

# Agenda Item IMD5

## INDIVIDUAL EXECUTIVE MEMBER DECISION

REFERENCE IMD: 2021/05

<b>TITLE</b>	Proposed new permitted development right for the change of use from Commercial, Business and Service use to residential
<b>DECISION TO BE MADE BY</b>	Executive Member for Planning and Enforcement - Wayne Smith
<b>DATE, MEETING ROOM and TIME</b>	21 January 2021 11am
<b>WARD</b>	None Specific;
<b>DIRECTOR / KEY OFFICER</b>	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 31<sup>st</sup> 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

<b>Other financial information relevant to the Recommendation/Decision</b>
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.

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

<b>Public Sector Equality Duty</b>
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.

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

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