
**Decision Session - Executive Member for
Economy and Strategic Planning**

26 January 2021

Report of the Head of Development Services

MHCLG Consultation: Supporting housing delivery and public service infrastructure.

Summary

1. On 3 December 2020 the Ministry of Housing, Communities and Local Government (MHCLG) published a consultation entitled '[Supporting housing delivery and public service infrastructure](#)'. The consultation runs until the 28 January 2021.
2. The MHCLG consultation seeks views on a series of proposed measures which the consultation states: 'seek to support housing delivery, economic recovery and public service infrastructure.' Specifically, the measures being consulted on are:
 - a. A proposed new permitted development right for the change of use from Commercial, Business and Service use to residential to create new homes.
 - b. Measures to support public service infrastructure through the planning system – extended permitted development rights for Schools, Colleges, Universities and Hospitals; with the right to also include prisons and in the future Ministry of Defence sites, and
 - c. An approach to simplifying and consolidating existing permitted development rights following changes to the Use Classes Order.
3. Permitted development rights provide a national grant of permission for specific types of development as set out by the corresponding legislation. Usually permitted development rights are subject to a series of limitations which the development must accord with and in some cases the developer is required to notify the Local Planning Authority before they undertake a development, under the Prior Approval Process.

4. The proposed new permitted development right will subsume a range of existing rights which allowed for various existing uses, such as offices and shops to be changed, subject to a Prior Approval application, to a residential use. However the proposed new right will also go further to include uses such as gymnasiums, children's nurseries, crèches, clinics and health centres.
5. The overarching thrust of the consultation is to seek to support housing delivery through increasing the instances where permitted development rights can be exercised to bring forward development which creates more residential units. However as with so many of these measures, the relaxation of permitted development rights does not provide any assurances that once permission is granted by the Local Planning Authority the approved units actually materialise on the ground and are delivered.
6. The proposals also include measures to expand the permitted development rights afforded to schools, colleges, universities and hospitals. There are also proposals to include Prisons and Ministry of Defence sites.
7. The proposals also include measures which seek to streamline the formal planning application process for public infrastructure bodies such as school/college providers and NHS bodies. These measures include shortening the statutory timetable for a major planning application from 13 weeks to 10 for development involving public service infrastructure; there are also proposals to shorten the minimum consultation period for these applications from 21 days to 14 days.
8. The consultation paper also proposes an approach to simplifying and consolidating existing permitted development rights. Following recent amendments to the Use Class Order which were made in September 2020 this work will go some way to 'spring cleaning' the current regulations which have been subject to multiple amendments since their last major overhaul in 2015; and now make reference to Use Classes which will soon no longer exist following the publication of the new Use Classes Order.

Recommendation

9. The Executive Member is asked to:
 - a. Note the content of this report and annexes; and
 - b. Delegate to the Assistant Director for Planning and Public Protection to submit the Councils response to the MHCLG consultation referred to in this report.

Background

A proposed new permitted development right for the change of use from Commercial, Business and Service Use to residential to create new homes.

10. On 1 September 2020 amendments to the Use Class Order came into force. One of the major amendments was the consolidation of various established Use Classes into a simplified set of categories of Class E (Commercial, business and service uses), Class F.1 (Learning and Non-Residential Institutions) and Class F2 (Local Community Uses).
11. Whereas, prior to the amendments, distinct Use Classes existed for Shops (Class A1), Financial and Professional Services (Class A2), Restaurants (Class A3), Offices (Class B1) these have been subsumed into the amended Class E (Commercial, business and service uses). The same is the case of some uses such as Clinics, health centres, children's nurseries and gymnasiums which move from Class D1 and D2 into the amended Class E.
12. The proposed new permitted development right would replace the current rights for the change of use from Office to Residential (Part 3, Class O of Schedule 2, of the General Permitted Development Order) and from Retail to Residential (Part 3, Class M of Schedule 2, of the General Permitted Development Order). However the new right will significantly extend the right to also include restaurants, indoor sports and crèches. This right would apply across the whole of the Council's administrative area it would not be exclusive to the city centre or main urban areas.
13. It is proposed that, in order for a premises to benefit from this right, the premises must have been in the Commercial, Business and Service use class on 1st September 2020 when the new classes came into effect.

14. All homes would be required to meet the nationally described space standards. This will come into effect from 1 August 2021.
15. Any exercising of this right would be subject to the Prior Approval of the Local Planning Authority. Therefore developers would be required to submit details to the Local Planning Authority for assessment, albeit of specific matters, and any such proposals would be subject to public consultation.

