
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes ☒ No ☐

ii) Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Question 1: Do you agree there should be permitted development rights, as proposed, for shops (A1) and financial and professional services (A2) to change use to a dwelling house (C3) and to carry out building work connected with the change of use?

How do you think the prior approval requirement should be worded, in order to ensure that it is tightly defined and delivers maximum benefits?

Yes ☐ No ☒

Comments

We welcome the proposals not to apply these new extended permitted development rights on Article 1(5) land (conservation areas), for the reasons stated against question 6 of this response. However we have misgivings about the principle of extending permitted development rights for A1/A2 to C3 changes in other areas without further safeguards.

We consider that it would be wholly inappropriate for housing to be introduced where there are significant existing problems of noise and odour nuisance from adjoining uses such as late night leisure uses (for example night clubs, pubs and takeaways) or commercial uses (for example motor repair premises). These issues would be satisfactorily addressed by appropriate policies in our adopted and emerging local plan, but could not be influenced by those policies in circumstances where a change of use did not require permission at all, or where the prior approval process did not offer sufficient safeguards.

We note that the prior approval process re design refers to “outlook” but the generally accepted meaning of “outlook” concerns daylighting and adequate distance from adjoining properties to prevent overlooking, rather than extending to consider residential amenity and living conditions in general. We consider that a prior approval process focused solely on design would not be capable of delivering housing of an adequate standard through unregulated change of use. It could not guarantee a high standard of amenity for residents nor prevent exposure to noise nuisance where problematic neighbouring uses exist. The changes would allow unregulated changes of use in many smaller premises which might have a restricted layout and little opportunity for external amenity space (for example the provision of adequate cycle parking, servicing and refuse storage) unless these matters were specifically detailed and itemised as part of the prior approval checklist.

If it is decided that a prior approval process is the way forward, then a prior approval test on “design” should certainly include a test of whether the proposal would deliver an acceptable standard of residential amenity and living conditions for prospective occupiers, not just through its design, but through its location and relationship to adjacent uses.

Further, we would urge the government to seriously consider aligning the prior approval checks for office-to-residential conversions already allowed by Class J of the 2013 general permitted development order with those smaller scale changes now proposed, as well as reviewing the approach to prior approval generally (see Q6). It is anomalous that small new dwellings provided through the proposed permitted change of use from A1/A2 would be subject to a prior approval process which can consider issues of design and economic impact but cannot consider flood risk, traffic, noise exposure or pollution. Neither is there any scope to consider the economic impact of the unregulated loss of a large quantum of office space on the economic health of the town centre, when that impact might be far more significant than the unregulated loss of a single shop. We consider that flood risk, traffic, pollution, economic impact, town centre character, design and amenity considerations should be part of the prior approval process for all categories of permitted change of use introduced through the 2013 Order and the new ones proposed in this consultation.

Amenity issues are especially relevant to office to residential conversion - external works associated with office to residential conversions under class J still require planning permission, but there is no guarantee that new homes provided this way would, or could, offer prospective occupiers an acceptable standard of amenity and internal/external layout. The additional freedoms afforded by Class J have resulted in prior approval applications for conversion of redundant office premises including a substantial one in the heart of the city’s night club area (the late night activity zone) where there are ongoing problems of late night noise, disturbance and periodic public disorder. Some of these issues are expected to be addressed by a proposed Early Morning Restriction Order (EMRO) but it is evident that the new rights for office to residential changes will result in housing being located inappropriately. Living conditions for prospective occupiers could well be very poor if not intolerable given that even the best standards of soundproofing may not be capable of delivering housing which is habitable.

We are also concerned that the opportunities for residential conversion of small shops and A2 uses might have unintended consequences since a proposed residential use could be significantly more lucrative for property owners than an existing commercial one. Although the proposals might lead to greater use of vacant retail premises (old shops) for housing they could also result in existing viable retail businesses being driven out if it made financial sense for the owner to make more viable use of the premises.

Question 2: Do you agree there should be permitted development rights for retail units (A1) to change use to banks and building societies?

Yes ☐ No ☒

Comments

We accept that the nature of many banks and building societies has been changing so that arguably they now have a more obviously “retail” character and exhibit many characteristics in common with shops.

