

Draft Response to the Planning Reform consultation on supporting the high street and increasing the delivery of new homes

Policy Context

1. The Ministry of Housing, Communities and Local Government (MHCLG) is consulting on planning reform proposals with the aim of simplifying and speeding up the planning system, to support the high street, make effective use of land and deliver more homes.

Background

2. Consultation on the proposed planning reform measures follows on from an updated NPPF which was published in July 2018.
3. Building on existing planning reforms, the government is consulting on proposals that will allow greater change of use to support high streets to adapt and diversify, support extending existing buildings upwards to create additional homes, and speed up the delivery of new homes.
4. The consultation includes separate proposals in respect of:
 - Part 1: new and amended permitted development rights and changes to use classes, including to support the regeneration of the high street and to extend existing buildings upwards to create new homes.
 - Part 2: the disposal of surplus local authority land - rationalising and updating the rules which govern disposal of public land at less than best value.
 - Part 3: a draft listed building consent order to support the work of the Canal & River Trust.
 - Part 4: draft guidance on the compulsory purchase powers of new town development corporations
5. Under Part 2 views are being sought on new permitted development rights to allow greater flexibility for change of use; use the airspace above existing buildings for additional new homes and extensions; remove the right to install new public call boxes and the associated advertising consent; and increase the height threshold for the installation of off-street electric vehicle charging points. It is also proposed to make permanent other existing time-limited rights, and to make an update to the Use Classes Order to reflect our changing high streets and make them more resilient.
6. Under Part 3 the Housing White Paper set out an intention to: amend planning rules to allow all authorities to dispose of land with the benefit

of planning permission which they have granted to themselves; and to consult on extending their flexibility to dispose of land at less than best consideration. Views are being sought on the second commitment. The purpose of these proposals is to streamline the involvement of the Secretary of State in the regime that governs disposal of land by local authorities at an undervalue, i.e. for less than best consideration. This is intended to give local authorities greater flexibility to dispose of public land at an undervalue where doing so is considered to deliver wider economic, social or environmental benefits.

7. The questions posed through the consultation, and draft responses, are provided in the attached annex. These broadly support the government's aim of speeding up the planning system to support centres and the High Street, to make the effective use of land and to deliver more homes. However, a number of specific proposed comments and concerns are set out, relating to some of the proposals and the potential consequences for plan-making and for the resources of local authority planning teams.
8. It is not proposed to submit any comments in regard to Parts 3 & 4 of the consultation.
9. MHCLG's deadline for consultation responses is 14 January 2019.

Consultation

10. The Cabinet Members for Environment and Transport have been consulted on the proposed response.

Alternative Options

11. Consideration has been given to some of the alternative options which are set out for some of the questions raised.

Implications of Recommended Option

12. **Resources:**
 - a) **Financial Implications** – The Strategic Director, Corporate Resources confirms no financial implications directly arise from this report
 - b) **Human Resources Implications** – No human resources implications.
 - c) **Property Implications** - No property implications.
13. **Risk Management Implication** - No risks associated with the consultation.

14. **Equality and Diversity Implications** – No implications for equality and diversity
15. **Crime and Disorder Implications** – No crime implications.
16. **Health Implications** – No health implications.
17. **Sustainability Implications** – No sustainability implications
18. **Human Rights Implications** - No human rights implications.
19. **Area and Ward Implications** – No area or ward implications

Annex

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Part 1: Permitted Development Rights and Use Classes

Question 1.1: Do you agree that there should be a new permitted development right to allow shops (A1) financial and professional services (A2), hot food takeaways (A5), betting shops, pay day loan shop and launderettes to change to office use (B1)? Please give your reasons.

The Council agrees with the proposed new permitted development right in terms of providing additional flexibility, although clarification is sought as to whether this is all B1 uses or just B1a, and whether the intention is that this applies to all properties in such use, and not just those on the High Street (within town centres) as referred to in the reports narrative. For sustainability reasons the Council would suggest that this provision should be limited to Town or Local Centres. Individual shops that serve a local community may not be appropriate for office use as they may not be sited in an accessible location.

Question 1.2: Do you agree that there should be a new permitted development right to allow hot food takeaways (A5) to change to residential use (C3)? Please give your reasons.

