

RBKC response to MHCLG: Supporting housing delivery and public service infrastructure

January 2021

1. 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

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)?

Please give your reasons.

The Council fully understands the need to maximise housing delivery and is making every effort to do so. However, we consider that increasing housing delivery should be subject to proactive local planning which allows us to deliver high quality homes for communities, to protect the businesses and services so essential for the economy and to meet the needs of our residents. This will not be achieved by replacing planning permission with prior approval, given that the PA process only includes a narrow suite of issues which a LPA can consider.

The proposal will have a number of unintended consequences. These are set out below. The higher the size limit the more properties included and the greater the harm.

- Deregulation of office to residential uses as a permitted development right has been in place since 2013. Whilst this Borough was exempt from this change and subsequently introduced an Article 4 direction, the poor quality housing developed as a result across England including other London authorities has been well documented. Research carried out by University College London for the Royal Institution for Chartered Surveyors (RICS)¹ in 2018 found that office-to-residential conversions, developed under PD rights, had produced a higher number of poor quality housing, than those governed through full planning permission. This report concluded *“Overall, office-to-residential PD has been a fiscal giveaway from the state to private real estate interests, whilst leaving a legacy of a higher quantum of poor quality housing than is seen with schemes governed through full planning permission.”* It recommended that this right should return to full planning control.

¹ <https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england-rics.pdf>

- A limited array of quality control measures have been suggested in this consultation to address the issue of poor quality housing. These include the need for new homes to meet minimum space standards. However, such a limited remit will run counter to the Government's ambitions to "build beautiful", a central pillar of the Planning White Paper. Some of the most beautiful places have a rich mix of uses and prioritising residential over all other uses is only likely to incentivise landowners to maximise land values in a borough such as Kensington and Chelsea.
- The proposals will increase housing delivery. However, they will run counter to the Government's stated ambition to support our high streets and our town centres. The Borough has some of the most outstanding town centres and shopping areas which need proactive planning support to thrive as they recover from the pandemic. This will undo some of the benefits associated with the newly created "commercial, business and service use class."
- Changes of use will take place due to differentials in land value rather than any inherent weakness of the E class uses. This will be reinforced for larger sites, where returns will be larger. Work carried out to justify our exemption to the initial office to residential liberalisation in 2013 suggested a differential in value of just 30% could trigger a change of use. There is no reason to believe that this trigger level will have changed.
- There is likely to be a significant impact on our centres where entire department stores or large multi floor retailers are lost to residential. These are key anchors which will continue to drive visitors to our centres long after the Covid 19 pandemic has passed. This will lead to a downward spiral as fewer people choose to visit our centres, further reducing the long term viability of the remaining units.
- The proposal will drive the loss of "larger" office occupiers. In this borough these will be the types of premises occupied by the SME, a sector which plays a particularly important role in supporting the wider economy. Only larger corporates will be able to afford to locate in our Borough with smaller SMEs being forced to relocate to those areas where affordable business premises remain. Once again, the loss will be driven by a differential in value and not by a weakness in the office/ business sector. This will have implications on the local economy as well as threaten one of the key drivers which has been so successful in attracting visitors into town centres. The "stay local" messages have highlighted the importance of the office sector to the success of our centres, with increased home working one of the reasons why footfall levels within our centres have dropped to the levels that they have.
- We have yet to understand what the implications of home working may be on the office sector in the longer term. However, there is every reason to believe that the office sector will retain a significant role. The contribution that the

sector will have to a high value borough such as ours will be lost if the premises are no longer available.

- The Council notes that the exclusion of the larger sites from the conventional planning process has the potential to remove the ability of a Council to ensure that externalities are addressed. These externalities may be most pronounced for our larger sites, with for example only sites over 650 sq m expected to make an affordable housing contribution. This would ordinary be done through CIL or S106 agreements, be these to provide affordable housing or to provide for school places and the like. We note that the Government is currently considering whether CIL should apply to permitted development rights. This is essential if new development is to address the need for the infrastructure that it creates. This must also include a mechanism to ensure the provision of affordable homes.

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?

Please give your reasons.

No comment as the Council does not have any of these are designations.

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

Please give your reasons.

No. The loss of a rich mix of uses has a direct impact on the character of a conservation area. It is this mix which makes these areas the special places that they are. This has been recognised by central government in the past, with for example the Permitted Development rights formerly offered by Class M, (retail, takeaways and specified sui generis uses to dwellinghouses) not relating to developments within conservation areas for this very reason.

This would allow a LPA to focus any subsequent Article 4 direction on those areas outside of a conservation area, where the freedoms would have the potential to be particularly problematic.

