

RIBBLE VALLEY BOROUGH COUNCIL

REPORT TO PLANNING AND DEVELOPMENT COMMITTEE

meeting date: THURSDAY, 4th FEBRUARY 2021
title: SUPPORTING HOUSING DELIVERY AND PUBLIC SERVICE
INFRASTRUCTURE CONSULTATION
submitted by: DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING
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1. PURPOSE

- 1.1 To advise Members of the response to the recent Ministry of Housing, Communities and Local Government consultation on changes to permitted development rights.

2. BACKGROUND

- 2.1 Members may recall that reforms to the Use Class Order were implemented in July last year. The changes came into effect on 1 September 2020 saw Use Classes B1, A1-A5, D1 and D2 revoked, and replaced with a series of new Use Classes as follows:

2.1.1 Class E: 'Commercial, service and business class' – this combines Use Classes A1-A3, B1, parts of D1 (health, crèches and nurseries) and parts of D2 (indoor sports and recreation);

2.1.2 Class F: 'Community and learning' (this is in 2 parts):

- F1: 'Learning and non-residential institution' – this includes the majority of current D1 uses but excluding crèches, nurseries and health which are now covered under Class E
- F2: Local community class – this includes local shops (restrictions apply) and community halls, outdoor leisure and swimming/skating rinks

2.1.3 In addition, Use Classes A4 and A5 became Sui Generis, along with some establishments which formerly fell under Use Class D2, such as cinemas, live music venues, concert, bingo and dance halls.

- 2.2 Central Government's intention in respect of introducing changes to the Use Class Order, was to "support the recovery and reimagination of our high streets and towns".

- 2.2 Following on from the Use Class reform Central Government published a consultation on its proposed changes to Permitted Development (PD) Rights for the new use classes in December 2020. The deadline for responses was 28th January 2021.

3. PROPOSED CHANGES

- 3.1 The most notable proposed change is a Permitted Development right for the new Use Class E (commercial, service and business class) to change use to residential.

- 3.2 The proposed PD right for Class E would allow for the change of use from any operation, or mix of operations, within the commercial, business and service use class (Class E) to residential use (C3). This change will go significantly beyond existing rights (which allow offices and retail to change to residential use), as it would now allow for restaurants, indoor sports facilities such as gyms, health and nursery uses to benefit from the change of use to residential under PD rights for the first time.

- 3.3 The consultation sought a response on whether a size limit should apply to the building which could benefit from the right and questioned whether the right should apply in conservation areas with the intention to support historic town centres.
- 3.4 The current PD rights, which allow offices or retail use to change to residential, require the submission of a Prior Approval application to the Local Planning Authority. The consultation set out that there would be a similar requirement for the proposed change of use from Class E to residential. The consultation proposed the following considerations for the Prior Approval:
- Flooding risk
 - Transport and safe access considerations
 - Contamination
 - Noise from existing neighbouring commercial premises
 - 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 and waste management
- 3.5 If the changes are implemented then these proposed Prior Approval considerations will be enshrined in law effectively removing all other development management policies from being considered if planning permission were required. Each criterion would need to be considered as acceptable and a balancing exercise, as often undertaken in respect of planning applications, would not be possible.
- 3.6 The proposed Prior Approval process would see light industrial floorspace within Class E, which is located in industrial areas, protected.
- 3.7 In respect of conservation areas, the only additional assessment (over and above the prior approval criteria listed above) would be the impact of the loss of the ground floor use to residential, in recognition of the conservation value that retail frontage can bring to conservation areas.
- 3.8 The second part of the consultation seeks to support the Government's investment programme to ensure the country's public services are world class. The Spending Review on 25 November 2020 set out the Government's vision for a long-term programme of investment in the vital public service infrastructure the country needs. This will include new hospitals, schools, further education colleges and prisons.
- 3.9 In terms of the consultation the Government proposes to increase the flexibility set out in the existing Class M right for extensions to schools, colleges, universities, and hospitals. Additionally, a 'prioritised' 10-week determination period for major public sector planning applications was also consulted upon.
- 3.8 The final part of the consultation details the Government's intentions for rationalising the existing Permitted Development Rights. It categorises the existing PD Rights into four categories:
- Category 1 - the right is no longer required. Example - Class D shops to financial and professional.
 - Category 2 - the right is unchanged by the amendments to the Use Classes Order and therefore no amendment is necessary. Example - Class L small HMOs to dwellinghouse and vice versa.
 - Category 3 - the right may be replaced by the new proposed PD Right from the commercial, business and service use class to residential. Example – Class O offices to dwellinghouses.

