

To: **Executive Member for Planning and Transport**  
**13<sup>th</sup> January 2021**

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**Supporting Housing Delivery and Public Service Infrastructure - Government  
consultation on changes to permitted development rights  
Director of Place, Planning and Regeneration**

**1 Purpose of Report**

1.1 The Government's recent White Paper 'Planning for the Future' set out long-term ambitions for changes to the planning system. Subsequently, on 3<sup>rd</sup> December 2020, a further public consultation was published which intended to 'explore more immediate changes to the planning system to provide greater planning certainty and flexibility to ensure that it can effectively contribute to some of the immediate challenges facing the country'. The consultation, entitled 'Supporting housing delivery and public service infrastructure' contains measures intended to support 'the economic future of our high streets and town centres, supporting jobs, and the faster delivery of our schools and hospitals' and seeks views on three proposals:

- a proposed new permitted development right for the change of use from Commercial, Business and Service use to residential to create new homes,
- measures to support public service infrastructure through the planning system, and
- the approach to simplifying and consolidating existing permitted development rights following changes to the Use Classes Order.

1.2 As responses are required by Thursday 28<sup>th</sup> January, the Council's response needs to be agreed by the Executive Member for Planning and Transport.

**2 Recommendation**

**2.1 That the Executive Member for Planning and Transport agrees the content of Bracknell Forest Council's response to the Government's consultation on 'Supporting housing delivery and public service infrastructure' as set out in Appendix A.**

**3 Reasons for Recommendation**

3.1 It is considered necessary for the Council to respond to the consultation since it contains proposals that could have implications for future planning policy including the viability of town centres and provision of sufficient employment land. It could also have an impact on the consideration of planning applications and have resource implications for the operation of the planning department.

**4 Alternative Options Considered**

4.1 The alternative option is for the Council not to respond to the consultation. However, this would mean that the Council would lose the opportunity to influence possible changes in national legislation, planning policy and guidance.

## 5 Supporting Information

- 5.1 The consultation identifies that high streets and town centres have felt the effects of structural change in consumer spending and retailing over a number of years and that the Covid-19 pandemic has magnified these problems. The Government's stated intention is to support town centres and high streets so they become thriving vibrant hubs where people live, shop, use services and spend leisure.
- 5.2 In September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (UCO) came into effect. One of the primary functions of this statutory instrument was to introduce a new Use Class E which contains Commercial, Business and Service uses. This new use class includes uses generally found on the High Street such as shops, banks, restaurants, gyms, creches and offices. The effect of this new use class is to provide greater flexibility to move between such uses or to provide a mix of uses.
- 5.3 The Government considers that where there is surplus retail floorspace, quality residential development will help diversify and support the high street whilst providing housing opportunities. In order to support this approach it proposes the introduction of a new permitted development right that would allow a change of use from the new Commercial Business and Service Use Class to residential use.
- 5.4 As part of the same consultation, views are sought in relation to proposals to amend existing permitted development rights for schools, hospitals and prisons and to speed up the planning process in respect of such public service infrastructure. Finally, responses are also sought in relation to proposals to consolidate and simplify other existing permitted development rights. Each of these proposals is dealt with in the sections below.

### ***New permitted development right to change from Class E Commercial, Business and Service use to residential use***

- 5.5 The current Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), (the 'GDPO'), already allows the change of use from retail and takeaways to residential (Part 3, Class M of Schedule 2 to GDPO) and from office to residential (Part 3, Class O of Schedule 2 of the GDPO).
- 5.6 Limitations under Class M restrict this right to an area of 150sq.m and it does not apply to either Listed Buildings or article 2(3) land which includes Conservation Areas. The right is subject to a prior approval process which allows the LPA to determine if prior approval is required having regard to a number of factors which include impact on the provision of services and the sustainability of a shopping area, as well as considerations relating to highways, flooding, living conditions etc.
- 5.7 The Class O right, which permits changes between offices and residential, applies to Article 2(3) land but not listed buildings, and does not contain any limitation on size. It is similarly subject to a prior approval process in relation to transport impacts, contamination risks, flooding, and future living conditions in terms of noise impact and adequate natural light.
- 5.8 The proposed right would allow the change of use from any use or mix of uses within Class E to residential (Class C3). It is not proposed that there would be any size limit for the buildings benefitting from the right although it would not apply to development that is screened as requiring an Environmental Impact Assessment. The right could

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therefore result in a significant number of homes, with the impacts being managed through the prior approval process.

