

Government Consultation on Relaxation of Changes of Use Regime
Report by Planning Policy Officer

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| Summary: | This report informs the Committee of a consultation recently received from the Government, and invites the Committee's comments and guidance on the proposed response. |
| Recommendation: | That the report be noted and the nature of proposed responses be endorsed. |

1 Introduction

- 1.1 The Government has recently issued more of a series of consultations on proposals to simplify and relax planning controls in the interests of economic growth. This particular consultation proposes a relaxation of the permitted development rights to allow a broader range of changes of use without the need for a planning application.
- 1.2 Of particular note from a Broads perspective are proposals to automatically permit:
- changes of use of agricultural buildings to shops, financial and professional services, cafes/restaurants, business, distribution, hotels or assembly and leisure uses;
 - temporary changes of use for up to 2 years from retail, financial and professional services, food and drink uses, offices, assembly and leisure uses to (as yet unspecified) other uses; and
 - changes of use for hotels or guesthouses to residential dwellings.
- 1.3. A link to the consultation document and a draft response is set out below. The Committee's comments, guidance and endorsement are invited.

2 Financial Implications

- 2.1 There are no financial implications to the provision of the consultation response. Potential financial implications for local planning authorities are noted in outline in the draft consultation response. If the proposals are introduced, a further report will inform the Committee and consider the implications of the detailed provisions.

Background papers: None

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Appendices: APPENDIX 1 – Department of Communities and Local Government Consultation Document and draft response

APPENDIX 1

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| ORGANISATION: | Department for Communities and Local Government |
| DOCUMENT: | New opportunities for sustainable development and growth through the reuse of existing buildings: Consultation |
| LINK | http://www.communities.gov.uk/documents/planningandbuilding/pdf/2171937.pdf |
| RECEIVED: | 29 June 2012 |
| DUE DATE: | 11 Sept 2012 |
| STATUS: | Newly Received |
| PROPOSED LEVEL: | Officer |
| NOTES: | This is one of a series of current consultations on 'streamlining' the planning system in the interests of economic growth. Others are assessed separately by the Head of Development Management. |
| PROPOSED RESPONSE: | Set out below. |

QUESTIONS 1 - 3:

CHANGE OF USE OF AGRICULTURAL BUILDINGS

Background: This would allow a wide range of changes of use from agricultural buildings, as set out in Question 1.

Question 1: Do you think there should be permitted development rights for buildings used for agricultural purposes to change use to:

- Class A1 (shops), A2 (financial and professional services), and A3 (restaurants and cafes);
- Class B1 (Business) and B8 (storage and distribution);
- Class C1 (Hotels); and
- Class D2 (Assembly and Leisure)?

Answer: No

Comment

- 1.1 The national parks and the Broads should be excluded from any such extension of permitted development rights. They are very sensitive to some of the potential adverse impacts of such an extension, and the National Planning Policy Framework says that the landscape, scenic beauty, wildlife and cultural heritage of these areas should be given the greatest weight. The value to the local economy in such areas of an attractive, positively managed environment, and of sustainable communities, far outweighs the constraints on development (which are often grossly overstated).