Size of the buildings to which the right might apply

16. It is proposed within the consultation, that there should be no size limit on the buildings that could benefit from the new permitted development. This is already the case for the existing Office to Residential (Class O) PD right. However this is a significant change to the existing Retail to Residential PD right (Class M) which is currently limited to 150m².
17. The omission of a specific size limit on the buildings which would benefit from this new PD right does raise the prospect that large retail units, such as those which may traditionally be occupied by high street department stores, could be seen as prime development sites to deliver high numbers of residential units. Similarly large out of town retail units would be subject to the permitted development right. Re-purposing of out of town retailing would be more appropriately considered through a planning application process given the scale of such schemes, their surroundings and location.

Where the right may apply

18. The consultation proposes that the new right should not apply in Areas of Outstanding Natural Beauty (AONBs), the Broads, National Parks and World Heritage sites. None of which are present in the Councils administrative area.
19. Having regard to Conservation Areas. Existing and previous rights for the change of use to residential, with the exception of Office to Residential did not apply in article 2(3) land (Conservation Areas, AONBs, the Broads and National Parks). The consultation paper outlines that the new right would apply in Conservation Areas. However the consultation states 'in recognition of the conservation value that retail frontage can bring to

conservation areas the right would allow for prior approval of the impact of the loss of the ground floor use to residential’.

20. Given the extent of existing Conservation Areas within the city it could be anticipated that this particular consideration in the prior approval process will assist with safeguarding retail frontages, particularly within the city centre. However it should be noted that this consideration would appear limited to the loss of the ground floor use to residential use. In practice this may mean ground floor only premises are afforded a greater degree of protection. However in the case of multi-floored developments, in larger buildings, it could be expected that the functionality of the ground floor is for one of access and or communal space, rather than living accommodation. Therefore there could be more scope to retain a retail type frontage; but it is not clear whether this would also safeguard the accompanying retail use. Or whether it would simply safeguard the appearance of a retail use.

Matters for local consideration through prior approval

21. The existing permitted development rights for the change of use to residential allow the Local Planning Authority to consider a closed list of issues during the prior approval process. The consultation paper proposes that the following issues for consideration would form part of the new Permitted Development Right:

Similar to other permitted development rights for the change of use to residential:

- a. flooding, to ensure residential development does not take place in areas of high flood risk
- b. transport, particularly to ensure safe site access
- c. contamination, to ensure residential development does not take place on contaminated land, or in contaminated buildings, which will endanger the health of future residents

To ensure appropriate living conditions for residents:

- d. the impacts of noise from existing commercial premises on the intended occupiers of the development
- e. the provision of adequate natural light in all habitable rooms
- f. fire safety, to ensure consideration and plans to mitigate risk to residents from fire

To ensure new homes are in suitable locations:

- g. the 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

22. It should be noted that this approach would, still, not allow for the Council a mechanism to secure any kind of off-site infrastructure that may be required to mitigate the impacts of such developments; which are often secured via Section 106 legal agreement.

Applications for Prior Approval and fees

23. It is proposed that applications for Prior Approval would need be accompanied by detailed floor plans showing dimensions and proposed use of each room, including the position of windows, information necessary for the consideration of the matters for prior approval, and a fee.

24. It is proposed that the application fee for such prior approval applications would be £96 per dwellinghouse. This is the same as the fee applied to other prior approval applications at present. This fee would be capped at a maximum fee for 50 homes (£4,800). In contrast a full planning application for 50 homes would attract an application fee of £23,100.

25. Dependent upon the uptake of this new right there is a risk that income from application fees could be impacted upon. The proposed level of fee is unlikely to cover the LPAs costs in administering and determining the applications. This will impact on service provision. There is also no evidence that the higher application fees levied upon full planning applications acts as a prohibitive barrier to development occurring.

Potential impacts of the proposed changes

26. It is apparent from the consultation that the main thrust of these changes is to seek to increase the delivery of housing, pursue further deregulation of the planning process, by removing the need for a full

planning application and provide greater planning certainty to developers and reducing costs to the developers.