- 5.9 The proposed right would apply to all buildings in Class E so would have implications for both the Borough's industrial areas and the town centre. There is no suggestion that it would only apply to buildings that have been vacant for some time and accordingly it could lead to a loss of less commercially attractive uses, reducing the diversity of uses within the high street. The loss of retail and restaurant uses within the town centre has the potential to impact upon the vitality and viability of the centre and the loss of creches, gyms or indoor sports venues has the potential to impact upon the health and well-being of existing and future residents.
- 5.10 There is no suggestion within the consultation that impact on provision of services or the sustainability of the town centre would be a matter for prior approval, as it is with current Class M rights.
- 5.11 Changes of use within existing industrial areas could lead to residential development in unsustainable locations, far from essential local facilities leading to increased dependence on private motor vehicles. It is also a matter of particular concern that it could lead to the loss of smaller, lower value 'starter' units which help to provide a range of jobs and accommodation for a variety of users, although it is recognised that this is currently possible under existing Class O rights.
- 5.12 As recognised by the consultation document, the absence of a size limit could result in the provision of a significant number of new homes. Whilst this would support the Government's aim of substantially boosting the supply of homes, it has the potential to undermine the Council's ability to plan and maintain a balance between employment and housing within the Borough and to provide suitable infrastructure to mitigate the impacts of additional residents.
- 5.13 The consultation document indicates that, similar to existing rights, the proposed permitted development right would not apply to sites of special scientific interest; listed buildings; scheduled monuments; safety hazard areas; military explosives storage areas and sites subject to an agricultural tenancy. However, whereas existing Part M rights do not apply to any Article 2(3) land, it is proposed that the new right would apply to Conservation Areas subject to a prior approval process relating to the impact of the loss of the ground floor use to residential.
- 5.14 No confirmation is provided as to whether the proposed rights would also convey a right to undertake building operations reasonably necessary to convert the building, as with existing part M rights or to the issues that would be subject to the prior approval process.
- 5.15 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Local Planning Authority in the exercise of its functions to pay special attention to the desirability or preserving or enhancing the character or appearance of a Conservation Area. The NPPF indicates (para. 193) that 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation..'. It continues at para. 194 that 'Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction or from development within its setting), should require clear and convincing justification.'
- 5.16 The consultation document does not make clear how the prior approval system will ensure that this statutory duty can be met and whether an appropriate 'heritage

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balance' can be undertaken. In the absence of any confirmation on this issue, there is concern that the extension of the proposed permitted development rights to Conservation Areas is inconsistent with the statutory duty within s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policies contained within Chapter 16 of the NPPF which seek to conserve and enhance the historic environment.

- 5.17 The proposed prior approval process would cover the following issues:
- Flooding - to ensure that residential development does not take place in areas of high flood risk,
  - Transport - particularly to ensure safe site access,
  - Contamination - to ensure that the health of future residents is not endangered,
  - Impacts of noise from existing commercial premises on future occupiers,
  - Provision of adequate natural light in all habitable rooms,
  - Fire safety, and
  - Impact on the intended occupiers from the introduction of residential use in an area the authority considers is important for heavy industry and waste management
- 5.18 However it does not allow consideration of other 'bad neighbour' uses that might be found within existing industrial estates resulting in possible harmful effects on future residents such as air pollution, smell or vibration.
- 5.19 In the event that these rights apply to large scale buildings, the absence of any consideration of parking or trip generation as part of the Prior Approval Process, rather than just safe access, has the potential to impact significantly on surrounding areas.
- 5.20 Existing Part M rights allow for consideration of the impact of the development on the provision of services and the sustainability of the shopping area and it is considered that this element of the prior approval process should be included within any new right.
- 5.21 Existing prior approval applications incur a fee of £96 per dwellinghouse and it is proposed that this should also apply to prior approval applications introduced under the currently proposed changes. The consultation document anticipates that the take up of this right would be high and it is considered appropriate that the cost of processing an application required in connection with this right should be borne by the developer who would benefit financially from the proposal.
- 5.22 Whilst the consultation envisages that there would be a significant increase in housing delivery above that achieved through the existing permitted development rights, there are concerns that the application of the proposed new right, particularly if applied to buildings of any scale, would have an adverse impact on the vitality of town centres and the LPAs ability to ensure that sufficient land is available for employment purposes.
- 5.23 The impact on the vitality and viability of town centres would result through the loss of restaurants/cafes and other uses which are often located in town centres such as creches and leisure facilities, reducing footfall and fragmenting the retail/leisure offer. It could be particularly damaging to the night-time economy, both due to the loss of

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restaurants/cafes and leisure facilities and the potential adverse effects on new residents.

