



DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR PLANNING AND ENFORCEMENT

TOPIC – RESPONSE TO GOVERNMENT CONSULTATION ON ALLOWING BUSINESS PREMISES TO CHANGE TO RESIDENTIAL USE WITHOUT REQUIRING PLANNING PERMISSION FROM THE COUNCIL.

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Friday 24 June 2011.

Contact Officers:

Case Officer: Simon Finch Head of Planning Management, Tel: 01962 848 271, Email: sfinch@winchester.gov.uk

Committee Administrator: Nancy Graham, Senior Democratic Services Officer, Tel: 01962 848 235, Email: ngraham@winchester.gov.uk

SUMMARY

The coalition Government has published a consultation paper entitled "Relaxation of the Planning Rules for Change of Use from Commercial to Residential." The aim is to change the planning regulations to allow business premises (B1 – research & development, offices & light industrial) to be converted to housing as permitted development i.e. without requiring planning permission from the Council. To this end the Government is proposing to alter the General Permitted Development Order to make changes of use from B1 to C.3 (dwellings) permitted development (PD). The Government has asked interested parties to provide comments using the questionnaire attached at Appendix A.

This relaxation of planning control is intended to increase the supply of land for housing whilst promoting economic growth and regeneration and bringing back into use empty commercial premises or buildings which are no longer suited to their original purpose. The Government also believes that there is a strong case to go further by extending existing PD rights relating to the conversion of floor space above shops and by including other commercial uses namely; B2 (heavy industrial) and B8 (storage & distribution).

At the present time, planning permission from the Council is needed in all cases where a change of use from business to residential is proposed. This means that there is an opportunity to consider the proposal against planning policy and to look at the suitability of the premises for residential use. The adopted Local Plan includes a policy (E.2) designed to protect employment premises (B1, B2 & B8). Under this policy, a change of use away from employment is only permitted where the retention of the business use would cause overriding environmental or highway objections or where the need for the development outweighs the retention of the existing use. Furthermore, under other Local Plan policies, contributions towards the provision of open space facilities and transport infrastructure are often required in relation to applications for residential uses.

The relaxing of PD rights would be likely to increase the supply of land for housing in Winchester as the owners of some business premises may well consider converting their buildings to residential use. It is acknowledged that this would have beneficial effects, given the existing need for housing within the District, as it would make it easier for homes to be created. It may also bring back into productive use vacant commercial buildings which have not been occupied for some time. However, this is more of a problem in other parts of the country.

However, the ability to convert commercial premises to housing without requiring permission from the Council is likely to have a detrimental impact upon employment opportunities in the District. There is a very real risk that high residential values will encourage developers to convert viable business premises to residential which will reduce opportunities for local businesses through loss of accommodation and will also act to increase commercial rents. This will undermine local planning policy as outlined above.

Furthermore, residential conversions carried out as PD will mean that there is no opportunity for a contribution to be made towards affordable housing. It will also mean that whilst new-build schemes will still have to make appropriate contributions towards provision of local facilities (open space, transport improvements etc.), conversions which are PD will not, thereby adding to existing deficiencies.

Notwithstanding any safeguards written into the revised regulations, it difficult to see how development in unsustainable (remote rural or other inaccessible locations) or unsuitable locations (noisy, overshadowed by neighbouring buildings etc.) can be adequately controlled and this may also lead to conflicts with adjacent commercial uses and poor living conditions for new residents.

It would be possible for the Council to seek to remove PD rights by using Article 4 directions. These are area-specific and so could be used to prevent changes of use from taking place in certain locations in the District. However, they are resource-intensive, as widespread coverage would probably be needed for them to be effective in this context, and such action can give rise to compensation claims. As a result, Article 4 powers would not overcome the concerns explained above.