Although the Council would agree with this proposal in terms of reducing the number of takeaways in an area contributing to wider health objectives, there could be an issue where the property concerned forms a cluster of such uses and the proposal results in a residential use next to another existing takeaway. That might lead to poor living conditions.

Question 1.3: Are there any specific matters that should be considered for prior approval to change to office use?

Parking requirements and accessibility by public transport. Impact of B1 (b or c) uses in terms of deliveries and servicing and noise generation.

Question 1.4: Do you agree that the permitted development right for the temporary change of use of the premises listed in paragraph 1.9 should allow change to a public library, exhibition hall, museum, clinic or health centre?

Yes – but consideration should be given to a size limit

Question 1.5: Are there other community uses to which temporary change of use should be allowed?

There are no obvious other community uses to which this provision could be extended.

Question 1.6: Do you agree that the temporary change of use should be extended from 2 years to 3 years?

Yes we agree - for background we have received 9 applications under this right since 2013, seven of which were changes to A3 (café/restaurant) uses. Consideration should be given to those already in their 2-year process as notifications and letters would require these to end at the two-year period. Resource implications involved in notifying of any extension.

Question 1.7: Would changes to certain of the A use classes be helpful in supporting high streets?

The Council would question how this change, along with the greater flexibility being allowed through the proposals discussed above, would impact on the character of primary shopping areas, and areas of primary retail frontage within a centre. Although it is accepted that in reality centres are changing to being less reliant on A1 retail and on that basis the proposal, on balance, has merit if limited to primary shopping areas. Shops outside of existing centres would potentially have different opening, servicing or delivery hours with an expanded use which could bring residential amenity issues.

If this is taken forward, clarity should be considered over whether and how A3 uses can have any ancillary off site sales. Consideration should be given to how future technology such as ubereats/justeat apply to A3 uses and when a mixed use would become an A5. In mixed uses as proposed this is likely to change at different times of the day and week.

Also, clarity should be given to how the A1 or mixed-use class relates to factory shops or trade counters as the introduction of a simplified retail use class should not create any further ambiguity over this significant issue.

Question 1.8: If so, which would be the most suitable approach:

- a. that the A1 use class should be simplified to ensure it captures current and future retail models; or,
- b. that the A1, A2 and A3 use classes should be merged to create a single use class?

Please give your reasons.

Under option a. the removal of specific use examples would appear a backward step in terms of providing clarity.

Option b. would appear the cleaner way forward in terms of this proposal - the inability to distinguish between a shop and a restaurant in planning terms is unlikely to have a negative impact on centres in Gateshead. Consideration should be given as to how the A3 use would be serviced (ventilation and bins storage etc.) which would be different to an A1 or A2 use.

Question 1.9: Do you think there is a role for a permitted development right to provide additional self-contained homes by extending certain premises upwards?

Potentially yes but the impact on townscape and appearance of the area would have to be considered very carefully. There may be limited take-up in Gateshead as there are very few properties with the disparity of heights described in the suggested example. It would be difficult to see how a blanket policy would be able to allow consideration of this impact to take place. This would be better utilised at a local level though the use of LDO's where the LPA considers that this policy would be appropriate.

It is not thought that this would apply to Gateshead. At most it would only be applicable to the urban core as defined in the council's Core Strategy. A better incentive would be to encourage local plans to identify areas suitable for mid to high density development whether by extension or rebuild. This would allow LPA's to set specific locally applicable limits to what it considers to be appropriate

Question 1.10: Do you think there is a role for local design codes to improve outcomes from the application of the proposed right?

The use of a design code would appear to be a good approach to managing the potential adverse impacts on the appearance of an area and townscape. However, this would inevitably have an impact on local authority planning resources in terms of drafting the code and it may be that the potential benefits in Gateshead would be clearly outweighed by the resources it takes.

Question 1.11: Which is the more suitable approach to a new permitted development right:

- a. that it allows premises to extend up to the roofline of the highest building in a terrace; or
- b. that it allows building up to the prevailing roof height in the locality?

Option b would potentially be more suitable but there may be difficulties in defining what the prevailing roof height is.

Question 1.12: Do you agree that there should be an overall limit of no more than 5 storeys above ground level once extended?

Not necessarily as it depends on what the height was to start with and the height of buildings in the locality. In some cases 5 storeys would be inappropriate.

Question 1.13: How do you think a permitted development right should address the impact where the ground is not level?