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?

Please give your reasons.

- Clarity is required. It is not clear whether prior approval allows a LPA to consider the implications of the change of use on the built form only, for example loss of shop fronts and replacement with blank walls, or the impact of

the loss of the actual use itself. Both will be necessary if the unintended consequences of the proposals are not to overwhelm the benefits. Use as well as appearance contributes to the character of an area.

- The Council considers that, at the very least, the provisions should either relate to upper floors only, or that the prior approval considerations should allow the LPA to consider the wider impact of the change of use of the ground floor. This should be the cases both within and outside a conservation area.
- It is the loss of E class uses on the ground floor which have the potential to do the greatest harm to our town centres. The loss of commercial uses and the introduction of residential uses, at this level, will create dead frontage and fragment the remaining “town centre uses”. This will have an immediate impact on the future success of our town centres.

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?

Please give your reasons.

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

Please specify.

The issues listed are important and must all form part of the consideration. However, the Council would urge that this list is extended.

It is essential that a LPA should be able to consider the impact of the change of use:

- where the building is located within a key shopping area, on the sustainability of that shopping area;
- on adequate provision of services of that sort by the E class use, but only where there is a reasonable prospect of the building being used to provide such services; and
- the impact of loss of commercial uses upon local economy and impact to address the objectively assessed need for that use.

The first two duplicate the provisions of class JA– and we have found these very useful to protect those uses which are of particular value, and release those which are not.

This is of prime importance if a LPA is to be allowed to protect the viability of its town centres as places in which to shop, to meet and to work as well as being the hubs which provide the services which serve the community and brings it together. If nothing else the Covid-19 crisis shows how much society values its town centres and

the opportunities they offer. The introduction of residential uses in locations which will harm the very function of our centre would be unwise in the extreme.

The third provision is essential if a council is to be able to protect those office uses which are of such value to the local and to the wider economy.

We note that it is difficult to quantify this value, although the Council did attempt to do so back in 2016 when looking to make an article 4 direction. Whilst these figures predate the current pandemic, they do indicate that the impact will be significant.²

- 3,500 firms would be at significant risk of having their current premises converted from offices to residential;
- 30,000 jobs within the Royal Borough would be directly at risk. This figure increases to over 44,000 when the indirect and induced economic impacts are modelled; and
- The impact upon economic output (measured in Gross Value Added (GVA) would be to place over £2.5 billion of direct economic activity at significant risk; a figure which rises to £3.25 billion once indirect and induced economic impacts are modelled.

The impact of the proposal on the provision of the former D1 class uses may also be significant. Of particular concern will be the impact on smaller clinics and associated uses. These are often in buildings originally in residential use, where conversion would be very easy. The differential in value between the newly created residential uses (in a borough where the median house price is £1.3 million³) and a treatment room or small clinic is very significant and will drive the change of use. Indeed the loss of private medical facilities is something which the policies within our current Local Plan have been very effective in resisting. We are likely to see a dramatic reduction in social capital, directly at odds with the core ambitions of the NPPF, the ambitions of our elected members and of our residents.

The Council notes that the provision of new homes should not in itself have a direct impact upon the amenity of those already living within the vicinity. However, the provision of homes will have secondary impacts, impacts such as car parking and refuse. These issues are of particular importance in a borough such as ours, where residential densities are so high. Prior approval must be able to consider how successfully these issues have been addressed.

The prior approval list includes the impact that the noise from existing commercial properties will have upon the intended occupiers. This is welcomed. However, the prior approval should be extended to allow a LPA to consider new occupiers as “agents of change”. It is essential that the day-to-day operation of existing uses in otherwise commercial settings are not jeopardised by the needs and expectations of new residents.

² [Evidence to inform Article 4 Direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential.](#) (TBR, 2016)

³ [ONS 2019.](#) Year ending September 2019.

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

Please give your reasons.

Yes there should be a fee to cover the cost of determining the application, as is the case for other similar prior approval processes.

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

Please give your reasons.

The fee should be the same, or at least in the region of the fees for new dwellings under Part 20 which are as follows:

- Under 51 new dwellings – £334 per dwelling
- Over 50 new dwellings – £16,525 plus £100 for each dwelling above 50 to a maximum fee of £300,000

The new right would be for the creation of new dwellings, as is the case with Part 20. This should attract a comparable fee given that the matters considered under prior approval are so similar. A properly funded planning system is essential if it is not to act as a brake to development, but to encourage the delivery of new homes.

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?

Please specify.

