

Relaxation of the planning rules for change of use from business to residential: Consultation Questionnaire

The Government welcomes your views on the proposals set out in the consultation document, *Relaxation of planning rules for change of use from commercial to residential*, which is available on our website at:

www.communities.gov.uk/consultations.

Our preference is to receive responses electronically and we would be grateful if you could return the completed questionnaire to the following e-mail address:

C3consultation@communities.gsi.gov.uk

If you wish to post your response, however, please send the completed questionnaire to:

Theresa Donohue
Consultation Team (Commercial to residential use)
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Department for Communities and Local Government
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Bressenden Place
London SW1E 5DU

This consultation will run for 12 weeks from 8 April 2011. **The deadline for submissions is 30 June 2011.**

Data Protection

This is to inform you that we may, with your consent, quote from your response in a published summary of the response to this consultation. If you are content for your views to be made public in this way, please tick the box.



Otherwise, your views may be set out in the response, but without attribution to you as an individual or organisation.

We shall treat the contact details you provide us with carefully and in accordance with the data protection principles in the Data Protection Act 1998. We shall not make them available to other organisations, apart from any contractor (“data processor”) who may be appointed on our behalf to analyse the results of this questionnaire, or for any other purpose than the present survey without your prior consent. We shall inform you in advance if we need to alter this position for any reason.

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	<input checked="" type="checkbox"/>
Personal views	<input type="checkbox"/>

iii) What category do you consider your organisation falls into?

Local planning authority	<input type="checkbox"/>
Housing developer	<input type="checkbox"/>
Community group/representative	<input type="checkbox"/>
Parish council	<input type="checkbox"/>
Business	<input type="checkbox"/>
Planning professional	<input type="checkbox"/>
Landowner	<input type="checkbox"/>
Voluntary sector or charitable organisation	<input type="checkbox"/>
Other (please state) Local law society	<input checked="" type="checkbox"/>

The consultation questions

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?

Yes No

Please give your reasons:

We support the planning system facilitating changes of use from business to dwelling houses, for example, by including appropriate policies to that effect in the Local Development Framework. A number of local planning authorities have had such policies for many years with great success. However, the land use impacts between business and residential uses can be complex so that the mitigation of such impacts is usually required.

Permitted development rights have historically operated successfully in those cases where the relevant development does not create issues which require mitigation. Suggesting that effective measures may be required to mitigate the consequence of this change implies that the proposed approach is flawed. Further, as the consultation paper itself acknowledges, land use is only one aspect of development control. Operational development to make the existing buildings fit for their new purposes will normally still require express planning permission. If it is necessary to take the land use change out of the equation when a planning application is made that can be achieved with greater flexibility and more likelihood of success by guidance from the Department and appropriate policies in the relevant Local Development Framework.

Question B:

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

Yes No

Please give your reasons:

Again, we support the policy objective in general terms. But the debate needs to be about the method of implementation. In our view, this policy objective can be achieved by a mixture of guidance and appropriate policies in the

LDFs. The land use impact of changing from B2 or B8 to C3 is particularly difficult. For example, historic B2 use could well have contaminated land issues, the resolution of which would be achieved by use of appropriate planning conditions. Further, whilst acknowledging the need to encourage house building, policies should not encourage the creation of sub-standard conversions: it is essential that governmental policies encourage good housing product and that approach has to be pivotal. Local planning authorities have been encouraged to do that in past through the planning process including using pre-application discussions to encourage, where necessary, improvements in the quality of the product being produced by the developer. Therefore, we do not believe that creating new permitted development rights will on its own result in this policy objective. Also, as with B1, change in the land use is only one part of the issue. Unless the permitted development rights are simple to understand, there will be uncertainty and developers and their funders will have to price that into their financial model or, so as to achieve price certainty, seek an express permission.

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?

Yes No

Comments:

Whilst accepting the desirability of reversion should the land use change prove to be unsuccessful, there could well be serious issues if, for example, some of the planning units on an industrial estate reverted and others did not. The creation of such a mixed use can, as has already been discovered in many parts of the country including the City of London, create planning issues and tensions between the various occupiers which are best resolved or mitigated on a site by site basis. Again, we would suggest the way forward is a presumption in favour of a land use reversion being built into the guidance leaving the detail of the implications of such reversion for the local planning authority to resolve on a site specific basis.

Question D:

Do you think it would be appropriate to extend the current permitted development rights outlined here to allow for more than one flat?

Yes No

Comment [1]:

If so, should there be an upper limit?

Yes No

Comments:

We would suggest a move to an upper limit of 2. Where there are more than 2 units there can be complex planning impacts and, for larger conversions, a requirement for the provision of affordable housing and it is appropriate for those impacts to be dealt with by the local planning authority on a specific site basis. Such an upper limit, we consider, would also be in line with the government's localism agenda.