- Category 4 - the right requires detailed consideration. There are several rights that may fall into this category, including some where the scope of the PD Right is broadened, for example to allow for the change of use to the commercial, business and service use class rather than an individual use within it, such as a shop. Or may similarly be broadened by providing for the change of use from a greater range of uses, such as from the commercial, business and service use class.

3.9 At this stage it is difficult to comment on the changes set out within category 4 as further detail is required.

4. CONSULTATION RESPONSE

4.1 A response to the consultation has been sent on behalf of Ribble Valley Council and is appended to this report.

4.2 The main concern in respect of the proposed change of use to residential is the impact the change will have on our town centres through the loss of commercial uses within our main retail areas. It is unclear how we will be able to ensure the right mix of commercial and residential in centres based upon the proposed changes set out within the consultation.

4.3 Whilst the consultation justifies the proposed changes in relation to reinventing the high streets concerns are raised that the changes are not limited to high streets.

4.4 The 'blame' for delays is once again aimed at Local Planning Authorities with no recognition of the amount of work LPAs undertake or the financial impact such changes would bring. It is considered that all stakeholders need to be accounted for when proposing such significant changes to the planning process.

5. RISK ASSESSMENT

5.1 The approval of this report may have the following implications:

- Resources – The changes would see a reduction in planning fees and possibly pre-application fees which the Local Planning Authority receives.
- Technical- N/A
- Political - N/A
- Reputation – N/A
- Equality and Diversity - N/A

6. **RECOMMENDED THAT COMMITTEE**

6.1 Note the attached response to the consultation.



NICOLA HOPKINS
DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING

Appendix 1- Response to the Consultation

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)?

Agree	
Disagree	√
Don't know	

Please give your reasons:

The fact that the change isn't necessarily restricted to town centres raises concerns that other areas, such established business parks, could be lost unless a size limit is enforced.

The justification for the proposed changes relates to high streets however it is not clear why the rights are not limited to high street properties?

In respect of the high street whilst we agree that we need to support our town centres and high streets in adapting to these changes in both shopping patterns and the COVID impacts it is not clear how unrestricted change of use will ensure our high streets and town centres retain an appropriate mix of uses to remain vibrant.

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?

Agree	√
Disagree	
Don't know	

Please give your reasons:

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

Agree	
Disagree	√
Don't know	

Please give your reasons:

Given that a lot of our main retail areas are designated as Conservation Areas we acknowledge that if such areas are excluded from the permitted development right then this would significantly restrict the number of properties which could benefit from the change. However, it is important to acknowledge that evidence suggests that the number of homes to date converted via permitted development rights create worse quality residential environments than those converted with planning permission. This would be a concern across all areas and in particular within our conservation areas.

For example, Clitheroe Conservation Area contains the commercial, administrative and business heart of a Lancashire market town. Unrestricted development within this area could have a detrimental impact on the vibrancy of the town and reduce the attractiveness of the area as a tourist destination. This would have an associated impact on the economy of the area and the local businesses.

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?

Agree	
Disagree	
Don't know	√

Please give your reasons:

We agree that the retail frontage of some of the Borough's conservation areas is part of the value and character of that area so do need to be afforded a degree of protection. However, it is difficult to comment without understanding what would be subject to prior approval. The existing prior approvals do not deal with matters, such as the loss of a historic shop front or the loss of a mix of uses within the area, which are often intrinsic to the character and historic importance of 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?

Agree	
Disagree	
Don't know	

Please give your reasons:

Notwithstanding the fact the submission of a prior approval application gives an opportunity for the community to make representations on these matters it can be challenging for non-planning professionals to understand that only certain matters are subject to prior approval consideration and by restricting what can be considered effectively reduces the involvement of the community within decision making. The government's planning white paper argued that they wanted to give communities a more meaningful voice in the future of their area and such a proposal is at odds with this statement.

Additionally, the existing areas of prior approval would not necessarily be applicable to the properties which could engage with the new permitted development rights. Consideration of the loss of the existing use on the vitality and viability of the area should be a consideration to ensure that a suitable mix of uses is retained.

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

Yes	√
No	
Don't know	

Please specify:

The impact of the loss of a commercial unit on the mix of uses within the area- the vitality and viability of the area needs to be considered to ensure that the change of use does not cause a detriment to the remaining businesses.

There is a risk of poor quality residential environments due conflict between residential and commercial uses which could have a significant impact upon business operators, a detriment to local economy and the attractiveness of the area to future businesses.