As set out above, we have grave concerns as to the wisdom of the approach proposed. First amongst these is the impact that the introduction of homes at the expense of commercial, business and service uses on ground floors will have upon the viability of our centres. This impact goes beyond the floorspace lost, but will erode the very ecosystem of our centres as dead frontage is created and our town centres are fragmented. This would be at odds with all of the initiatives from Government to try to support our town centres. Excluding ground floors from the proposals would be welcomed as this would remove some of the disadvantages whilst still supporting the expansion of housing on upper floors, or those part of a building where housing is most suited.

Amending the NPPF could encourage LPAs to release these ground floor uses to residential, where the impact on the wider centre is likely to be limited. This would allow the creation of new homes where appropriate but allow a LPA to resist such proposals where harmful.

We are concerned that the principle of replacing planning permission with prior approval erodes the value of the plan led system, whereby policies are developed with our elected members and our residents before being formally examined by the Secretary of State. These local policies, with local nuances, reflect the needs of a particular area are devalued as a LPA can only consider a narrow set of issues through prior approval.

Prior approval will distance our residents and other stakeholders from the planning process. This is both in terms of the limited nature of consultation and limited suite of issues to be considered with a prior approval application.

It is not clear how the proposals will allow the delivery of either First Homes or the truly affordable housing that is in such demand across this Borough, and others like it. There does not appear to be a mechanism or requirement in place to provide it. By the same token the removal of planning permission removes the opportunity for a Council such as ours to work with developers to ensure that the type of homes in greatest need are provided. This will be the case for market homes as well as affordable products. This runs counter to the stated aims of the MHCLG or to “level up” and to cater for the needs of all those in society.

This issue will be exacerbated by the lack of a threshold for the proposed provisions. Proposals which would ordinarily trigger a need for affordable housing would no longer do so. As noted above an amended CIL/s106 regime would be essential if this is to be addressed and the development industry to share the benefits of the significant uplift in value associated with these proposals and to make a proper contribution to the housing needs of those unable to access market housing.

The consultation paper does not explain how the externalities ordinarily covered by s106 agreements or CIL will be properly addressed.

Notwithstanding our concerns about replacing planning permission with prior approval, a more nuanced set of prior approval issues will be beneficial. This would allow un/under-used floorspace to change to residential with the minimum of bureaucracy, yet allow a LPA to protect the uses which are still of value. However, there will always be some circumstances, and some locations. were an Article 4 Direction will be necessary.

It is essential that councils are both able to make Article 4 directions and that the E to C3 permitted development is “prescribed” so that a council will not be liable for compensation if the proper procedures for a non-immediate Article 4 Direction are followed.

We would also welcome a mechanism by which a non-immediate Article 4 direction can be made and confirmed before the 31 July 2021, the date when the Government intends to introduce these provisions. Without an amendment to regulations there will be a period when no local authority will be in a position to use an Article 4 Direction and to required planning permission for any change from an E to a C3 use. A provision which extends existing Article 4 directions by 14 months (2 months for

the process to make the Direction, and 12 months to confirm) would give a LPA the opportunity to consider whether any existing direction remains appropriate, and if it does, to make a new one afresh.

Public Sector Equality Duty Assessment and impact assessment

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?

If so, please give your reasons.

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?

If so, please give your reasons.

2. Supporting public service infrastructure through the planning system

Q7.1 Do you agree that the right for schools, colleges and universities, and hospitals be amended to allow for development which is not greater than 25% of the footprint, or up to 250 square metres of the current buildings on the site at the time the legislation is brought into force, whichever is the greater?

Please give your reasons.

Q7.2 Do you agree that the right be amended to allow the height limit to be raised from 5 metres to 6?

Please give your reasons.

Q7.3 Is there any evidence to support an increase above 6 metres?

Please specify.

We welcome these provisions, as support any initiatives which allow our hospitals, schools and colleges to remain agile and to provide the buildings they require. Increasing the sale of extension from 100 to 250 sq m and with a height of 5 to 6 metres maintains these balance - in that it will provide the necessary protections to nearby residents when the development is proposed close to a boundary.

However, we note that these provisions will be permanent and not as suggested to “enable vital public infrastructure to respond quickly to the societal and economic effects of Covid-19.”

Q7.4 Do you agree that prisons should benefit from the same right to expand or add additional buildings?

Please give your reasons.

No comment. The borough does not contain any prisons.

Q8. Do you have any other comments about the permitted development rights for schools, colleges, universities, hospitals and prisons?

Please specify.

No further comments

Q9.1 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

The impact is likely to be limited in this Borough, given the small number of relevant developments expected each year. In addition, the proposed changes are modest in nature.

Q9.2 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons.

No comment.