27. It should also be noted that the reduction in development costs would extend far further than the costs of making an application or preparing the required supporting information. Under these proposals, as is the case at present under the Office to Residential PD right. In schemes where 10 or more dwellings are created the Council would have no mechanism by which to secure planning obligations such as affordable housing either on site, or contributions for off-site provision, contributions towards education to provide school places, highways or sustainable transport infrastructure or open space provision
28. As a result there is the prospect of additional large developments coming forward, which have an impact upon local infrastructure and services such as schools, public open spaces, but these developments make no contribution to the ongoing provision of such services.
29. As with other Prior Approval processes. The matters that the Council can consider in the assessment of any such proposals are relatively narrow.
30. The proposed expanded PD right would in effect grant permission to allow uses falling within Class E to be changed to a residential use. As with the existing PD rights there is no requirement in the proposals that the premises must be vacant. Within the consultation there is no reference to the right also permitting any operational development that may be required to facilitate the change. It may therefore be the case that in the event of the new right coming into force, the council sees an increase in more minor applications for works and alterations which are not covered by the new PD right. This is something that has been seen with the Office to Residential prior approvals. Whereby the Prior Approval Application is made to facilitate the change of use, but the developer then makes a further full planning application to undertake minor operational development such as the provision of new door openings, or works to alter the external appearance of the building.

31. There can be no guarantees that these proposed measures will actually deliver more housing. This is a matter that is outside the control of the Local Planning Authority. The measures will likely lead to an increase in the number of dwellings which have extant planning approval to be built; however this is only one element of the overall delivery process. Furthermore there is the potential, particularly in historic areas, that new residential uses would be more popular for visitor accommodation, negating the benefits to residents outlined in the consultation.
32. The overall impact of a new permitted development right of this nature will be heavily dependent upon the uptake amongst developers and the owners of premises which benefit from the right. There is the possibility that the right could prove popular dependent upon how existing business respond and recover from the current Coronavirus pandemic. Depending on business recovery either as a result of businesses consolidating the physical space they occupy or some businesses not surviving there is the possibility that there could be a significant number of premises which could provide development opportunities.
33. Certain existing PD rights that allow changes of use to shops include, as part of the Prior Approval process, an assessment of the impact of the change upon the adequate provision of shops and services and the impact on the sustainability of key shopping areas. The consultation proposals do not include such safeguards, except for ground floor uses in conservation areas on historic character and appearance grounds. Whilst the impact of trading conditions on retailers and commercial property owners is acknowledged, there is concern that the consultation proposals may lead to the loss of retail and service uses that will undermine town and district centres and potentially isolate remaining commercial uses by reducing local footfall because of visitor perceptions at a street or shopping area level.
34. The new use class E includes the provision of medical and health facilities; crèche, day nurseries and day centres. The proposed PD right may result in the loss of such facilities to residential use undermining local and national policies to retain such uses and the potential loss of uses from accessible locations. This could be to the

detriment of working families and the ease in which they can access important support facilities such as childcare.

35. It is considered that the list of matters to be assessed as part of the prior approval process should include consideration of all potential noise sources that may impact on residential amenity and the health of future occupants; consideration of air quality impacts, and specific reference to waste and re-cycling storage.

Supporting public service infrastructure through the planning system

36. At present Schools, Colleges, Universities and hospitals benefit from certain Permitted Development Rights under Class M, Part 7 of Schedule 2 of the GPDO. These rights currently contain various limitations to the scale of development. Extensions are limited to 25% of the gross floorspace of the original building up to a maximum of 100m² or 250m² in the case of schools. The overall height is also restricted to 5m and prevents development close to the boundaries in the case of schools, to protect neighbouring properties.

37. It is proposed that these rights would be extended by:

- a. Allowing such facilities to expand by up to 25% of the footprint of the current buildings on site at the time the legislation is brought into force or up to 250m² whichever is greater.
- b. Increase the height limit from 5m to 6m (excluding plant on the roof) – except where it is within 10m of the boundary or curtilage.
- c. The rights would also be extended to include Prisons.
Consideration is also being given to extend the right to land and buildings located ‘within the wire’ of existing Ministry of Defence Sites.

38. At present permitted development rights in relation to Schools, Colleges, Universities and hospitals are not subject to any prior approval process. As such the operators of such facilities are free to exercise these rights if they can be satisfied that they are in full compliance with the necessary limitations contained within the legislation.

Potential Impacts of the proposed changes

39. The proposed changes are deregulatory. Given the types of land and building use they relate to, they would, if brought into force benefit both public and private institutions.
40. As with the expansion of any permitted development right there is a risk that this would reduce the volume of planning applications relating to such existing uses and therefore a loss of income from planning application fees. However given the type of institutions involved such applications do not typically generate notably high volumes in any case; therefore any adverse impact upon fee income is unlikely to be significant. Furthermore, in the case of developments at schools, the albeit limited reduced costs as a result of not having to make a formal planning application would benefit other service areas of the Council such as Education, costs which could in turn be reallocated into the projects themselves.
41. The size limitation could allow for significant sized developments which in built-up areas could have amenity and traffic impact both in terms of traffic generation and loss of existing parking spaces which can in turn displace parking on to adjacent streets. The proposed limitations in the proposals provide some safeguards for the amenity of adjoining property. There is however no reference to the provision of windows in proximity to boundaries.