Parking- The permitted change could possibly result in increased parking problems with more pressure on the highway network as result of residential parking on street frontages. Ultimately it could lead to problems with people accessing the retail/ commercial areas and deliveries in areas where there is no off-street parking. This would have a detrimental impact on the local economy.

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?

Agree	√
Disagree	
Don't know	

Please give your reasons:

Yes, although the prior approval route was introduced with the aim to speed up decision making the process still involves a significant amount of staff resource and time (and does not appear to speed up the process). The process is confusing to neighbours and the community which adds to the resource impact on the planning officers. A fee is required to provide an appropriate level of resource to the LPA to undertake the work involved in dealing with such an application.

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

Yes	
No	√
Don't know	

Please give your reasons:

It is unclear why the fee for creating a new dwellinghouse via this permitted development route differs to the existing fee for a new dwellinghouse/ change of use (£462) or at least accords with the prior approval for change of use where building operations are required (£206)

The justification appears to relate to the impact of the costs to developers with no consideration on the impact of the costs to the Local Planning Authority. For clarity and the work involved in dealing with the proposed change of use of a commercial unit to a dwellinghouse we consider that the fee should reflect the existing fees for change of use.

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?

Yes	√
No	

Please specify:

There is a risk that the proposed changes could result in poor quality residential environments with conflict between residential and commercial uses. This could have a significant impact upon business operators and be detrimental to the local economy.

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	√
No	
Don't know	

If so, please give your reasons:

Businesses- landlords could see the value increase of a dwelling rather than a commercial unit as an incentive not to renew leases which could impact on businesses ability to find suitable accommodation.

The loss of commercial units could have a negative impact on the retained businesses within that area as consumers often visit places where they can combine multiple stores in one visit. The loss of businesses could impact negatively on the attractiveness of the area for consumers.

Communities- shopping local has become more prevalent within the current pandemic and we believe will continue post pandemic as peoples shopping habits have changed. Loss of local businesses to residential could impact on the choice local communities have in terms of shopping and evening entertainment- Ribble Valley has a high elderly population a number of whom are limited in terms of accessing services wider afield.

Additionally, pressure for parking associated with the new residential use could impact on the accessibility of the area for consumers and businesses with an associated detrimental impact on the economy of the area

Local Planning Authorities: The change would reduce the amount of planning fees received which would put extra strain on an already strained service. The introduction of a further prior approval procedure further complicates the planning system which is challenging for the general public to understand currently and adds another dimension to workloads without, it appears, the necessary resource to facilitate this change.

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?

Yes	
No	
Don't know	√

If so, please give your reasons:

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 larger?

Agree	√
Disagree	
Don't know	

Please give your reasons:

On the proviso that conditions and restrictions within Class M of the existing GDPO are incorporated (subject to the proposed changes) this appears to enable some flexibility.

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

Agree	
Disagree	
Don't know	√

Please give your reasons:

It is difficult to comment on a size limit as a limit of 6m may not always be appropriate in relation to the relationship of the surrounding land uses. Generally existing schools, colleges, universities and hospitals have site restrictions and constraints and as such it is not clear how much impact this proposed change will have in enabling the facilities to expand quickly.

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

Yes	
No	
Don't know	√

Please specify:

As above each facility will be different in respect of how high an extension can extend to and not have a detrimental impact.

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

Agree	√
Disagree	
Don't know	

Please give your reasons:

Prisons generally have a clearly identified and secure curtilage and extensions and alterations within the grounds which increase capacity should have limited impact in the wider area.

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

Yes	√
No	

Please specify:

The Spending Review on 25 November 2020 related to new hospitals, schools, further education colleges and prisons. The changes proposed from a planning perspective only relate to existing facilities a number of which already have significant site constraints which would render the permitted development rights unusable.

It is considered more important to deliver new infrastructure to provide world class public infrastructure as per national governments desire.

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?

Yes	√
No	
Don't know	

If so, please give your reasons:

The emphasis within the consultation document is that securing planning permission leads to project delays and cost increases, with the 'blame' being directed to Local Planning Authorities. However, as a small district LPA currently working on a major infrastructure project we believe that delays cannot solely be blamed on the LPA. Key to delivering major infrastructure projects is collaboration and use of Planning Performance Agreements (or similar mechanisms) would be preferable than introducing more changes to the planning system which adds uncertainty and more complexity into the system.

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?

Yes	
No	
Don't know	√

If so, please give your reasons:

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?

Yes	
No	√
Don't know	

If so, please give your reasons:

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?