- 1.2 There is a serious risk that these proposals would more often lead to the displacement of agricultural uses than help support and sustain agricultural use and rural communities and ways of life. This is particularly important in national parks and the Broads, where agriculture is not just part of the economy, but helps sustain the rural communities and their cultural heritage, and maintain the treasured landscapes of these areas.
- 1.3 It is not clear that there is any real evidence that rural economic development is unduly constrained by the need for planning permission. Most rural planning authorities are, like the Broads Authority, very keen to support rural business development, especially if this makes use of redundant buildings and supports agricultural diversification. If there are no adverse impacts, then there is no basis for a refusal of planning permission. Where there are adverse impacts, rural planning authorities will usually advise applicants how these may be overcome or avoided.
- 1.4 The improvements in our built, natural and historical environment, and the involvement of people and communities that Minister Greg Clark talks about in his introduction to the NPPF (dated only six months ago) would be undermined by this measure. The proposals appear to run counter to the Government's only recently stated agenda in terms of localism, a plan-led system, and the delivery of sustainable development. In particular, paragraph 8 of the NPPF states 'to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions. This measure would seem to undermine this important role.
- 1.5 While there continues to be widespread support for re-use of redundant agricultural buildings, the reality is that not all of them are suitably located or provided with infrastructure to suit some of the proposed uses proposed to be permitted development. It should be appreciated that some agricultural buildings are very large indeed, and thus the potential impacts and demands resulting from changes of use correspondingly large. The process of determining planning applications allows these impacts to be identified, evaluated and, if appropriate, mitigated or avoided, if necessary through contributions to upgrading of infrastructure from the uplifted value of the previously agricultural building. The sporadic location and potential scale of change from this type development, if uncontrolled, is likely to have an adverse effect on the viability and deliverability of planned development and infrastructure in more sustainable locations. Additionally, it would impose additional costs on the public purse and others associated with duplication and extension of service and infrastructure provision.

- 1.6 The proposed changes would also very likely result in a proliferation of new buildings constructed to replace and free up existing agricultural buildings for permitted changes of use. The time limits discussed in paragraph 29¹ do not address this point at all. The impacts of such 'replacement buildings' on the rural (and urban fringe) landscape are potentially very substantial, and particularly problematic in protected landscapes such as the national parks and the Broads. The 10-year time limit for future buildings mentioned in paragraph 29 is also inadequate to deter abuse in respect of the buildings constructed henceforth.

Question 2: Should thresholds and limitations be applied to reduce the potential impact of any permitted change of use?

Answer: (none - neither yes nor no answer appropriate)

Comment

- 2.1 It is extremely difficult to define categories, thresholds or limitations of the proposed permitted changes of use that would necessarily be free of adverse impacts. The degree of potential adverse impacts is not directly related to the scale of the development, but often derives from the nature of the use in relation to the specific characteristics of the site and its neighbourhood. This needs to be assessed on a case-by-case basis, and a planning application is an appropriate and proportionate means by which to do this.

Question 3: Are there circumstances that would justify a prior approval² process to allow the local planning authority to consider potential impacts?

Answer: No

Comment

- 3.1 The prior approval process is inadequate to allow proper assessment of the scale and nature of potential impacts. It provides neither the simplicity of permitted development, nor the potential for proper control of impacts of a planning permission. It is an additional complication of procedure for a

¹ Paragraph 29 of the consultation document suggests that the permitted development would apply to buildings already in existence at the date of publication of the consultation. It also seeks views on whether there should be the same permitted development rights for future buildings once they have been in agricultural use for 10 years.

² 'Prior Approval' is a hybrid somewhere between a planning application and ordinary permitted development. It is currently used with certain agricultural and telecommunications permitted development. The developer must give advance notification of the intended development (in the form of basic details). Typically, the local planning authority cannot question the principle of the proposed development, but has a limited period (usually 28 days) to decide whether it wishes to control details of, for instance, design or siting.

process that has already been described recently by Ministers as ‘elaborate and forbidding’. Such a proposal appears to preclude community involvement at the key stage, contrary to the spirit of the localism agenda. An alternative to this measure could be to simply change national planning policy to give added support to changes of use of former agricultural buildings.

QUESTIONS 4 AND 5:

INCREASE IN THE SIZE OF PERMITTED CHANGES BETWEEN VARIOUS BUSINESS CLASSES

Background: Increase from 235 square metres to 470 square metres, or some other size, for permitted development changes between Business use classes B1 (offices, light industry); B2 (general industry) and B8 (storage and distribution).

Question 4: Do you agree that the size thresholds for change of use should be increased?

Answer: No

Question 5: If so, is 470sq m the correct threshold, or should the increase in the limit be larger or more modest?