A faster planning application process for public service developments

42. Existing permitted development rights for Schools, Colleges, Universities and Hospitals provide a degree of scope for expansion opportunities; and the proposed changes to permitted development rights would enhance these opportunities further. However, often expansion at these types of sites are far more extensive and complex and are therefore outside the scope of permitted development rights. Such development often constitutes Major development.
43. In the context of a formal planning application, an application for Major development has a statutory timetable of 13 weeks (or 16 weeks in the case of EIA (Environmental Impact Assessment) development.

44. Within the consultation paper it is proposed amendments are to be made to secondary legislation, principally the Town and Country Planning (Development Management Procedure) (England) Order 2015. The proposed amendments include:

- a. A shortened determination period – shortened to 10 weeks;
- b. Modified consultation and publicity requirements (reduced from a minimum of 21 days to 14) and;
- c. Measures to increase transparency – local planning authorities to have to notify the Secretary of State when a valid application of this type is received; and to notify the Secretary of State no later than 8 weeks from having validated the application, when the Local Planning Authority anticipate making a decision.

45. It is proposed that the as part of the amendments clear criteria would be included to define what types of development would benefit from this modified process. However the consultation paper does outline that definitions will be provided for the following:

- a. Hospitals;
- b. Schools and further education colleges;
- c. Prisons, young offenders' institutions and other criminal justice accommodation.

46. The Government consultation paper envisages that the types of project to benefit from these measures are principally those which are funded by government. It also states that in the first instance these measures would not apply to development which falls within the definition of EIA development. These will retain a statutory timetable of 16 weeks.

Potential Impacts of the proposed changes

47. Given that these amendments are only likely to apply to a specifically defined subset of development types it is not anticipated that they would place an unduly excessive additional demand upon the Local Planning Authority. As an example during 2019 only 5.no Major Planning applications were received which may fall into the proposed

10 week application type; these applications were made by NHS bodies and Universities.

48. Within the context of York notable key beneficiaries of this particular change could be local NHS trusts and Education providers including the Universities – depending on the exact final definitions of who would benefit.
49. The proposed shortening of the statutory timetable to 10 weeks will likely place some additional pressures on resources in terms of ensuring statutory consultees respond in a timely manner. The consultation paper states that to assist in this regard the statutory consultees will be resourced to respond in the required time. However it is not clear whether this relates only to national bodies, such as the Environment Agency, Historic England, Highways England for example; or whether this will also include statutory consultees that are within the Council such as the Local Highway Authority.
50. The proposed shortening of the minimum consultation period from 21 to 14 days would assist with streamlining the application process bringing forward the earliest date from which the Local Planning Authority could determine the application, having discharged their obligations in respect of publicity. However it could also act to exclude third parties who may wish to participate in the planning process. Often major applications can be accompanied by a large volume of supporting information. It is not uncommon for third parties and Parish Councils to raise concerns that the current 21 day period being insufficient for them to be able to make a response to Major applications.

Consolidation and simplification of existing permitted development rights

51. Finally, the consultation paper proposes the possible consolidation and simplification of the existing General Permitted Development Order (GPDO). The GPDO provides the national grant of planning permission for certain types of development. This can include material changes of use, such as the Office to Residential Use and also extensions and alterations to existing buildings; such as minor extensions to existing dwellinghouses.