Yes	
No	
Don't know	√

If so, please give your reasons:

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)?

Yes	√*
No	

Please give your reasons:

*subject to comments made within the next questions

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?

Yes	√*
No	

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

*subject to comments made within the next questions

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

Yes	
No	√

Please give your reasons:

Once again, the 'blame' for delays in delivering new infrastructure is being directed at the LPA where there are numerous factors involved.

As an LPA we already prioritise large, strategically important infrastructure projects and believe that the key to their successful delivery is secured at pre-application stage. The length of the determination period is irrelevant if there has been limited/ no pre-application engagement.

Issuing guidance on the importance of pre-application engagement does not necessarily result in pre-application engagement. The only way the time scale for determining major applications for new infrastructure could be reduced is to make pre-application engagement mandatory for these types of applications. This would ensure that all parties, including the local community, are engaged at an early stage and a timetable for consideration and determination can be agreed by all parties enabling surety of timescales and reduction in the potential for increased costs.

There are existing mechanisms in place to enable LPAs to manage large scale infrastructure projects within a timescale agreed by all parties, such as Planning Performance Agreements. The consultation documents states that it will be important that local planning authorities have effective case management systems so they can clearly identify and prioritise the application, undertake the necessary consultation, analyse responses from consultees and reach a final decision. All of this, extending to pre-application and post application issues, could be included within a PPA which would then enable the determination period of the actual planning application to be reduced as suggested.

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

Yes	
No	√

Please give your reasons:

Such a reduction would rely on everyone having digital connectivity whereas in some more rural areas there are connectivity and access issues. Sometimes getting clarity or even convening a meeting to make a decision isn't deliverable within such a short time period. For the sake of one week this does not appear to have any significant benefit.

If pre-application engagement was made mandatory which will ensure that all the interested parties are engaged before the application is submitted reducing the time needed for them to consider and comment at planning application stage- this is the only way the time limit could be reduced.

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 anticipates making a decision? (We propose that this notification should take place no later than 8 weeks after the application is validated by the planning authority.)

Yes	
No	√

Please give your reasons:

This is yet another burden on the LPA adding to the number of processes the LPA has to go through without any clear reason for doing so. An alternative option would be for the applicant to advise the SoS on receipt of the confirmation from the LPA that the application has been validated.

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?

Yes	√*
No	

Please give your reasons:

*Whilst we do not have any concerns with extending paragraph 94 the consultation document suggests that local planning authorities are not already taking a proactive approach to engaging with key delivery bodies and other stakeholders at the pre-application stage. We are taking such an approach and amending the National Planning Practice Guidance setting out the importance of pre-application engagement does not make developers/ key delivery bodies/ stakeholders engage at pre-application stage. Pre-application should be made mandatory for these types of developments to ensure engagement occurs with all interested parties at an early stage making decision making smoother.

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

Yes	√
No	

Please specify:

Make pre-application mandatory for these schemes to ensure that all the aspirations set out within the consultation are achieved and such development can be delivered in a timely manner

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

Yes	√
No	

Please specify:

Transport schemes should be prioritised partly in light of the changing travel patterns as a result of the pandemic and the fact that inadequate highway and public transport infrastructure can be the reason other pieces of public infrastructure are delayed in their delivery.

Q18 Do you think that the proposed amendments to the planning applications process for public service infrastructure projects could give rise to any impacts on people who share a protected characteristic?

Yes	
No	√

If so, please give your reasons:

Consolidation and simplification of existing permitted development rights

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?

Agree	√
Disagree	
Don't know	

Please give your reasons:

Given the number of changes which have occurred and those which are proposed a review is necessary to provide absolute clarity of what is and is not permitted development

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

Yes	√
No	

Please specify:

There should be an opportunity to comment on the proposed changes following the review as at this stage it is not possible to comment on what the new permitted development rights will look like and the associated impact.

Q20 Do you agree think 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?

Agree	√
Disagree	
Don't know	

Please give your reasons:

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

Agree	
Disagree	
Don't know	√

Please give your reasons:

Whilst we agree that the rights should be simplified as much as possible it is hard to comment on a broad approach to this piece of work given that it has numerous factors involved some of which could have a negative impact on the Borough. The suggested changes should be subject to a separate consultation exercise.

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

Yes	√
No	

Please specify:

To date consolidation and simplification of the planning process has created more complicated planning processes which are confusing for the public to understand. Any changes need to be clear and concise and consider all stakeholders as opposed to suggesting that the changes are needed because Local Planning Authorities are not delivering which is not the case within the Ribble Valley.