

## Report for Resolution

**Report to** Cabinet  
01 June 2011

**Report of** Head of Planning Services

**Subject** Consultation response to Communities and Local Government on proposed amendments to change of use planning rules.

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### Purpose

This report presents the response to the current consultation being held by Communities and Local Government to relax planning rules on change of use between different planning uses. This report seeks to notify members of the potential significant implications of this and gain the endorsement of members for the response.

### Recommendations

To note the implications and endorse the response to be made to Communities and Local Government

### Financial Consequences

Financial consequences are unpredictable, being dependent upon market responses to any amendments to change of use legislation.

### 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”.

**Cabinet Member:** Cllr Bert Bremner

**Ward:** All

### Contact Officers

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### Background Documents

Relaxation of planning rules for change of use from commercial to residential (Communities and Local Government, 2011) – available on CLG website  
<http://www.communities.gov.uk/publications/planningandbuilding/relaxationchangeconsultation>

# Report

## Introduction

1. This report considers the current consultation being held by Communities and Local Government on relaxation of planning rules for the change of use from commercial to residential. Since the inception of the UK planning system a material change in the use of buildings or land has been regarded as development and thus subject to the need for planning permission.
2. The proposals relate to two planning statutory instruments: the Use Classes Order 2007 (UCO) and the General Permitted Development Order 1995 (GDPO). Together these instruments work as a deregulatory device which identify certain classifications of land and allow change within them and between them in certain circumstances without the need for planning permission. The circumstances where changes are permitted between land uses classes are generally when the impacts are broadly similar or beneficial. Thus a hot food take away can be changed to a café without planning permission but not vice versa.
3. The consultation seeks views on a number of matters but at heart the proposal is to allow the change of use from various business uses to residential. The three particular use classes effected and the extent of current permitted development rights are summarised in the table below:

Use Class	Example	Current Permitted Development
B1 Business	Offices, Research and development, laboratories, light industry	Permitted change to B8 where no more than 235m <sup>2</sup>
B2 General Industry	General Industry	Permitted change to B1 or B8. B8 limited to no more than 235m <sup>2</sup>
B8 Storage or Distribution	Use for storage or as a distribution centre, repositories.	Permitted change to B1 where no more than 235m <sup>2</sup>

4. The consultation states that “removing the burden and costs associated with such applications and establishing the principle that change of use between these use classes [to C3 residential] is permitted should encourage developers to bring forward more proposals for housing”.

## Potential Implications for Norwich

5. Notwithstanding the fact that a number of safeguards are proposed to address issues of potential conflict between land uses that could be created it is considered that the proposals, if enacted, could have very significant adverse implications, and that these adverse impacts may be particularly acute in Norwich. The proposed robust response to the consultation (attached as

appendix 1) sets these out in full in response to the particular questions proposed but to summarised it is considered that the proposals will:

- Undermine the recently adopted policies for employment provision in the Joint Core Strategy, the existing policy approach in the current Local Plan and the approach proposed in the emerging Development Management Policies Development Plan Document;
  - Adversely affect the market for new homes in the City especially the provision of new build flats;
  - Undermine transportation policies and create problems for the enforcement of parking control;
  - Allow potentially conflicting land uses to be created alongside one another without adequate opportunity to mitigate these;
  - Create operational difficulties in the servicing of new residential development; and
  - Create difficulties in funding infrastructure needed to support new residential development.
6. In the longer term the proposals could in particular undermine the role of City Centre as a key employment location and over time see employment uses in central locations being displaced to less accessible locations on the edge or outside of the City.

## **Appendix 1 to Cabinet report for 1 June 2011**

### **Proposed response to Communities and Local Government on consultation on 'Relaxation of planning rules for change of use from commercial to residential'**

Norwich City Council wishes to strongly object to these proposals. It considers them to be ill conceived and based on a misunderstanding of the planning system. They may, if enacted, have a serious adverse impact on places such as Norwich that will not be balanced by the benefits of any additional housing they may bring.