However, we are concerned that once a bank or building society became established through permitted development it could be difficult to prevent further changes to other types of A2 which might be more obviously harmful to retail function (betting shops for example), even though that is not the intention. This is because the rationale behind grouping similar types of uses into the same use class is that they are deemed to have similar characteristics and impacts. Attempting to make banks and building societies a “special case” but keeping them within class A2 would be departing from that principle. It could lead to greater pressure from the operators of other types of A2 business to become established in inappropriate locations, arguing that their impacts are in fact no different from banks. If the government considers that building societies and banks are so similar to shops as to have no appreciable difference in their impact, then we suggest they should be reclassified as shops – for example by creating two sub categories: A1(a) – retailing of goods and A1(b) – retailing of banking and other financial services direct to the public. Post offices, which are already A1, could also be put in this category. That way there would be no need for a convoluted definition of banks and building societies and perhaps a detailed list in a revised Use Classes Order of which A2 uses are considered sufficiently similar to them not to need planning permission. This could only lead to more confusion and dispute and would make the system less flexible, not more.

With banks and building societies transferred into a subset of class A1, planning permission would no longer be needed to change from a shop to a bank or building society, but it would still be needed to change to other types of financial and professional service, which would remain in class A2. Appropriate planning controls would also be available over design and external appearance. If an upper size threshold is considered necessary, this could be affected in the GPDO by restricting the size of premises which could change from A1(a) to A1(b). Under this model, the result would be essentially the same as what is now proposed but with fewer potential pitfalls..

Question 3: Do you agree there should be permitted development rights, as proposed, for existing buildings used for agricultural purposes to change use to a dwelling house (C3) and to carry out building work connected with the change of use?

Yes ☐ No ☐

Comments

No response as these changes would not affect Norwich City Council which is a predominantly urban authority.

Question 4: Do you agree that there should be permitted development rights, as proposed, to allow offices (B1), hotels (C1); residential institutions (C2); secure residential institutions (C2A) and assembly and leisure (D2) to change use to nurseries providing childcare, and to carry out building work connected with the change of use?

Yes ☐ No ☒

Comments

We are sceptical about the merits of this move. We appreciate the theoretical benefits of this proposal in terms of increasing opportunities for childcare. However, experience shows that nurseries and other such childcare facilities attract a high number of car trips and lead to significant problems of traffic congestion and vehicular conflict during morning and afternoon peaks. This is felt more strongly when such additional peak trip movements occur in busy and already heavily congested residential and mixed use areas.

Complete deregulation could lead to a situation where it would no longer be possible to prevent such uses being introduced in areas where residential amenity, highway safety, and the safety of children and parents could be seriously compromised. Such factors are normally controllable through planning policies.

We acknowledge that prior approval checks would apply, but it is not clear at this point in time how effective the prior approval safeguards in relation to transport and highways impacts for such changes of use will be. Also there is no prior approval test for flood risk in place either for schools already permitted by

virtue of the 2013 Order or for children's nurseries proposed to be permitted under this consultation. We regard this as anomalous. In certain circumstances schools and nurseries provided through permitted change of use rights could result in the exposure of children and other users to elevated risk compared to a previous lower density use - and there would be no opportunity at any point to assess and mitigate those risks through planning powers.. We would urge the government to refrain from extending these provisions to childcare facilities until any adverse impact of the 2013 changes have been properly assessed.

We also consider it would be difficult to clearly define the extent of “building work connected with the change of use.” For children's nurseries these works might be more extensive than those necessary to change a small shop to a dwelling. The proposed retail-to-residential conversion rights would not apply to premises of more than 150 sq.m but there does not appear to be an equivalent size limit in respect of nurseries. This would appear to be an omission and if the government proceeds with this change we would urge that such a limit needs to be clearly specified.

Question 5: Do you agree there should be permitted development rights, as proposed, for buildings used for agricultural purposes to change use to new state funded schools and nurseries providing childcare and to carry out building work connected with the change of use?

Yes ☐ No ☐

Comments

No response as these proposals would not directly affect Norwich as a predominantly urban authority. However we consider that to introduce a permitted development right to change the use of agricultural buildings to state funded schools and nurseries in addition to the uses already allowed through the 2013 GPDO would tend to encourage an unsustainable pattern of development and increase the need to travel by car, contrary to the advice in the NPPF.

We also consider it would be difficult to clearly define the extent of “building work connected with the change of use.” – see comments against Question 4.. We also consider it anomalous that there should be an upper size limit on the conversion of agricultural buildings to nurseries but none on conversion of commercial buildings to the same use - this should be regularised.

Question 6: Do you have any comments and further evidence on the benefits and impact of our proposals set out in the consultation?

Yes ☒ No ☐

Comments

Although we welcome the government's intention to bring in prior approval fees for these categories of permitted development (as with the previous round of changes) we would urge that the fee regulations accompanying any revised order should be brought in concurrently and not be delayed. Local planning authorities would then not suffer an immediate loss of fee income at a time when their workload and administrative burden will inevitably increase.

