



WOKINGHAM BOROUGH COUNCIL

A Meeting of an **INDIVIDUAL EXECUTIVE MEMBER DECISION** will be held virtually on **THURSDAY 21 JANUARY 2021 AT 11.00 AM**

Susan Parsonage
Chief Executive
Published on 13 January 2021

This meeting may be filmed for inclusion on the Council's website.

Note: The Council has made arrangements under the Coronavirus Act 2020 to hold this meeting virtually via Microsoft Teams. The meeting can be watched live using the following link: <https://youtu.be/tT5dSETZAHM>

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WOKINGHAM BOROUGH COUNCIL

Our Vision

A great place to live, learn, work and grow and a great place to do business

Enriching Lives

- Champion outstanding education and enable our children and young people to achieve their full potential, regardless of their background.
- Support our residents to lead happy, healthy lives and provide access to good leisure facilities to complement an active lifestyle.
- Engage and involve our communities through arts and culture and create a sense of identity which people feel part of.
- Support growth in our local economy and help to build business.

Safe, Strong, Communities

- Protect and safeguard our children, young and vulnerable people.
- Offer quality care and support, at the right time, to prevent the need for long term care.
- Nurture communities and help them to thrive.
- Ensure our borough and communities remain safe for all.

A Clean and Green Borough

- Do all we can to become carbon neutral and sustainable for the future.
- Protect our borough, keep it clean and enhance our green areas.
- Reduce our waste, improve biodiversity and increase recycling.
- Connect our parks and open spaces with green cycleways.

Right Homes, Right Places

- Offer quality, affordable, sustainable homes fit for the future.
- Build our fair share of housing with the right infrastructure to support and enable our borough to grow.
- Protect our unique places and preserve our natural environment.
- Help with your housing needs and support people to live independently in their own homes.

Keeping the Borough Moving

- Maintain and improve our roads, footpaths and cycleways.
- Tackle traffic congestion, minimise delays and disruptions.
- Enable safe and sustainable travel around the borough with good transport infrastructure.
- Promote healthy alternative travel options and support our partners to offer affordable, accessible public transport with good network links.

Changing the Way We Work for You

- Be relentlessly customer focussed.
- Work with our partners to provide efficient, effective, joined up services which are focussed around you.
- Communicate better with you, owning issues, updating on progress and responding appropriately as well as promoting what is happening in our Borough.
- Drive innovative digital ways of working that will connect our communities, businesses and customers to our services in a way that suits their needs.

For consideration by

Wayne Smith, Executive Member for Planning and Enforcement

Officers Present

Justin Turvey, Operational Manager – Development Management

Callum Wernham, Democratic & Electoral Services Specialist

IMD NO.	WARD	SUBJECT	
IMD 2021/05	None Specific	CONSULTATION RESPONSE - PROPOSED NEW PERMITTED DEVELOPMENT RIGHT FOR THE CHANGE OF USE FROM COMMERCIAL, BUSINESS AND SERVICE USE TO RESIDENTIAL	5 - 14

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Agenda Item IMD5

INDIVIDUAL EXECUTIVE MEMBER DECISION

REFERENCE IMD: 2021/05

TITLE	Proposed new permitted development right for the change of use from Commercial, Business and Service use to residential
DECISION TO BE MADE BY	Executive Member for Planning and Enforcement - Wayne Smith
DATE, MEETING ROOM and TIME	21 January 2021 11am
WARD	None Specific;
DIRECTOR / KEY OFFICER	Director, Place and Growth - Chris Trill

PURPOSE OF REPORT (Inc Strategic Outcomes)

To agree the Council's response to the current government consultation 'Supporting housing delivery and public service infrastructure' (MHCLG, December 2020) , specifically Part 1 of the consultation, entitled:

Supporting housing delivery through a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential

RECOMMENDATION

That the Executive Member for Planning and Enforcement agrees that Wokingham Borough Council submit the comments contained in Appendix 1 as this Council's formal response to the government consultation 'Supporting housing delivery and public service infrastructure' (MHCLG, December 2020)

SUMMARY OF REPORT

The government has consulted on a document proposing changes to permitted development rights to allow the conversion of any Class E (Commercial, Business and Service Uses) use to residential, subject to a prior approval process which allows only a limited number of factors to be considered.

There are concerns that the unintended consequence of the proposed permitted development right changes would lead to a significant loss of retail uses in main and smaller shopping areas, as well as the loss of smaller community facilities, which would not have been supported through the Council's adopted planning policies.