In seeking to bring forward such far reaching changes to planning system by this route of amending statutory instruments it is feared that government may be repeating mistakes it made in its early attempt to abolish Regional Spatial Strategies. The changes proposed alter certain fundamental and long held aspects of the planning system and may undermine significant aspects of the adopted Development Plan for Norwich (and elsewhere).

They are of such significance that they should either be the subject of primary legislation or amended to allow local authorities to adopt them using Local Development Orders where supported by local communities. They should not be imposed on local authorities who do not support them. To do so would clearly run contrary to the government's stated commitment to localism. In view of the time taken to prepare Article 4 Directions and the potential financial liabilities for local authorities in doing so, this is not considered a workable solution for restricting the adverse impact the proposals may have.

#### **Question A**

Do you support the principle of the Government's proposal to grant permitted development rights to change use from B1 (business) to C3 (dwelling houses) subject to effective measures being put in place to mitigate the risk of homes being built in unsuitable locations? Please give your reasons.

#### **Proposed response:**

No – Through several key parts of legislation, policy and guidance and guidance the government has tasked local authorities through the planning system to deliver sustainable and inclusive patterns of urban development. This runs through PPS1, and PPS4 in particular. PPS1 requires local authorities to bring forward sufficient land for commercial development, PPS4 builds on this and requires assess the detailed land or floorspace for economic development.

This Council, working in partnership with its neighbouring Councils, has recently adopted a Joint Core Strategy. This strategy is supported by a comprehensive evidence base and identifies the need for provision of high quality office space particularly within the City Centre. The level of current office accommodation in the City Centre (and the level of it that will be retained and enhanced) has been taken into account in the work which underpins policies about the extent of provision of further employment land elsewhere within the Greater Norwich area.

Much of the office stock in the City is at the moment of poor quality and some is vacant. The market is not sufficiently strong to support widespread refurbishment

and upgrading of the stock at present, though the evidence suggests it is essential that this be retained in order to allow grade A office accommodation to be provided in the medium term. Evidence suggests that the market to allow this will return in due course. Rental levels per sq m are currently higher for residential uses in the City Centre than for Office accommodation so in the short term there is clearly a risk that, if allowed to do so, the market pressures will result in the loss of office accommodation to residential uses which will be of detriment to the strength of the City Centre in the longer term and undermine recently adopted, widely supported and evidence based policies.

These proposals would be very likely to lead to a loss of offices in Norwich and many other town centres and increased office development in less sustainable locations on the edge of towns. This would have a serious impact on the vitality and success of the City Centre as a commercial centre serving not only the City but much of Norfolk.

Also, over time, the proposals may have a significant impact on the level of public transport service provision in the City. The City currently has a network of Park and Ride sites and ambitious plans to improve public transport routes into the City Centre providing improved accessibility to the City Centre to existing and new populations. If the level of office accommodation does not increase as planned these proposals may become less viable.

Furthermore it should also be noted that within its boundaries Norwich City currently has a five year housing land supply. There are a number of extant consents for residential development at relatively high densities in and around the City Centre which are currently marginal in terms of viability and the City Council, in accordance with government advice considers flexibility of its planning (sec 106) requirements on a case by case. These proposals, if enacted as proposed potentially have two serious implications for residential development:

- 1) The fact that change of use to residential from office could be brought forward without planning permission (and hence the opportunity to secure any sec 106 contributions) may significantly reduce the funds available for the provision of infrastructure necessary to serve new development. Sec 106 funds are crucial to the provision of education, open space, child play space and transportation services. In view of the state of public finances it is not realistic to suggest that if this income is foregone it can be met from other sources. Nor is it credible to suggest that it will be met by development on a voluntary basis.
- 2) It will potentially create a perverse incentive for the market to bring forward conversions to residential use ahead of new building meaning that the viability of the redevelopment of derelict brownfield sites will be further undermined.

**Question B**

Do you support the principle of granting permitted development rights to change use from B2 (general industrial) and B8 (storage and distribution) to C3 (dwelling houses) subject to effective measures being put in place to mitigate the risk of homes being built in unsuitable locations? Please give your reasons.