This would need to be consistent with existing caselaw on ground levels which applies to permitted development rights such as means of enclosure and householder extensions.

However, the impact of an additional storey or stories would be significantly greater on sites where there are levels differences. This is an

example of where local knowledge is essential in defining where this approach is appropriate.

Question 1.14: Do you agree that, separately, there should be a right for additional storeys on purpose built free standing blocks of flats? If so, how many storeys should be allowed?

Potentially yes. It is however, difficult to suggest an arbitrary figure of the number of storeys as local circumstances will vary. For example, a freestanding block which has been designed to dominate the local area will be more capable of accommodating additional storeys. This proves the difficulty of such permitted development rights without a judgement being made as to the impact on the appearance of the area or townscape. The method of construction may make it impractical to do.

Question 1.15: Do you agree that the premises in paragraph 1.21 would be suitable to include in a permitted development right to extend upwards to create additional new homes?

Agree, to a certain extent. However, the mixing of residential and certain noisy or odour causing commercial uses may lead to unacceptable living conditions in the future and cause an “agent of change” where the viability of businesses is threatened due to complaints.

Question 1.16: Are there other types of premises, such as those in paragraph 1.22 that would be suitable to include in a permitted development right to extend upwards to create additional new homes?

Yes, premises that would not generally cause future amenity issues for residents could be considered. In out of town locations, sites that are not accessible (or could be made so) by public transport, walking and cycling should not be considered.

Question 1.17: Do you agree that a permitted development right should allow the local authority to consider the extent of the works proposed?

Yes

Question 1.18: Do you agree that in managing the impact of the proposal, the matters set out in paragraphs 1.25 -1.27 should be considered in a prior approval?

Yes

Question 1.19: Are there any other planning matters that should be considered?

The considerations essentially equate to those that would be considered as part of a full planning application and does not offer any increased certainty that the development will be approved. As such it offers no benefit over the current planning arrangements. If a property is suitable for extension then a full planning application would work, especially if there is a local plan policy and national advice setting out where and how these would be considered appropriate.

Question 1.20: Should a permitted development right also allow for the upward extension of a dwelling for the enlargement of an existing home? If so, what considerations should apply?

No domestic extensions are far more complex, varied and controversial which would prevent the ability for a standard set of criteria to be established.

Question 1.21: Do you agree that the permitted development right for public call boxes (telephone kiosks) should be removed?

Yes

Question 1.22: Do you agree that deemed consent which allows an advertisement to be placed on a single side of a telephone kiosk should be removed?

Yes

Question 1.23: Do you agree the proposed increased height limit for an electrical vehicle charging point upstand in an off-street parking space that is not within the curtilage of a dwellinghouse?

Yes

Question 1.24: Do you agree that the existing time-limited permitted development right for change of use from storage or distribution to residential is made permanent?

The Council has received no applications for these.

Question 1.25: Do you agree that the time-limited permitted development right for larger extensions to dwellinghouses is made permanent?

Yes

Question 1.26: Do you agree that a fee should be charged for a prior approval application for a larger extension to a dwellinghouse?

No - domestic extensions are far more complex, varied and controversial which would prevent the ability for a standard set of criteria to be established.

Question 1.27: Do you support a permitted development right for the high-quality redevelopment of commercial sites, including demolition and replacement build as residential, which retained the existing developer contributions?

Expansion of permitted development rights to allow the redevelopment of commercial sites for residential use risks damaging the ability of local

planning authorities to allocate land for commercial uses, thereby undermining the Government's commitment to a planning system that is "genuinely plan-led".

We note that paragraph 1.47 of the consultation document states: "in constructing a right it could be necessary to consider... the relationship with local plan policies for key sites and areas where the right should apply". In our view, it is imperative that any new permitted development right for the redevelopment of commercial sites has regard to local plan policies on town centre and employment (B1, B2, B8) uses. However, it should also be recognised that unallocated commercial sites ('whiteland' sites that are not protected by local plan policy) have a significant role in supporting economic activity and make a particularly important contribution to meeting local needs.

Rapidly changing dynamics for commercial premises (the recent increase in demand for last-mile logistics facilities being a good example) mean that a diverse and flexible supply of commercial premises is required to support economic growth. Introducing a permitted development of the type proposed through this consultation has the potential to reduce the supply of commercial sites either through the redevelopment of premises, or by landowners / freeholders preventing commercial sites becoming occupied in the hope that vacant premises can be redeveloped for (usually higher value) residential use.