Many prior approval applications might not involve an appreciable reduction in local authority workload compared with a full application (which might be required subsequently anyway) and there would be less opportunity for public comment on proposals, to the detriment of the local democratic process and the principles of localism.

We are as yet unconvinced by the merits of the prior approval approach. We believe that, far from streamlining and simplifying the system, it adds an extra layer of complexity to the process of submitting, assessing and making decisions on development proposals. For permitted residential uses the proposed prior approval test on design is not well thought out and (as noted in our response to question 6) should include considerations of basic standards of residential amenity and external layout, which we believe should also apply to other categories of permitted change of use. The fact that the prior approval tests are different according to what the change of use involves has no obvious logic – why for example do relatively minor changes of use from small shops to housing have to meet a test of economic and town centre impact, when proposals involving the complete loss of substantial office buildings to housing do not? Why are those B1 office to residential changes subject to a prior approval test on flood risk but not one on exposure to noise? And why should proposals for new state funded schools and children's nurseries be subject to a prior approval test on noise but *not* one on flood risk, when the proposal might involve an increase in the density of occupation of a building and the exposure of potential occupiers to flooding compared to a previous use?

We consider that unless the requirements for prior approval tests are reviewed and regularised as part of the next round of legislative changes, the system can only lead to more confusion for the public, lack of certainty for the development industry and potential for legal challenge, all of which would slow down, not speed up, the planning process. We are concerned at the obvious

inconsistencies in the application of the prior approval tests and to further extend the scope of prior approval before the impacts of this relatively new process for local authorities and end-users have been adequately tested has considerable risks.

For Norwich, the government's intention that the permitted development rights for A1/A2-C3 changes would not apply on article 1(5) land is nevertheless welcome. Virtually the whole of the city centre including our primary retail area, secondary and specialist shopping areas and a large district centre in the northern part of the city centre fall within a conservation area. The additional planning control over change of use here is essential since much of the attraction of historic Norwich both as a visitor destination in the top 10, and a regional shopping destination in the top 15 nationally rests in its great range and variety of shopping. The success of Norwich in retail terms has been due in no small part to successful local policies to proactively manage changes of use, attract beneficial supporting uses such as restaurants and cafés and, where necessary, resist the loss of shops. This is now complemented by the introduction of a Business Improvement District (BID) covering much of the city centre. Norwich has therefore been using change of use policy, along with many of the measures put forward in the Portas Review, to successfully manage the city centre using locally agreed policies for many years. We consider that these proposals, along with those measures already introduced through the 2013 PD rights changes, will tend to undermine a very successful long term strategic approach to city centre management and reduce the council's ability to take forward its recently adopted strategy, agreed in partnership with our neighbouring authorities in our Joint Core Strategy.

The success of this strategic approach is evidenced by recent research carried out by the city council as part of its regular monitoring of the central shopping area [whose findings are published in the council's August 2013 monitoring report [here](#)]. The report shows vacancy rates consistently well below national average and a sustained improvement since early 2012. Our secondary areas are recovering well after a period of relative decline, albeit that this was nothing like as severe as in other towns and cities.

Many previously marginal areas are repositioning themselves as specialist shopping areas catering to Norwich's growing ethnic population of recent migrants from Eastern Europe and elsewhere, while others are diversifying further into arts and cultural uses and the evening economy.

We acknowledge that these proposals are aimed at tackling the problems of town centres which are seen to be failing, however for cities with a good track record of retail success such as Norwich we believe that excessive deregulation will be counterproductive and will undermine much of the good work done over many years to support and enhance the city centre.

It is apparent that these proposals represent a further stage in the already wide ranging government initiative to introduce deregulation into the planning system. In conclusion we would urge the government to think carefully about the impact of such changes for cities such as Norwich whose relative prosperity has depended to a large extent on progressive planning policies for the responsible

management of land use change both in the city centre and elsewhere, for the benefit of all users. We are very concerned that the rapid pace of planning deregulation will not only reduce the ability of the council as local planning authority to implement locally agreed policies effectively but completely remove the ability of local people to have a say over particular changes in the use of land and premises which they should be able to influence. This would appear to fly in the face of the government's commitment to localism in general and increasing local involvement in planning in particular. This has been highlighted by the approaches the council has received in respect of the loss of local pubs and the proliferation of betting shops – issues of concern to many local people which these proposals are doing nothing to address.

Thank you for your comments.

Consultation criteria

About this consultation

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged

unless specifically requested. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

If you have any queries regarding the consultation process, please contact:

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