Q10.1 Do you think that the proposed amendment to allow prisons to benefit from the right could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

No comment.

Q10.2 Do you think that the proposed amendment in respect of prisons could give rise to any impacts on people who share a protected characteristic?

If so, please give your reasons

No comment.

A faster planning application process for public service developments

Q11 Do you agree that the new public service application process, as set out in paragraphs 43 and 44 of the consultation document, should only apply to major development (which are not EIA developments)? Please give your reasons.

No comment.

Q12 Do you agree the modified process should apply to hospitals, schools and further education colleges, and prisons, young offenders' institutions, and other criminal justice accommodation?

If not, please give your reasons as well as any suggested alternatives.

No comment.

Q13 Do you agree the determination period for applications falling within the scope of the modified process should be reduced to 10 weeks?

Please give your reasons.

Yes. We welcome the recognition of the importance of applicants carrying out meaningful engagement with neighbours and local residents at the beginning of the planning process. However, we do note that the detail and language will be key. Any changes such as a new application form and guidance must be in place when the new right comes into force.

As already identified by MHCLG, success will rely on all parts of the chain being able to work more efficiently. There will be an increased reliance on the role of statutory consultees and of other external bodies. What happens when we don't receive responses and are unable to make a decision? The statutory bodies must be properly resourced if they are to be effective.

Q14. Do you agree the minimum consultation/publicity period should be reduced to 14 days?

Please give your reasons.

No. We are concerned that reducing the consultation period to just 14 days will reduce rather than support public engagement. It relies on applicants carrying out full and meaningful consultations at pre-application stage. What if they haven't? How does this align with the stated ambition for communities to become more involved in the planning process and to properly shape the areas in which they live. We are considering more digital ways of engagement and consultation but this will need to be carefully managed in light of changes such as this.

Q15 Do you agree the Secretary of State should be notified when a valid planning application is first submitted to a local planning authority and when the authority it anticipates making a decision?

Please give your reasons.

The Council is unsure how notification will promote greater transparency. Further information is required as it is not clear what notification actually means. Does this mean that the SOS intends to call in more modest proposals as a matter of course?

Similarly we are unclear how further notifications will increase transparency? No explanation is offered.

Q16 Do you agree that the policy in paragraph 94 of the NPPF should be extended to require local planning authorities to engage proactively to resolve key planning issues of other public service infrastructure projects before applications are submitted?

Please give your reasons.

No comment.

Q17.1 Do you have any comments on the other matters set out in this consultation document, including post-permission matters, guidance and planning fees?

Please specify.

No comment.

Q17.2 Do you have any other suggestions on how these priority public service infrastructure projects should be prioritised within the planning system?

Please specify.

No comment.

Q19.1 Do you agree with the broad approach to be applied to the review and update of existing permitted development rights in respect of categories 1,2 and 3 outlined in paragraph 76 of the consultation document?

Please give your reasons.

We would welcome the consolidation of permitted development rights to reflect the recent changes. The current rights have become so convoluted that many have become unintelligible (Category 4) or now relate to provisions which no longer exist. (Categories 1 and 3). Consolidation is clearly needed.

This should not be taken as support for many of the reforms, merely as a recognition that the planning regulations must easily understood of they are to have their intended benefits.

We note that with regard category 4, the consultation states that, “*there is potential to consolidate and simplify [the individual rights] into one or more rights. In doing so that could then some change to the detail of the limitations.*” Whilst this is correct, it is essential that any proposals are properly consulted upon so that practitioners can fully explore their implications before they become enshrined in regulation.

Q19.2 Are there any additional issues that we should consider?

Please specify.

No

3. Consolidation and simplification of existing permitted development rights

Q20 Do you agree that uses, such as betting shops and pay day loan shops, that are currently able to change use to a use now within the Commercial, Business and Service use class should be able to change use to any use within that class?

Please give your reasons.

Whilst a betting shop or payday loan shop may have a function they do not contribute to an area or provide a community service in the same way as a shop or a café might. As such we would welcome a provision which allows the use of a betting/ loan shop as an alternative E class use. These are all uses which are inherently suited to a “town centre location” and the change from one use to another will not harm the function of a centre it lies within. However, this freedom should be

one way only, as it would be regrettable were bookmakers and pay day loan shops to become the staple of a town centres already fragmented through the introduction of residential uses within ground floor frontages.

Q21 Do you agree the broad approach to be applied in respect of category 4 outlined in paragraph 76 of the consultation document?

Please give your reasons.

Please see comments in response to question 19.1.

Q22 Do you have any other comments about the consolidation and simplification of existing permitted development rights?

Please specify.

No comment.