It is considered that through the planning application process the Council is best placed to assess whether or not a loss of retail, commercial or community uses would be acceptable, rather than a sweeping right to lose these facilities without regard to the particular impact on an area. The right is likely to lead to a fragmentation of main retail frontages and a decrease in visitors and footfall, which could compound the issues facing struggling high streets rather than supporting them. Specialist and marginally

profitable shops are likely to be the most vulnerable as a result of conversions to more profitable residential uses. In residential areas outside of the main centres, uses such as nurseries and day care centres as well as smaller retail units serving the local population could also be lost to residential uses without proper assessment through a planning application. Many high streets are located within Conservation Areas, and the proposed permitted development right has the potential to lead to a number of conversions and subsequent alterations to buildings that would be of detriment to the character of the Conservation Area.

The prior approval process would be required but this does not result enable the Council to ensure that new homes would meet the Council's minimum standards in terms of matters such as provision of amenity space, separation distances etc and is likely to lead to poor quality living accommodation. There would be no CIL or s106 requirement to mitigate the impact of the development as is required through a planning application, including for provision of affordable housing.

The proposal would reduce staff resource as the prior approval application fee would not cover the cost of dealing with the submission.

It is proposed that Council submits an objection to the proposed 'Supporting housing delivery and public service infrastructure' consultation, specifically the proposal to introduce a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential. The proposed response to the consultation forms Appendix 1.

Background

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. Significant changes were made last year to the Use Classes Order, Creating a new Class E (Commercial, Business and Service) from the following classes:

- A1 - Shops
- A2 - Financial and professional services
- A3 - Restaurants and cafés
- B1(a) - Offices
- B1(b) - Research and development
- B1(c) – Light Industrial processes
- (Part of) D1 - Non-residential institutions
- (Part of) D2 - Assembly and leisure

The new Class E covers a broad range of high street and town centre and commercial uses (including shops, banks, cafes, offices and health centres), and provides flexibility to move between the uses without a change of use occurring i.e. no planning permission is required to change between any use under Class E.

Subject to prior approval, it is currently permitted development to change from some of the above uses to residential without the need for full planning permission. For example, the current regulations allow conversion of offices to residential, which has led to the conversion of a number of office buildings within the borough e.g. Fishponds Road/Molly

Millars Lane to flats. A permitted development right also exists to convert some A1 retail premises to residential use, but this is heavily controlled in terms of the size and the location of units which can be converted, and take-up of this right has been very limited because of the restrictions in place (there have only been 3 prior approval submissions for retail to residential conversions submitted to the Council since 2015, compared to 100 office to residential prior approval submissions).

The current consultation seeks views on a new permitted development right from 31st July 2021 which would allow the conversion of any Class E building to residential use, subject to prior approval of the following matters only:

- flooding
- transport/site access
- contamination
- the impacts of noise from existing commercial premises on the intended occupiers of the development
- the provision of adequate natural light in all habitable rooms
- fire safety
- the impact on the intended occupiers from the introduction of residential use in an area the authority considers is important for heavy industry/waste management

The implications of this proposal are considered below.

Business Case (including Analysis of Issues)

The government have introduced and are proposing a number of wide ranging changes to how the planning system operates, and have made a significant number of changes to permitted development rights to enable more development without the need for planning permission, particularly conversions of buildings to residential use, as part of a drive to increase the delivery of housing.

The implication is that Council's act as a stumbling block to delivery of housing; however, proactive local authorities, such as Wokingham Borough, have shown that high quality developments, including those of a strategic scale, can be planned for, funded and delivered, and significant residential development has taken place over the plan period to meet the identified need for housing within the borough. Likewise, in decision making on smaller schemes, the Council accept the conversion of buildings to residential use where they meet our standards and policies. The Council approves around 90% of planning applications, which it is able to negotiate through the planning process to meet quality standards.

The introduction of prior approval for conversion of buildings, particularly offices, to residential has led to an increase in the number of residential units within the borough. However, many of the converted buildings are away from existing residential communities and facilities and so development may be isolated. Converted buildings are not required to meet the Council's standards (e.g. amenity space standards and separation distances), and the prior approval regime does not require scheme to provide contributions to mitigate the impact of development, which is discussed in more detail below.

The consultation notes that changing consumer behavior and the impacts of online shopping and COVID-19 presents a significant challenge for retailers in town centres, and

considers that where there is a surplus of retail floorspace, quality residential development will help diversify and support the high street. Allowing any building under Class E to be converted to residential under a prior approval is likely to significantly increase the number of conversions which take place. In particular, high street retail, professional services such as banks and community facilities such as crèches, regardless of size or location, could be converted to residential irrespective of the designation of the building or the Council's planning policies.