Answer: Yes

Comment

- 4.1 Careful thought needs to be given to the implications of the potential combinations of this measure and those relating to agricultural buildings and temporary uses. It is likely that if these measures are introduced, buildings will, in some cases, be cycled through a series of uses to avoid planning fees, community infrastructure levies, Section 106 contributions, and the need to address impacts on the neighbouring and wider areas.
- 4.2 National parks and the Broads should be excluded from these measures because of the risk of impact on their special qualities. The proposed change would have particular risks and disadvantages for the Broads. The Broads has a unique geography. Boatyards and similar uses are vital to the enjoyment of the special qualities of the area by the public (many of whom are waterborne), and to the interests of navigation, two of the statutory purposes of this national park equivalent area. In addition, boatyards are key components of the economy of the area and of its cultural heritage. Both the total quantum of boatyards and the network of their distribution around the various rivers are important. The boatyards are mainly small concerns and vulnerable to pressures for alternative uses, especially given their prime waterside locations. At the same time, the creation of new and replacement boatyards is highly problematic due to the flood risk affecting most of the Broads area, the environmental and landscape sensitivities and designations, and the often high land values adjacent to the water. The Broads Core Strategy and other development plan policies seek to retain boatyard uses, while providing for a degree of flexibility and diversification where this

supports the boatyard use. An increase in permitted development rights to include other uses, particularly those of higher value such as offices, would likely to lead to boatyard uses being displaced, to the detriment of both the local and national value of the Broads. Replacing these boatyards elsewhere would not be easy for the reasons set out above and would have significant adverse effects on this nationally protected area.

- 4.3 A further problem in changing uses between business uses in the Broads is the issue of flood risk. Around 81% of the Broads is in flood zone 3, and some of these changes of use will result in an introduction of a more vulnerable use in a high risk zone contrary to national planning policy and the development plan for the area.
- 4.4 The consultation document states erroneously (in paragraph 36) that the suggested increase in permitted development applies 'for change of use and not new development'. The legal definition of development includes both a material change of use and operational development. It is disappointing that the Department of Communities and Local Government is not aware of this.

QUESTIONS 6 AND 7:

TEMPORARY CHANGES OF USE

Background: This would allow existing buildings in retail, financial and professional services to the public, food and drink, offices, assembly and leisure, and non-residential institution uses to change to another use for two years. The 'other uses' to be permitted are not indicated in the consultation, but suggestions are invited.

Question 6: Do you think there should be permitted development rights to allow for the temporary use of buildings currently within the A, B1 and D1 and D2 use for a range of specified other uses for 2 years?

Answer: No

Comment

- 6.1 It is not clear how a notification requirement would provide 'an opportunity to validate uses', as stated in paragraph 38.
- 6.2 Very careful thought needs to be given to how this temporary permission might be made workable in practice. There are very real issues concerning the dating of commencement of such changes, the cycling of buildings through various uses or repeated temporary permissions to 'work the system'. There is also scope for considerable additional confusion about whether and when a planning application is required.
- 6.3 Paragraph 38 recognises the likely need for monitoring of such uses. This will be an additional cost to local planning authorities, as will enforcement activity likely to be associated with the almost inevitable complaints about many such changes, and the anticipated confusion about what is permitted, when, and for how long. The Government is concerned to increase the proportion of the

costs of planning services falling on applicants. This measure will increase public costs without a contribution from those most benefitting from these changes.

Question 7: If you agree with the proposal what uses do you think should be allowed on a temporary basis?

Answer: Not applicable.

QUESTIONS 8 TO 10:

PERMITTED CHANGES FROM HOTEL USES TO DWELLINGS

Background: This would allow a change of use from hotel or guesthouses (Class C1) to residential dwellings (Class C3) where there was not an additional need for planning permission for building, etc. works.

Question 8: Do you think there should be permitted development rights to allow hotels to change to residential use without the need for a planning permission?