Proposed response:

No – This proposal will have different impacts to the Question A but is similarly unwelcome. They could undermine recently adopted and evidence based policies for the provision of employment land, employment uses can only be located on employment land due to the nature of their use and losing the ability to locate these units here will reduce the available land for such uses. The proposal could also lead to homes being provided in areas with little provision for transport, schools and other services.

Further to this, and taking account the mitigation and prior approval measures being considered, there is a risk of allowing the introduction of fundamentally conflicting land uses. B1, B2 and B8 can all generally comfortably co-exist next to one another with little conflict. Conversion of one unit to residential that is close to B2 or B8 uses would create a conflict and potentially may threaten valuable employment uses in the longer term owing to current Environmental Health legislation.

**Question C**

Do you agree that these proposals should also include a provision which allows land to revert to its previous use within five years of a change?

Proposed response:

No – if other adjacent sites are converted to residential then the previous commercial use may lead to unacceptable residential conditions.

**Question D** (relating to permitted development of space over shops to turn into one residential unit)

Do you think it would be appropriate to extend the current permitted development rights outlined here to allow for more than one flat? If so should there be an upper limit?

Proposed response:

The suitability would be site specific depending on floorspace available and accessibility to amenity space. The conversion of inappropriate units to residential could create poor quality living space. This could be offered as cheaper than average market accommodation which would make it viable for developers, whilst providing poor accommodation for those who cannot afford anything else.

**Question E**

Do you agree that we have identified the full range of possible issues which might emerge as a result of these proposals? Are you aware of any further impacts that may need to be taken into account? Please give details.

Proposed response:

No. There are several key issues which will arise even if the mitigation options are put in place. These are:

- The opportunity to provide infrastructure and for developments to make a contribution to planning gain will be lost. This will result in unplanned growth with limited opportunity to provide the necessary infrastructure to ensure sustainable communities are created. This is a major flaw of the proposed

changes. It will result in problems which will lead to a poorer quality of life for residents and problems which will require public intervention to remedy;

- There will be no provision for affordable housing within these new developments. This will disregard affordable housing needs within a local authority area;
- Noise issues are still likely to occur even with the prior approval scheme. There are two situations where this could occur. Firstly commercial land may be lost in phases to residential. If one phase is successfully converted but a second phase fails within 5 years and is converted back to employment this could result in statutory noise nuisances and disturbance to phase 1 residential units. Secondly businesses adjacent to converted residential units would be restricted within their employment uses. Employment uses are located together often on land with good road links but not near residential development. This allows industry to operate without restrictions associated with maintaining residential amenity. If sections of employment land or areas of employment were lost to residential it would restrict this land from changing to more intensive industrial uses. However there are few sites where industrial uses would be appropriate and any existing land should be safeguarded to ensure appropriate sites are available;
- Loss of designated employment land, allocated to protect the land for uses to create jobs;
- The changes will make existing brownfield sites where complete redevelopment is required less viable to develop than the proposed conversions. It may be quicker and cheaper to convert commercial buildings than to build out existing permissions. Although the proposals will release some housing land into the supply it will disadvantage existing housing site;
- Not all communities will be able to afford the time and money to take part in measures under the Localism Bill. Suggesting that in the absence of planning applications communities can get involved through neighbourhood plans to shape their area is idealistic and unrealistic. In reality people with time and space financial resources will be able to take part but those who don't will be left out of processes which will change their neighbourhoods. This is undemocratic and contrary to the notion of sustainable, inclusive communities;
- There is a reliance on the market delivering good quality dwellings that people will want to live in. In reality the driver in house buying is price. If dwellings are sold at a significantly cheaper level they will sell even if they are a poorer quality of dwelling. People who have limited choice when buying a house due to ability to get a mortgage and overall high cost will have no option but to buy dwellings on sites that are potentially not in sustainable locations and have not been subject to planning gain. As a result there may be insufficient capacity at adjacent schools, insufficient open space and play areas and high costs associated with travel to and from the site.