There are significant concerns relating to this proposed permitted development right:

- Allowing conversions of high street retail uses to residential undermines the ability of the planning system to protect retail uses within the town centre which current planning policies allow. Permitted development rights are granted at a national level; however, it is considered that local Council's have an understanding of how their high streets are functioning and are best placed to decide whether a retail/commercial use or a residential use is most appropriate on a case by case basis. This is best done through a planning application, where the impacts of the change of use can be considered. The National Planning Policy Framework seeks to ensure the vitality of town centres, including residential development on appropriate sites – enabling residential on any Class E site runs counter to this objective by removing existing protections for town centre uses.
- The permitted development right is likely to lead to pepper potted and ad hoc conversions to residential along the high street. A continuous retail frontage is important in attracting shoppers to a high street and the fragmentation of the retail frontage is likely to lead a decrease in visitors and footfall, compounding the issue of struggling high streets rather than helping them. It is significant that the consultation does not seek to protect primary retail frontages from conversion, so even the main retail offer in larger centres could be lost.
- A significant number of specialist and marginally profitable shops are likely to be lost as a result of the proposal. These are units along secondary frontages or smaller centres which could not afford higher rents. Removing the requirement for planning permission is likely to make many landlords look to residential given the higher returns available. This would undermine the town centre 'offer' and undermine the vitality and viability of these centres. In residential areas outside of the main centres, uses such as nurseries and day care centres as well as smaller retail units serving the local population, could also be lost.
- A significant number of high streets are located within Conservation Areas, designated because of their historic nature and their character and appearance. Whilst other permitted development rights generally exclude Conservation Areas, this permitted development right would apply to any Class E use within a Conservation Area. There is concern that conversions would lead to significant pressure to change established shopfronts, including traditional features such as stallrisers, large windows and fascias, to provide a more private residential appearance once a conversion had been approved, undermining the character of the Conservation Area.
- The prior approval process is effectively a 'light touch' assessment process, where only a limited number of matters are considered. However, they have become increasingly complex to consider, and are comparable to a planning application in

terms of time taken to consider them. The proposed fee per unit (£96) for each application is significantly less than the equivalent planning application (£462) and this represents a significant loss of income for the Council.

- CIL and s106 does not apply to the prior approval process, inhibiting the ability of the Council to secure mitigation or facilities to meet the needs of new housing, including the provision of affordable housing.
- The prior approval process does not enable the local planning authority to assess a proposal against any of the Council’s adopted standards that require new homes to meet acceptable standards, such as those relating to the provision of amenity space or requiring minimum separation between buildings to ensure privacy etc. Without proper standards to ensure acceptable accommodation is provided, a number of residential schemes provided through this mechanism are likely to provide undesirable homes.

For these reasons it is proposed that Council submits an objection to the proposed ‘Supporting housing delivery and public service infrastructure’ consultation proposing to introduce a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential. The proposed response to the consultation forms Appendix 1.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe funding pressures, particularly in the face of the COVID-19 crisis. It is therefore imperative that Council resources are focused on the vulnerable and on its highest priorities.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0	Yes	Revenue
Next Financial Year (Year 2)	£0	Yes	Revenue
Following Financial Year (Year 3)	£0	Yes	Revenue

Other financial information relevant to the Recommendation/Decision
No financial implications arise directly as a result of this consultation exercise.
The proposals within the consultation have potential impacts on the council’s ability to secure affordable housing and other financial contributions from development proposals, and the fee would not cover the cost of delivering the service, impacting upon Council resources.

Cross-Council Implications
No implications arise directly as a result of this consultation exercise.

Public Sector Equality Duty
This report relates to proposed changes to the planning system promoted and consulted on by government, and does not directly relate to actions of the council. As such an equality assessment has not been undertaken.
An equality assessment will be undertaken by government and views have been specifically invited as part of the consultation process on potential impacts of the proposals in this regard.

SUMMARY OF CONSULTATION RESPONSES	
Director – Corporate Services	No comment
Monitoring Officer	No comment
Leader of the Council	No comment
List of Background Papers	
MHCLG ‘Supporting housing delivery and public service infrastructure’ consultation document published December 2020	

Contact Justin Turvey	Service Place
	Email justin.turvey@wokingham.gov.uk

APPENDIX 1

INDIVIDUAL EXECUTIVE MEMBER DECISION

Proposed response to proposed new permitted development right for the change of use from Commercial, Business and Service use to residential

Q1 Do you agree that there should be no size limit on the buildings that could benefit from the new permitted development right to change use from Commercial, Business and Service (Class E) to residential (C3)?