52. The last major amendments to the GPDO were in 2015. Since then there has then also been periodic amendments made to various sections to update the legislation and introduce new permitted development rights. In addition to which other items of legislation have also been subject to quite radical change, most notably the Use Classes Order, which was revised in September 2020.
53. At present and until 31st July 2021 there is a transition period in relation to the Use Classes Order published in September 2020 and its forerunner. After the 31st July 2021 only the 2020 Use Class Order will survive.
54. The proposed consolidation of the GPDO is considered to be a logical step, insofar as it will allow for references to old Use Classes which are no longer relevant and in some cases PD Rights that are no longer relevant to be removed from legislation. However this could require the amendment of 49. no individual rights and additional paragraphs and articles.
55. At this stage the Government have identified 4 broad categories which could be applied to existing Permitted Development Rights:
- a. **Category 1** – the right is no longer required. Example – Class D (Shops to Financial and Professional); as these were previously two separate rights which are now within the broad Commercial, Business and Service Use Class.
 - b. **Category 2** – the right is unchanged by the amendments to the Use Class Order. Example Class L (Small Houses of Multiple Occupation to Dwellinghouse and vice versa) – only outside of the area covered by the HMO Article 4 Direction in York.
 - c. **Category 3** – the right may be replaced by the new proposed permitted development right from the Commercial, Business and Service Use class to residential. Example Class O (Office to Residential Use).
 - d. **Category 4** – the right requires detailed consideration. These are classes where more detailed consideration is required as a result greater divergence from the previous Use Classes Order. For example Class J (retail or betting office or pay day loan shop to assembly and leisure D2). This is as a result of some uses which

all fell into Class D2 having now been separated into the new F2 Local Community Use Class whilst others such as concert halls are now listed as not been in any use class.

56. The Government therefore propose to review and update the individual rights that have been affected by the amendments to the Use Class Order. The aim being to simplify and rationalise the rights where possible by revoking unnecessary rights and merging where appropriate. The intention being that the end result is a more accessible set of rights.

57. Whilst work towards a more accessible and consolidated set of permitted development rights would be welcomed, particularly in the context of the amendments and revisions made since the last major changes in 2015 and the changes to the Use Classes Order. It should be noted that the clear, general, direction of travel from Government is one of deregulation. It will therefore be necessary to be aware of the potential risks moving forward and ensure that the correct balance of safeguards are retained within any amended or consolidated rights.

Conclusion

58. The further deregulation of the planning measures through the expansion of the permitted development rights will result in the further erosion of the Councils ability to shape and deliver development. The proposal to grant a new permitted development right to allow any Commercial, Business or Service use to be changed to residential has the potential to have a significant impact upon spatial development within the city.

59. The proposed measures to support public service infrastructure via the extended use of permitted development rights has the potential to benefit public service infrastructure providers; including the Council. Measures to streamline the formal planning application process for public service infrastructure developments outside the scope of permitted development are not expected to create an undue burden upon the Council. However, for these measures to be successful, it will be important for such projects to be 'front loaded' whereby the

developer engages with the Local Planning Authority at pre-application stage.

60. The consolidation and simplification of existing permitted development rights is the logical next step; particularly following changes to the Use Class Order. This work will be an opportunity to ensure that permitted development rights are fit for purpose, accurate and do not create areas of ambiguity. However the clear risk is that this is simply a further level of deregulation. Which whilst seeking to simplify things only does so for developers. There is the risk that it will remove some local decision making powers.

Council Plan

61. The Council priorities for Creating Homes and world class infrastructure are relevant to the Development Management function. The proposals to deregulate the planning process and expand permitted development rights will remove, to a degree, the ability of the Local Planning Authority to proactively shape development within the city. Whilst the proposals to expand the permitted development rights in respect of the creation of dwellinghouses has the potential to increase the delivery of dwellinghouses, this is by no means guaranteed. The measures will do nothing to address or provide affordable housing or to secure other necessary infrastructure and has the potential to undermine the provision of shops and services.

Implications

- **Financial** Further deregulation of the planning process by broadening the levels of development which are deemed to be permitted development, and therefore do not require planning permission, will lead to a reduction in the number of planning applications the Council receives. This will have an impact upon income from application fees in Development Services. The proposed fee for the new permitted development right is unlikely to cover the LPA costs in determining the application.
- **Human Resources (HR)** There are no HR implications
- **Equalities** The new use class E includes the provision of medical and health facilities; crèche, day nurseries and day centres. The proposed PD right may result in the loss of such facilities to residential use undermining local and national policies to retain such

uses and the potential loss of uses from accessible locations adversely impacting on the elderly, people with disabilities.

- **Legal** There are no legal implications
- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications
- **Property** The proposals would apply to CYC owned property.
- **Other** The broadening of permitted development rights and the use of the prior approval process, where only very specific matters can be considered in assessing a set of proposals, may further limit the democratic element of the planning process. Whereby interested third parties and elected members have less of an input into decision making.

Risk Management

62. There are no known risks

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Report **Date** 18/1/21
Approved

Wards Affected:

All

For further information please contact the author of the report

Background Papers: None

Annexes: Annex 1: City of York Council response to Ministry of Housing, Communities and Local Government consultation: Supporting housing delivery and public service infrastructure.