**Question F**

Do you think that there is a requirement for mitigation of potential adverse impacts arising from these proposals and for which potential mitigations do you think the potential benefits are likely to exceed the potential costs?

Proposed response:

There is a requirement for mitigation of these adverse impacts but as outlined in the answer to question E the proposed mitigation measures do not go far enough to prevent significant adverse impacts.

The potential mitigation measures proposed all result in higher costs than benefits. The cost of implementing Article 4 directions or local development orders will be significant to councils faced with diminishing budgets and staff time available to carry out such work.

**Question G**

Can you identify any further mitigation options that could be used?

Proposed response:

There is no suitable mitigation for the proposed changes. The implications of these proposals would be significant to undermine the housing and employment land supply, leading to sub-standard housing that is not supported by sufficient infrastructure.

**Question H**

How, if at all, do you think any of the mitigation options could best be deployed?

Proposed response:

No suitable mitigation options can be deployed to counter-balance the negative implications of these proposals on the creation of sustainable communities.

**Question I**

What is your view on whether the reduced compensation provisions associated with the use of article 4 directions contained within section 189 of the Planning Act 2008 should or should not be applied? Please give your reasons.

Proposed response:

If any Article 4 directions are to be used as a mitigation measure then using the reduced compensation provisions would obviously be of benefit to local authorities, in that there would be lower risk of financial losses.

**Question J**

Do you consider there is any justification for considering a national policy to allow change of use from C to certain B use classes? Please give your reasons.

Proposed response:

This response relates to use class C3 residential dwellings only, not use class C1 (hotels) or C2 (residential institutions). There are accepted housing needs within the local authority area and nationally. To allow the unplanned loss of dwellings would lead to even more severe housing supply issues. Allowing the market to dictate the provision of housing would inevitably lead to market failures.



**Question K**

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

Proposed response:

The proposed changes seem to undermine some of the long held policy objectives of the planning system which exist in legislation and guidance. Such fundamental changes should perhaps be subject to legislative review. The principles of Planning Policy Statement 1 to promote sustainable communities, Planning Policy Statement 4 to support business development and sustainable economic development and Planning Policy Guidance 13 to ensure sustainable transport patterns are implemented would be undermined by these proposals.

The practice of planning is in place for a reason – to promote the quality of people's lives through access to homes, jobs and recreational opportunities amongst other necessary functions to contribute to a good quality of life. To remove planning controls that aim to ensure this happens is perverse. It will lead to the market dominating development and market failures. It is within no ones interests – individuals or businesses – to let this happen. The council would urge you to seriously reconsider the proposals put forward as they will create problems that will lead to more public intervention to resolve.

## **Answers to consultation on associated impact assessment**

### **Question 1**

Do you think that the impact assessment broadly captures the types and levels of costs and benefits associated with the policy options? If not, why?

Proposed response:

No – the likely costs to local authorities in investigating statutory noise complaints, implementing Article 4 directions and local development orders. To safeguard land for jobs as identified by the employment needs study within the evidence base for the local development framework, the council will have to invest a significant amount of time into administration and legal advice to cover these matters.

### **Question 2**

Are there any significant costs and benefits that we've omitted? If so, please describe including the groups in society affected and your view on the extent of the impact.

Proposed response:

As with the above response to question 1 the requirement to cover Article 4 directions and local development orders will cost the council money. In doing so less money will be available to promote the welfare of groups with protected characteristics.

### **Question 3**

Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?

Proposed response

No comment.

### **Question 4**

Are there any significant risks or unintended consequences we have not identified? If so please describe.