- 5.24 The NPPF requires Local Plans to meet their area's needs for economic development and to plan for the future of town centres. Cumulatively, the proposals could have a significant impact on the supply of land for economic development and the scale and variety of jobs available. There are also concerns regarding the monitoring of employment land which underpins the Council's ability to plan for its provision. Potentially, the Council would have no prior warning about a development that might result in a significant loss of employment floorspace.
- 5.25 Furthermore, it would result in a loss of ability for other stakeholders to participate in the decision-making process. This is important as the use of a property for residential purposes might conflict with the use of nearby buildings for commercial purposes, for example, night access, deliveries. It is also likely to result in residential development in commercial areas being located away from essential facilities for residential areas such as shops, schools, open spaces etc. The consultation does not provide any information on how funding would be secured for infrastructure to mitigate the impact of the increased residential population.

### ***Supporting Public Infrastructure through the Planning System***

- 5.26 It is proposed to provide greater flexibility for public service infrastructure through extending existing permitted development rights. Existing permitted development rights conveyed by Class M, Part 7 of the GDPO allows schools colleges, universities or hospital buildings to increase their facilities by 25% of the gross floor space of the original buildings or 100sq.m (250sq.m in the case of schools) whichever is the lesser, subject to conditions including a height restriction of 5m.
- 5.27 It is proposed that this right should be amended to allow extensions of up to 25% of the footprint of current buildings on site at the time that the legislation is brought into force or up to 250sq.m whichever is the greater, up to a height limit of 6m (excluding plant) except where the development is within 10 metres of the site's boundary. Playing fields would continue to be protected in the case of schools. It is also proposed to extend this right to prisons.
- 5.28 In general, these proposed changes are welcomed, subject to the safeguards set out relating to protection of playing fields and restrictions on any increase in height within 10m of the site's boundary. However, it is noted that a 25% increase in scale above the existing footprint could result in a significant scale of building which, if positioned on existing car parking areas and generating parking requirements itself, could lead to potential amenity or highway safety issues. It is also noted that application of this right, relies on LPAs having access to accurate surveys of the site at the relevant time.
- 5.29 In instances where planning applications are required for such public service infrastructure projects, the Government intends to amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 to encourage prioritisation of the determination these applications. The consultation seeks views on the scope of a modified process, a shorter determination period, modified consultation/publicity requirements and increased transparency.
- 5.30 It suggests that any new process should only apply to major development proposals which are not EIA development and would relate to defined hospitals, schools, further education colleges and prisons. It would also be limited to public infrastructure projects

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principally funded by Government. The process would reduce the determination period to 10 weeks, with a minimum consultation/notification period for statutory consultees and interested parties of 14 days. There would be a requirement to notify the Secretary of State of the submission of such applications in the interests of transparency. LPAs would also be expected to prioritise subsequent applications such as reserved matters or conditions applications with the fees for such applications remaining as per the existing regulations.

- 5.31 It is considered that the reduced timescale for the determination of such applications is likely to be inadequate given their scale and complexity, particularly if a Committee decision is required. Reducing the timescales for representations impacts on local engagement and a 14 day timeframe for statutory consultees is likely to raise issues given existing resources and the potentially complex nature of such applications.

### ***Consolidation and simplification of existing permitted development rights***

- 5.32 The final section of the consultation relates to the consolidation and simplification of existing permitted development rights as set out in the GDPO. The changes are necessitated primarily due to the recent revisions to the Use Classes Order which has resulted in some classes no longer being required, some which will be replaced by any right introduced following this current consultation and some which require further consideration. The proposals outlined are intended to simplify the secondary legislation, removing any inconsistencies. This is broadly welcomed as the Order has become overly complicated at a time when the planning system is supposed to be being made more effective and transparent.
- 5.33 Specific comment is sought in relation to the approach proposed in instances where the change in the UCO results in a requirement to review the existing right. In such instances any merging of rights in relation to uses previously in different use classes could result in either broader or more restricted rights being made. Caution is advised in instances where broader rights are envisaged, particularly in relation to protected land such as Conservation Areas for the reasons set out at para. 5.16 above.

## **6 Consultation and Other Considerations**

### Legal Advice

- 6.1 The consultation document suggests that any changes would be introduced by a range of measures including changes to the GDPO and national policy and guidance. At this stage no further details are available.

### Financial Advice

- 6.2 There are no financial implications arising from the recommendation in this report at this stage since it relates to a consultation from the Government.

### Equalities Impact Assessment

- 6.3 This is not applicable as the report is concerned with formulating a response to a consultation from the Government.

### Strategic Risk Management Issues

- 6.4 There are no specific risks identified in the Strategic Risk Register (2020) which affect this consultation response.



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Background Papers

Supporting Housing Delivery and Public Service Infrastructure - Government consultation on changes to permitted development rights

[Supporting housing delivery and public service infrastructure - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Appendices

Appendix A: Bracknell Forest Council's response to Government Consultation – Supporting Housing Delivery and Public Service Infrastructure

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