Question E:

Do you agree that we have identified the full range of possible issues which might emerge as a result of these proposals?

Yes No

Are you aware of any further impacts that may need to be taken into account?

Yes No

Please give details:

From the consultation paper it would seem that the government's starting position is that all uses within the B classes have similar planning impacts. The reality is more complex which is one reason why Scotland, with similar arrangements, have retained a numerical identification rather than alpha numerical. We believe that the government's objectives can be achieved by guidance on the system of planning controls which will enable the local planning authority to tailor mitigation policies to reflect the site specific issues.

We agree with the range of the impacts identified in the consultation paper. However, we believe that the regular occurrence and seriousness of those impacts have been underestimated. For example, it is not clear that the sites best suited for conversion will be chosen by the market for conversion. The market will make choices based on short term profitability and on availability of sites, not good planning considerations. If the LDF system is reformed so as to work as originally envisaged, the policy objectives could be achieved in a way which limits the impacts. With respect, the consultation paper is very naive in envisaging an holistic approach of private sector developments. Community assets such as doctors' surgeries and schools are supported by developers because such provisions facilitate the grant of planning consent, not because such facilities are inherently "good" to have (unless to the extent

that their presence can be shown to increase the sale prices for the new dwellings). Government policy should be aimed at ensuring development only occurs where society in general and the local community in particular feel that the benefits of the development outweigh its impacts, not allowing a free for all until this window is closed once society and government appreciates the unforeseen consequences of the change.

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?

Yes No

Comments:

Again, the policy objectives could be achieved by guidance to the local planning authorities. The Localism agenda supports such an approach with decisions being taken at a local level. The impacts identified in the consultation paper indicate how complex these issues are and how important it is that the local planning authority can work with the applicant to deal with the impacts which affect the site in question. The City of London and the City of Westminster provide good examples of the potential tensions such as regarding noise and deliveries which can arise on multi-purpose sites and the inherent conflict between the expectations of residential uses as against the demands by a 24/7 business use.

Flood risk is another good example of issues which need to be taken into account, particularly since insurance for flood risk will almost certainly become more difficult and expensive to obtain, depending on location, when the Statement of Principles on the Provision of Flood Insurance expires on 30 June 2013. The various impact descriptions in the paper show how complex the issues can be and the need for mitigation to be site specific rather than one size fits all.

Another good example of issues which need to be taken into account is contaminated land. Under Part IIA of the Environmental Protection Act 1990, contaminated land must be remediated so that it is suitable for its "current use". Defra Circular 01/2006 defines the term "current use" by reference to "future uses or developments which do not require a new, or amended, grant of planning permission" (paragraph A.26). A grant of permitted development rights to change the use of land that has been remediated from a B class use to C3 means that occupants of such dwellings may be at risk from contamination because it has not been remediated to an adequate level. Still further, provisions in respect of contaminated land in hundreds of thousands

of contracts that have been entered into since 2000 have relied on planning permission being needed for a change in use from a B class use to C3. The prospect, therefore, arises that the change will adversely affect relevant contractual provisions with potentially serious consequences for parties to them.

Question G:

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

If LPAs reacted to policy guidance which encourages or requires a positive approach for land use change then both the planning authority and the applicant would concentrate on the mitigation to be reflected in the grant of express planning permission.

The suggestion in the consultation paper that further mitigation options might be required is of itself evidence of how complex the issues are and that solving the problem by relaxation of the planning controls is not the best solution

Question H:

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

If a large number of planning authorities seek article 4 directions the reform will fail. In the rush to facilitate new housing the government must avoid failing to provide good new housing which will not become the slums of the future.

Mitigation measures are best applied under the grant of a specific planning permission.

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:

The new permitted development right would represent a relaxation from the current regime. Insofar as such relaxation produces an increase in value, that increase will be unexpected and, therefore, limiting the compensation payable if an article 4 direction is imposed would not, in this particular case, be unreasonable.

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?

Yes No ✓

Please give your reasons:

For the reasons mentioned above we believe that the planning objectives are better achieved by site specific discussions.

In particular, control of land use is for the overall benefit of the community as a whole and has been at the heart of planning control since 1947. Experiences of previous temporary policy changes such as in Westminster for offices following the second world war and the shortage of office space is a good example of how planning can go awry when a temporary need interferes in the market for years after that real need has ceased. The statistical detail in the consultation paper supports the conclusion that there is currently a large amount of commercial space available and there appears to be no current need for additional B use space across the country. As mentioned, the land use aspect is only part of the equation.

Whilst in principle no objection to a change to B1 (which, after all, is defined as a use compatible with a residential area), a change to the other B class uses is more complex: use within class B2 of itself is by definition inappropriate as being incompatible with a residential area and from a practical perspective very few C use buildings would be suitable for B8 use without major modification.