Answer: No

Comment

- 8.1 For the Broads (and the national park family more generally) the provision of visitor accommodation is a fundamental component of the statutory purpose to 'provide opportunities for the understanding and enjoyment of the special qualities of [these areas] by the public'. It is also a major factor in the local economy. The Broads and surrounding rural areas received around 7.1 million visitors in 2010. The tourist economy of the area was estimated at £437 million, and directly supported more than 6,000 jobs.
- 8.2 The Broads Authority fully recognises that hotel and guesthouse provision will change over time, and through the planning process supports efforts to upgrade accommodation, or find another appropriate beneficial use where hotel, etc. use is no longer feasible.
- 8.3 However, it is important that this can be looked at in the round through the planning process, and recognise that the immediate market advantage of the owner/developer is not necessarily always consistent with the longer term interests of the local economy and community.
- 8.4 Particular issues in national parks and the Broads are the replacement of short-term visitor accommodation with second homes, which generally contribute less to the local economy and employment; and the loss of a quantum or type of visitor accommodation which cannot be readily replaced, given the environmental and other constraints (including, in the Broads, extensive flood risk).

- 8.5 Permitted development of changes of use from hotels to housing would deprive planning authorities and their areas of the benefits of the requirements for provision of affordable housing and for controls on occupation set out in their adopted development plans. In national parks these often address acute problems of provision and the sustainability of local communities.
- 8.6 The nation faces a growing need for supported accommodation for the elderly. Some redundant hotels and guesthouses may be suitable for such uses. In areas where a specific need has been identified, the loss of this potential could be damaging, particularly in areas such as national parks where new buildings may sometimes be difficult to accommodate satisfactorily.
- 8.7 It is not at all clear what is the logical basis for the claim that such permitted development rights would somehow lead to authorities thinking more creatively about hotel stock, etc. in their area. Neither is it clear that there is any evidence that local planning authorities are unwilling to grant permission for such changes of use where there is no apparent reason not to. Furthermore, the suggestion of the use of Article 4 directions where the proposed permitted development is likely to be problematic ignores both the likely cost of such measures, and the very limited capacity of many planning authorities, in the current economic climate, for preparing such directions without impinging adversely on more productive planning work.

Question 9: Should thresholds and limitations be applied to reduce the potential impact of any permitted change of use?

Answer: (None: no simple answer).

Comment

- 9.1 It is extremely difficult to define categories of the proposed permitted changes of use that would be free of adverse impacts. The degree of potential adverse impacts is not necessarily directly related to the scale of the development, but often derives from the nature of the use in relation to the specific characteristics of the site and its neighbourhood.

Question 10: Are there circumstances that would justify a prior approval process to allow the Authority to consider potential impacts?

Answer: No.

Comment

- 10.1 The planning application process is a suitable prior approval process. The intermediate prior approval processes for agricultural and other development³

³ See footnote 2 on earlier page for information on 'prior approval'

do not provide the opportunity for community involvement in planning, the delivery of sustainable development that is championed by the Government, nor the freedom from regulation that sectors of the development industry are seeking.

QUESTION 11:

UPDATING DEFINITIONS IN THE USE CLASSES ORDER

Background: No clear proposals given, but an example of what might be considered is the explicit inclusion of manicure parlours, computer repair centres and small-scale horticultural outlets as retail shops (Class A1).

Question 11: Are you aware of any updates or amendments needed to the descriptions currently included for the existing Use Classes?

Answer: No

Comment

- 11.1 The Broads Authority is not aware of any problems with the Use Classes Order that are likely to be readily resolved by minor amendments of the definitions or classifications.
- 11.2 The Broads Authority would wish the Government to carefully consider the case for separating into different classes, dwellings in permanent residential occupation and those in a holiday letting or second home use. Changes between these two can often be unproblematic, so in most cases a planning permission for such a change would be readily forthcoming. However, the lack of problems is certainly not always the case. In areas such as national parks, the loss of permanent dwellings to holiday properties can cumulatively result in very severe problems for both the sustainability of rural communities, and the cultural heritage of these areas. More generally, changes in the other direction, from holiday homes to permanent ones, can occasionally give rise to problems of amenity, access and sustainability.
- 11.3 In relation to the specific example quoted, the Broads Authority would object to the inclusion of small-scale horticultural outlets within the definition of A1 (retail). Such uses are characteristic of rural areas, especially those near to centres of population. Small-scale horticultural outlets are often a predominantly horticultural use, often appropriate to the countryside and to a national park, with a subsidiary retail element which supports the horticultural use, or a mix of the two uses, depending on the particulars of the case. In rural areas the inclusion of these within Class A1 would be likely, in many cases, lead to the loss of the horticultural use altogether, and the substitution of a pure retail use which is unlikely to be of wider benefit to the countryside and local communities, and would run counter to the Government's aims of strengthening town centres and providing rural facilities and services.