Overall, therefore, the relaxation of PD rights to allow commercial premises to be converted to housing is not supported, as it is likely to have a detrimental impact upon employment opportunities in the District, as well as other negative effects, although no objection in principle is raised to the extension of existing PD rights regarding the change of use to residential of floor space over shops.

PROPOSED DECISION

That Appendix A is approved as the Council's response to the Government's consultation document on "Relaxation of the Planning Rules for Change of Use from Commercial to Residential."

REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

The proposed relaxation of PD rights to allow the change of use of commercial premises to housing without requiring the Council's permission is not supported because it would be likely to result in the loss of employment premises which would be detrimental to business opportunities in the District. This would undermine local planning policy and wider Council economic objectives. Furthermore, it could lead to the creation of residential premises in unsustainable locations (remote sites in the countryside) and unsuitable locations (dwellings close to noisy commercial premises). Such developments would not make contributions towards the provision of facilities and infrastructure, or affordable housing, normally required of housing schemes in the District.

The option of supporting the broadening of PD rights was considered and it is acknowledged that the proposed changes would be likely to increase the supply of new homes because it would be easier to convert commercial buildings to housing. Some of the units created could provide much needed accommodation and may also bring back into productive use vacant premises. Nevertheless the negative effects explained above outweigh these benefits and so the change to PD rights is not supported.

RESOURCE IMPLICATIONS:

A slight reduction in planning fee income as the number of applications could fall. This is unlikely to be significant.

The increased use of Article 4 Directions to remove PD rights from certain areas of the District, where protecting commercial premises is a priority, would be resource-intensive and would be likely to give rise to compensation issues.

The Council could benefit financially if dwellings created by exercising PD rights are covered by the New Homes Bonus scheme.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

Portfolio Holder and internal officer consultation.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

n/a

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

n/a

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature)

Date of Decision:

Councillor Robert Humby – Portfolio Holder for Planning and Enforcement

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

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

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

C3consultation@communities.gsi.gov.uk

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

Theresa Donohue
Consultation Team (Commercial to residential use)
Planning Development Management Division
Department for Communities and Local Government
1/J3, Eland House
Bressenden Place
London SW1E 5DU

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

Data Protection

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

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

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

About you

i) Your details

Name: Simon Finch
Position: Head of Planning Management
Name of organisation (if applicable): Winchester City Council
Address: City Offices, Colebrook Street, Winchester, Hants SO23 9LJ.
E-mail: sfinch@winchester.gov.uk
Telephone number: 01962 848271

ii) Are the views expressed on this consultation an official response from the organisation you represent, or your own personal views?

Organisational response

Personal views

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

Local planning authority

Housing developer

Community group/representative

Parish council

Business

Planning professional

Landowner

Voluntary sector or charitable organisation

Other (please state)

The consultation questions

Question A:

Do you support the principle of the Government's proposal to grant permitted development rights to change use from B1 (business) to C3 (dwelling houses) subject to effective measures being put in place to mitigate the risk of homes being built in unsuitable locations?

Yes No

Please give your reasons:

There are vast regional and local differences relating to commercial and housing land values and rents as well as to vacancy rates. However, in prosperous areas like Winchester, there is a very real risk that high residential values will encourage developers to convert viable business premises to residential which will reduce opportunities for local businesses through loss of premises and will also act to increase rents. This will undermine local planning policy and wider Council economic objectives.

Question B:

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

Yes No

Please give your reasons:

The same concerns apply as outlined in QA. It is also difficult to see how effective safeguards could be put in place in the GPDO to prevent residential conversions in unsuitable locations i.e. in places where new residents would be subjected to unreasonable levels of noise and disturbance associated with the operation of neighbouring business uses.

Question C:

Do you agree that these proposals should also include a provision which allows land to revert to its previous use within five years of a change?

Yes No

Comments:

If such COUs are permitted by the GPDO it would be useful if the premises could revert to its previous business use which would build in flexibility. If residential units proved unattractive it would be possible to go back to the previous use.