Question K:

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

We support the policy objectives underlying the issues being consulted upon. Our concern and criticism is that the proposed solution is ill advised and, with respect, in our view will not achieve such objectives but will create more issues which would have to be resolved in the long run. The policy objectives can best be achieved by use of guidance and local planning policies. This initiative will not succeed because it deals only with land use and will not result in dwelling houses "happening" freely as suggested in the consultation paper simply because there will still be a need for planning permission for operational development.

Examples of the complex planning issues which planners properly consider when evaluating residential planning applications include:

- policies to prevent the use of the housing by non-permanent residents
- policies to ensure a range of housing sizes and thereby to ensure a proper social and economic mix of occupants
- policies to ensure mixed use developments on the site in question and where desirable for the specific site in question and the surrounding neighbourhood;
- policies to prevent residential uses in "pure" business/commercial areas, for example, see the concerns which have been raised with regard to certain parts of the City of London;
- policies to ensure provision of affordable housing (whilst this is a political issue, all parties seem to accept that some affordable housing should be provided as part of new housing developments). If the extension of permitted development rights does not result in more affordable housing, the effect may well be that the local planning authority would have to increase the burden of the provision of such affordable housing when dealing with planning applications which relate to more traditional residential developments requiring express planning permission;
- in a similar vein, policies to ensure the availability of key worker homes, particularly in areas such as Greater London;
- policies to encourage the provision of special needs housing and housing for long term housing needs, for example ensuring that a percentage of the units in a development are constructed for wheelchair users;
- planning policies with regard to the provision of gardens and amenity areas in general including the provision and funding of open spaces;
- policies concerning housing density and in the light of that density the provision of amenity areas including off street parking spaces.

If this change in permitted development proceeds these planning issues will not be capable of being considered nor dealt with unless the proposal also involves operational development. Clearly, some of these issues are disliked by developers not least because of the cost implications. But on many sites with conversion potential some if not most of these issues will be valid and appropriate if the intention is to facilitate high quality residential stock fit for the 21st century and beyond.

Finally, this proposal will not facilitate a complete consideration of sustainability issues relevant to a proposed conversion. Some sustainability aspects will be caught by the Building Regulation approvals but the

remainder, being planning policy based, will be by passed. One consequence of that may be to create the impression that the Government is not fully committed to its sustainability aspirations. It will also result in the country slipping further away from achieving its zero carbon targets.

The impact assessment questions

Question 1:

Do you think that the impact assessment broadly captures the types and levels of costs and benefits associated with the policy options?

Yes No

If not why?

We do not accept that there will be a material decrease in the requirement for planning applications since applications will be required for the operational development aspect of the proposal. The proposal is one element of that process. The proposal might reduce some of the discussion but little of the process itself and, in any event, on the right site land use change objections even today should not be a complex and time consuming issue.

Question 2:

Are there any significant costs and benefits that we've omitted?

Yes No

If so, please describe including the groups in society affected and your view on the extent of the impact:

Question 3:

Are the key assumptions used in the analysis in the impact assessment realistic?

Yes No

If not, what do you think would be more appropriate and do you have any evidence to support your view?

As mentioned, there will still be a need for planning applications for the operational development aspects. Unless the applicability of the permitted development rights obviously applies to the development in question, the developer will still seek an express planning consent in order to achieve certainty and, thereby, to satisfy its financiers and the eventual buyers/occupiers of the completed development. On the other hand, lack of certainty as to the applicability and application of these extended permitted development rights will make it more difficult for the local planning authority to enforce breaches of planning controls save in the most blatant cases.

Question 4:

Are there any significant risks or unintended consequences we have not identified?

Yes No

If so please describe:

Ensuring the proper allocation of land use to achieve the mix of development required by society is a key objective of the town and country planning system. The proposed change drives a horse and carriage through the land use controls which have evolved over the last 60 years or more.

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?

Yes No

If not, why not?

The paper assumes that certain vacancy rates are indicative of long term under use and the consequential assumption that, therefore, they are clearly surplus to requirements. However, that is a very simplistic analysis as some softness in the supply of, say, the office market, ought in traditional economic theory, to result in downward rental pressure on commercial rents, etc. Increasing the number of homes is obviously laudable but the inhabitants will need somewhere to work. Where will they work if the offices, factories and other industrial uses in the area have been reduced by this proposal?:

Question 6:

Do you think there are any groups disproportionately affected?

Yes No

If so please give details:

Question 7:

Do you think this proposal will have any impacts, either positive or negative, in relation to any of the following characteristics – Disability, Gender Reassignment, Pregnancy and Maternity, Race, Religion or belief, Sex, Sexual Orientation and Age?

Yes No

Please explain what the impact is and provide details of any evidence of the impact:

Question 8:

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

No – most applications for change of use from B use classes to C3 are not limited to just the land use issue but also to operational development and, therefore, would remain subject to express planning application.