While the objective of maximising delivery of new homes is supported, the importance of ensuring an adequate supply of sites and premises capable of supporting economic growth should not be overlooked. The consultation document does not estimate how many new homes could be delivered through the proposed new permitted development right, but if the Government seeks to pursue this option the Council respectfully suggests that the anticipated benefits be carefully considered against the potential adverse consequences for the supply of commercial premises. It is Gateshead Council's view that the NPPF provides an appropriate and flexible basis to support the delivery of new housing, while ensuring that the needs of businesses continue to be met.

There needs to be provision to consider the location of the site as many commercial locations will be unsuitable for housing in terms of amenity, infrastructure and accessibility. It is therefore more appropriate to identify sites through allocations in local plans. It would be impossible to set criteria that meet every local circumstance and therefore it would provide no significant benefit over the full planning route in terms of certainty for the developer. National and local policy supporting high quality development of commercial sites as a principle would be more appropriate.

Question 1.28: What considerations would be important in framing any future right for the demolition of commercial buildings and their redevelopment as residential to ensure that it brings the most sites forward for redevelopment?

Whether development makes the most efficient use of land, amenity, location of the site, infrastructure and accessibility; however, this is effectively addressed through Local Plans and through supporting evidence in the form of SHLAAs and ELRs.

Question 1.29: Do you have any comments on the impact of any of the measures?

- i. Allow greater change of use to support high streets to adapt and diversify
- ii. Introducing a new right to extend existing buildings upwards to create additional new homes
- iii. Removing permitted development rights and advertisement consent in respect of public call boxes (telephone kiosks).
- iv. Increasing the height limits for electric vehicle charging points in off-street parking spaces
- v. Making permanent the right for the change of use from storage to residential
- vi. Making permanent the right for larger extensions to dwellinghouses

- i. These should only apply to local and town centres.
- ii. This should not be a blanket approach across all areas
- iii. No additional comments
- iv. No additional comments
- v. No additional comments
- vi. The fees should reflect the resources required.

Question 1.30: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equality Act 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impact identified?

No

Part 2: Disposal of Surplus Local Authority Land

Question 2.1

Do you think that the threshold for the existing general consents for the disposal of land held for purposes other than planning or housing at an undervalue (under section 123 of the Local Government Act 1972) should:

- a) Remain at its current level
- b) Be increased
- c) Be removed completely

Response:

It should be increased (b)

Reason:

Land values have increased since the £2m threshold was created and as such raising the threshold would be appropriate to reflect this

Question 2.2

If you consider it should be increased, do you think the new threshold should be:

- a) £5 million or less
- b) £10 million less
- c) Other threshold

Response:

£10 million (b)

Reason:

- Land values have increased across the country but more so in some areas than others and as such £10 million is considered to be more appropriate than £5 million.
- It is considered that whilst local authorities have a fiduciary duty to their tax payers and will always be capable of scrutinising such decisions the threshold provides checks and balances which helps ensure that there is no impropriety

Question 2.3

Do you agree that the Secretary of State should issue a new general consent under section 233 of the Town and Country Planning Act 1990 for the disposal of land held for planning purposes?

Response:

Yes

Reason:

Land held for planning purposes is often the first tranche of land which is required in the initial phases of a scheme to drive it forward and for this reason may have to be offered at less than best consideration. Development is all about timing and catching the market. If consents have to be obtained then this could have a detrimental effect on timing.

Question 2.4

If yes do you think any new general consent should apply to:

- a) Disposal at an undervalue of £2 million or less
- b) Disposal at an undervalue of £5 million or less
- c) Disposal at an undervalue of £10 million or less
- d) Disposal at some other undervalue threshold (please state level)
- e) All disposals regardless of the undervalue

Response:

Disposal at an undervalue of £10 million or less (c)

Reason:

For the reasons as set out in 2.2

Question 2.5

Do you agree that the economic, social or environmental well-being criteria which apply to the existing general consent should apply to any new general consent for the disposal of land for planning purposes?

Response:

Yes

Reason:

Provides consistency

Question 2.6

Do you have any additional comments about the current system governing disposals of land at an undervalue by local authorities and our proposals to amend it?

Response:

None