Question D:

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

Yes X No

If so, should there be an upper limit?

Yes X No

Comments:

There is clearly more scope to allow space above shops to be used for residential purposes but large scale proposals could have unintended consequences. A limit of 5 units would be appropriate.

Question E:

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

Yes No X

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

Yes X No

Please give details:

Comments:

The Council has adopted policies which are designed to protect business premises and these reflect local circumstances. Removing the need to apply for a COU from business to housing will undermine these policies to the detriment of employment generation and retention.

Furthermore, residential conversions carried out as PD will mean that there is no opportunity for a contribution to be made towards affordable housing, bearing in mind that need within the District is high.

It will also mean that whilst new-build schemes will still have to make appropriate contributions towards provision of local facilities (open space, transport improvements etc.), conversions which are PD will not thereby adding to existing deficiencies. In future, residential schemes undertaken as PD would not be required to make contributions in line with the Community Infrastructure Levy.

Notwithstanding any safeguards written into the GPDO, it difficult to see how development in unsustainable (remote rural or other inaccessible locations) or unsuitable locations (noisy, overshadowed by neighbouring buildings etc.) can be adequately controlled and this may also lead to conflicts with neighbouring commercial uses and poor living conditions for new residents..

Question F:

Do you think that there is a requirement for mitigation of potential adverse impacts arising from these proposals and for which potential mitigations do you think the potential benefits are likely to exceed the potential costs?

Yes X No

Comments:

In all cases a prior approval mechanism should be required to ensure that the details of the scheme work for a residential use. Whilst this may slow down the process, it is important to ensure that safeguards are in place to protect future residents' amenities, including in terms of noise, parking, contaminated land etc.

Question G:

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

Should the GPDO be changed, it is important that conditions be included to limit the scale of developments which could be carried out as PD (maximum number of units being limited to 9/1000 sq.m floorspace which is below the threshold of major developments). Environmentally-sensitive locations, such areas at high risk of flooding, and development needing EIA should be excluded from these PD rights.

Question H:

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

Conditions of PD written into the GPDO.

Question I:

What is your view on whether the reduced compensation provisions associated with the use of article 4 directions contained within section 189 of the Planning Act 2008 should or should not be applied? Please give your reasons:

If the GPDO is relaxed as proposed, it will be vital for councils to be able to introduce Article 4 directions to enable control to be exercised in areas where the retention of business premises is a priority in accordance with local policy. To enable Article 4s to be used in this way, the reduced compensation provisions of S189 of the 2008 Act should be applied.

Question J:

Do you consider there is any justification for considering a national policy to allow change of use from C to certain B use classes?

Yes No

Please give your reasons:

Allowing businesses into predominantly residential areas could cause problems of noise and disturbance. Access and parking issues could be particularly problematic.

Question K:

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

Even though Article 4 directions can be used to restrict PD rights, having to make these orders is resource-intensive and will load significant costs on to councils, notwithstanding the issues arising from possible compensation.

If the GPDO only allows for the COU of buildings and does not permit any associated alterations, developers are still likely to need to make applications to councils relating to new fenestration, means of access/escape. Will councils in such cases be able to consider the principle of the conversion, or only the impact of the physical changes?

The impact assessment questions

Question 1:

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

Yes No

If not why?

Question 2:

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

Yes No

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

Please see response to Question K.

Question 3:

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

Yes X No

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

Question 4:

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

Yes X No

If so please describe:

See responses to questions Q, E, I and K above.

Question 5:

Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options?

Yes No X

If not, why not?

The extension of PD rights as proposed could undermine local planning policies as explained above.

Question 6:

Do you think there are any groups disproportionately affected?

Yes X No

If so please give details:

Local businesses may be the group most affected by these changes as rents may increase and business premises may be lost. This is likely to be particularly evident in a district such as Winchester, where residential land values are high.

Question 7:

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

Yes No X

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

Question 8:

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

Not at present.