QUESTIONS (un-numbered):

IMPACT ASSESSMENT

Background: The consultation is accompanied by an impact assessment of the proposals. This generally concludes that these would be beneficial impacts on the economy, sustainability, health and wellbeing, rural development, etc., while resulting in cost savings to both applicants and planning authorities. Any adverse impacts would be avoided by making permitted development rights subject to a prior notification scheme, or picked up by future monitoring.

Question (Impact Assessment): Do you have any comments on the assumptions and analysis set out in the consultation stage Impact Assessment?

Comment

- IA.1 The Impact Assessment erroneously assumes that 'Any increase [in changes of use] would support the policy objective to stimulate economic activity and to allow building and land to change to more productive uses' (page 31). This appears to be a rather narrow understanding of the factors supportive of economic growth and productivity. Some economic activity and changes of use of buildings and land will have an overall negative impact on economic growth and productivity through adverse effects on, for instance, the free and safe flow of highway traffic, the character of an area on which a wide range of businesses depend or noise or other nuisance to existing or potential neighbouring uses (including businesses). The role of the planning system is to encourage economic activity while ensuring impacts on the wider economy, environment and communities are addressed. There is no credible evidence that the more permissive planning regimes in some countries result in a healthier economy, and there are strong indications to the contrary. The costs to businesses of a regulatory regime such as planning are rarely welcome, but the benefits to business of sound planning for sustainable growth are far greater.
- IA.2 In the spirit of localism, changes such as these should be locally determined. If it can be demonstrated that the proposed changes would boost the economy, save local planning authority's money, and avoid adverse impacts, it is difficult to imagine any authority would wish to do otherwise. DCLG could provide a model local development order that would give effect to the consulted changes, and local planning authorities could either adopt this or risk the distress of seeing its neighbouring areas gaining the economic and political advantage.

'Questions for consultation' and answers:

Q (i) Will removing the need for planning applications increase the level of change taking place?

A (i) Yes, but not necessarily for the better. It is anticipated that there will be a marginal increase in change taking place, but that much of this small increase is likely to be highly problematic, with adverse impacts on businesses,

communities and the environment. Where there are no such impacts, or they can be readily ameliorated, planning permission would be forthcoming in any case.

Q (ii) Would cost savings outweigh the savings to local authorities?

A (ii) It is not clear what this question means.

Q (iii) What other costs and benefits are there likely to be in addition to the ones identified above?

A (iii) The costs of the proposals not identified in the Impact Assessment include:

- (a) Additional costs to local planning authorities in:
- additional enforcement activity;
 - handling complaints;
 - handling prior approval applications; and
 - putting in place the suggested Article 4 Directions where obvious problems are anticipated, and any compensation becoming payable by the local planning authority in respect of those Directions.
- (b) Additional costs to the private economy:
- adverse impacts on the quality of the environment on which local businesses depend, especially in areas such as national parks and the Broads;
 - loss of visitor accommodation in areas dependent on tourism spend; and
 - limitations to future development of nearby sites through adverse neighbour effects, highway congestion, infrastructure capacity, etc.
- (c) Additional costs to the wider public purse such as:
- reduction in CIL/Section 106 contributions, resolving highway congestion and hazards, infrastructure duplication or extension, dissipation of development momentum in planned growth and regeneration areas etc.; and
 - handling complaints.