Proposed response

As per response to Question E on main consultation:

There are several key issues which will arise even if the mitigation options are put in place. These are:

- The opportunity to provide infrastructure and for developments to make a contribution to planning gain will be lost. This will result in unplanned growth with limited opportunity to provide the necessary infrastructure to ensure sustainable communities are created. This is a major flaw of the proposed

changes. It will result in problems which will lead to a poorer quality of life for residents and problems which will require public intervention to remedy;

- There will be no provision for affordable housing within these new developments. This will disregard affordable housing needs within a local authority area;
- Noise issues are still likely to occur even with the prior approval scheme. There are two situations where this could occur. Firstly commercial land may be lost in phases to residential. If one phase is successfully converted but a second phase fails within 5 years and is converted back to employment this could result in statutory noise nuisances and disturbance to residential units. Secondly businesses adjacent to converted residential units would be restricted within their employment uses. Employment uses are located together often on land with good road links but not near residential development. This allows industry to operate without restrictions associated with maintaining residential amenity. If sections of employment land or areas of employment were lost to residential it would restrict this land from changing to more intensive industrial uses. However there are few sites where industrial uses would be appropriate and any existing land should be safeguarded to ensure appropriate sites are available;
- Loss of designated employment land, allocated to protect the land for uses to create jobs;
- The changes will make existing brownfield sites where complete redevelopment is required less viable to develop than the proposed conversions. It will be quicker and cheaper to convert commercial buildings than to build out existing permissions. Although the proposals will release some housing land into the supply it will disadvantage existing housing site;
- Not all communities will be able to afford the time and money to take part in measures under the Localism Bill. Suggesting that in the absence of planning applications communities can get involved through neighbourhood plans to shape their area is idealistic and unrealistic. In reality people with time and space financial resources will be able to take part but those who don't will be left out of processes which will change their neighbourhoods. This is undemocratic and contrary to the notion of sustainable, inclusive communities;
- There is a reliance on the market to deliver good quality dwellings that people will want to live in. In reality the driver in house buying is price. If dwellings are sold at a significantly cheaper level they will sell even if they are a poorer quality of dwelling. People who have limited choice when buying a house due to ability to get a mortgage and overall high cost will have no option but to buy dwellings on sites that are potentially not in sustainable locations and have not been subject to planning gain. As a result there may be insufficient capacity at adjacent schools, insufficient open space and play areas and high costs associated with travel to and from the site.

#### **Question 5**

Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options? If not, why not?

Proposed response:

No – a key impact will be on developers. Although the proposals aim to enable land to be developed for housing there will be an impact on land already within

the ownership of developers. Previously developed land that needs to be completed/redeveloped will be less viable than commercial conversions. Therefore the proposals disadvantage landowners. Allowing the large scale release of land and dwellings into the housing market will also distort the housing market.

Also the consumers (house buyers) will be faced with potentially sub-standard housing that has not been sufficiently planned in relation to required infrastructure.

The costs associated with the work local authorities will need to do to enable prior approvals, Article 4 directions, local development orders and potential noise complaints (as outlined in responses to Questions E and 4) will also be significant in a time of public spending cutbacks.

**Question 6**

Do you think there are any groups disproportionately affected? If so please give details.

Proposed response:

People who may not usually be involved in planning processes may find the new system even more unapproachable. The proposals under the Localism Bill to enable local communities to shape their local areas are unlikely to attract people who would not usually have got involved in planning decisions.

**Question 7**

Do you think these proposals will have any impacts, either positive or negative, in relation to any of the following protected characteristics – Disability, Gender Reassignment, Pregnancy and Maternity, Race, Religion or belief, Sex, Sexual Orientation or Age? Please explain what the impact is and provide details of any evidence of the impact.

Proposed response:

The proposed changes disadvantage groups with protected characteristics as it prevents the opportunity for community involvement on planning decisions (through the absence of planning decisions). The opportunity for local authorities to consider the impact of developments on groups with protected characteristics under their equalities duties will be lost.

**Question 8**

Do you have any information on the current level of planning applications for change of use from B to C3 in your local authority area which might be helpful in establishing a baseline against which to measure the impact of this policy?

Proposed response:

We have routinely monitored the loss of allocated employment land to other uses (including residential) through Core Indicator BD3 and local plan indicators in the Annual Monitoring Report process. The change of use to residential has been very rare as allocated employment land is identified for protection to ensure jobs can be provided for new residents of the Norwich area.

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Norwich City Council  
20 May 2011