A – No. The lack of a size limit means that a number of large format retail units could be lost from town centres without requiring permission, significantly impacting upon the vitality and viability of town centres. Once lost, it would be extremely difficult to re-provide large retail uses back into centres. The loss of a large or an ‘anchor store’ makes centres much less attractive places to visit. This element of the proposal therefore may have the consequence of doing more harm than good to centres.

Q2.1 Do you agree that the right should not apply in areas of outstanding natural beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, and World Heritage Sites?

No comments.

Q2.2 Do you agree that the right should apply in conservation areas?

A – No. A significant number of Class E uses are located within town centre Conservation Areas, designated because of their historic nature and their character and appearance. The character of a place is more than physical structures, it is a holistic appreciation of place. Unmanaged change carries significant risk of undermining the special character and the designation of the conservation area itself. The right would lead to future pressure for physical changes to buildings within CA's, undermining their characters.

Q2.3 Do you agree that, in conservation areas only, the right should allow for prior approval of the impact of the loss of ground floor use to residential?

A - See above. This should not apply in Conservation Areas.

Q3.1 Do you agree that in managing the impact of the proposal, the matters set out in paragraph 21 of the consultation document should be considered in a prior approval?

A - The matters which an LPA may consider under the prior approval exclude significant considerations which affect both the high street and commercial areas and the quality of accommodation provided to residents.

The proposed permitted development right is likely to lead to pepper potted and ad hoc conversions to residential uses along the high street. A continuous retail frontage is important in attracting shoppers to a high street and the fragmentation of the retail frontage is likely to lead a decrease in visitors and footfall, impacting their vitality and viability and compounding the issue of struggling high streets rather than helping them. It is significant that the consultation does not seek to protect primary retail frontages from conversion, so even the main retail offer in larger centres could be lost.

The Council does not agree to the change of use as proposed without a planning application to enable the Council to consider the impact of the scheme on vitality and viability. Regard must be had to a Council's adopted planning policies.

The converted units are not required to meet any of the LPA's adopted standards which seek to provide a decent standard of accommodation, such as those relating to the provision of amenity space or requiring minimum separation between buildings to ensure privacy etc. Without proper standards to ensure acceptable accommodation is provided, a number of homes provided through this mechanism are likely to provide substandard and undesirable homes.

Q3.2 Are there any other planning matters that should be considered?

A – Yes. The proposal doesn't fully consider the function of place. Whilst residential always has provided an important element in town centres and flats above shops etc are commonplace, the introduction of significant ground floor residential use, especially within established centres will be harmful to the vitality of these centres and undermine their ability to meet the general retail and service needs of their communities.

A significant number of specialist or marginally viable retail uses are likely to be lost as a result of the proposal. These are units along secondary frontages or smaller centres which could not afford higher rents. Removing the requirement for planning permission is likely to make many landlords look to residential given the higher returns available. In residential areas outside of the main centres, uses such as nurseries and day care centres as well as smaller retail units serving the local population, could also be lost.

Q4.1 Do you agree that the proposed new permitted development right to change use from Commercial, Business and Service (Class E) to residential (C3) should attract a fee per dwellinghouse?

Yes.

Q4.2 If you agree there should be a fee per dwelling house, should this be set at £96 per dwellinghouse?

They should be set at the same rate as the equivalent planning application. Although marketed as a 'light touch' approach, prior approvals have become increasingly complex to consider, particularly given the questionable drafting of some of the recent SI's, and can be comparable to a planning application in terms of time taken to consider them. The proposed fee per unit (£96) for each application is significantly less than the equivalent planning application (£462) and this represents a large loss of income for the Council when the work associated with dealing with them is not significantly less.

Q5 Do you have any other comments on the proposed right for the change of use from Commercial, Business and Service use class to residential?

No comments.

Q6.1 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could impact on businesses, communities, or local planning authorities?

Yes – significant detrimental impact upon all three groups for the reasons above.

Q6.2 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could give rise to any impacts on people who share a protected characteristic?

Many of the most vulnerable in the community, including some with protected characteristics, will be detrimentally impacted by the loss of accessible services and facilities that will result from this proposed permitted development right.

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