

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	<b>Meeting:</b>	Cabinet Member for Environment and Regeneration
2.	<b>Date:</b>	20 June 2011
3.	<b>Title:</b>	Relaxation of planning rules for change of use from commercial to residential: Government Consultation
4.	<b>Directorate:</b>	Environment & Development Services

### 5. Summary

The Government is proposing to amend planning rules allow changes of use from commercial (B use classes) to residential use (C3 use classes) and from shops (A1) and financial and professional services (A2) to mixed use of A1 or A2 plus more than one flat without the need for planning applications. This report sets out the background to the consultation and the suggested RMBC response.

### 6. Recommendations

- That Cabinet Member notes the content of this report and approves the submission of the comments at appendix A as Rotherham's response to this Government consultation.

## **7. Proposals and Details**

The Government is currently consulting on proposed changes to permitted development rights to allow further changes of use to be carried out without requiring planning permission. The consultation period ends on 30<sup>th</sup> June 2011.

Planning permission is usually required for material changes of use. Under current legislation planning permission is not required where both the existing and the proposed use fall within the same class within the Town and Country Planning (Use Classes) Order 1987 (as amended). It also provides for some limited changes of use between different use classes.

The Government is proposing to introduce changes which would:

- allow changes of use from B1 (business – offices, research and development premises and light industry), B2 (general industrial) and B8 (storage and distribution) to C3 (dwelling houses) to happen freely without the need for planning applications
- allow land to revert to its original B use class as long as it does so within five years of having changed as a result of this policy.
- build on the current situation whereby it is possible to convert unused space above a shop into a flat, to allow change of use from A1 (shops) and A2 (financial and professional services) to mixed use of A1 or A2 plus more than one flat

These proposals relate only to change of use. Where a development requires any additional work to the exterior of an existing building or is a new build development, a planning application will be required in the normal way. Proposals involving the following are excluded because they raise issues requiring further consideration:

- listed buildings and scheduled monuments
- safety hazard zones
- development where an environmental impact assessment is required
- development on land affected by contamination.

The Government is proposing these changes as part of its aim to support economic growth by encouraging developers to bring redundant commercial premises back into use and at the same time help tackle the need for more housing. It argues that removing the burden and costs associated planning applications should encourage developers to bring forward more proposals for housing. It is proposed that the impact of these proposals, if implemented, would be reviewed after three years.

The Government identifies the following potential benefits:

- greater freedoms will encourage the more efficient use of land and buildings through enabling more direct responses to clear price signals.
- encouraging developers to bring forward more housing proposals and make better use of buildings that are no longer needed and/or unsuitable for their original purpose.
- that B1 uses are most likely to be located in suitable locations for housing and that in many cases existing premises will lend themselves to conversion to housing without the need for extensive external works.

- that in general, the market will make sensible decisions about where land classified as B2 and B8 is and is not suitable for residential development
- reduced planning process required for local authorities, therefore there will be corresponding administration savings which could be used to provide other services

The consultation document acknowledges that there is a risk that the changes may be perceived by some as a loss of control for local authorities and their ability to consider the wider external costs and benefits of development in coming to a decision. It also identifies a number of potential impacts:

- **Impact on amenity, services and housing mix** – there is potential for the loss of important local commercial premises or, concern about the lack of local services such as doctors' surgeries or schools. These issues would not be addressed by proposals although the Government notes that they could occur through other action by the local authority or the developer on a voluntary basis.
- **Loss of commercial land and property and the impact on areas with high residential values** - the market will attach a higher value to the residential use and this could act as an incentive to owners to consider change of use of economically viable and prosperous commercial uses to residential use. The Government does however believe that re-use of previously developed sites should lead to less pressure on greenfield sites
- **Transport and parking** - removing the requirement to submit planning applications would remove any obligation to prepare travel plans and remove the opportunity for the local authority to ensure the developer addressed any transport issues the change of use brought.
- **Noise** - if the impacts were higher than the previous use there may be other routes for dealing with problems that arise, such as through environmental health legislation.
- **Site location impacts** - some B class uses (particularly B2) may have characteristics that reduce their acceptability as housing sites. There is also a possibility that replacement of industrial development with housing could create 'bad neighbour' situations for adjoining activities, leading to a call for tighter environmental or operational controls to be placed on existing surrounding activities.

As part of the consultation the Government is seeking views on potential options to address these impacts:

- **Conditions and prior approval** – attaching standard conditions to the permitted development right; either associated with a prior approval mechanism or based on self-certification by the developer.
- **Introducing a threshold** - above which the permitted development right did not apply. I.e. based on the number of dwellings being created or at the level where an Environmental Impact Assessment is required.
- **Article 4 Direction** - local planning authorities can make an Article 4 Direction, to remove the permitted development right and require planning applications for such development. The Government is minded not to apply the provisions in section 189 of the Planning Act 2008 which provide a cap on potential liability for compensation where permitted development rights are

removed, providing it was possible to design the permitted development right nationally in a manner that addressed any significant adverse impacts

- **Local development orders** - should there be very localised instances where there is a significant and unacceptable loss of commercial land, local authorities already have the ability to use **local development orders** to allow for other balancing changes in the local planning regime e.g. to allow for change of use from C to certain B use classes. The Government is seeking views on the principle of liberalisation on a national basis from C3 use (dwelling houses) to certain B use classes.

### **Proposed RMBC Response**

The Government has set out in its consultation document specific questions on which it would welcome a response. Appendix A sets out the proposed RMBC response to these questions. It has been requested that the proposed response is also considered by the Council's new Improving Places Commission. Due to the deadline for responding back to Government the proposed response has been circulated to Members on the Improving Places Commission and any comments raised will be fed back verbally at the Cabinet Member meeting.

### **8. Finance**

A number of possible financial implications may arise from implementation of these proposals:

- Possible loss of business rates;
- potential costs associated with investigating statutory nuisances;
- cost of issuing Article 4 directions, if pursued, including potential compensation not capped by Section 189 of the Planning Act 2008.
- loss of income from planning applications
- A potential need to fund improvements which may otherwise have been secured through developer agreements, for example additional road calming measures.

### **9. Risks and Uncertainties**

The impact of the proposed changes will vary in different locations, and therefore the precise implications in financial terms, as identified above, will be difficult to predict. In a worse case scenario it may lead a need to find alternative employment sites should some existing areas cumulatively change to a residential character.

### **10. Policy and Performance Agenda Implications**

The implementation of the proposal could make a positive contribution to Rotherham's Regeneration priorities by increasing housing supply:

- providing sufficient good quality homes supports the priority of Rotherham Safe
- well designed, decent affordable housing also contributes to the cross-cutting theme of Sustainable Development
- help to further encourage regeneration and renaissance of Rotherham Town Centre

However there could be negative impacts on the borough's employment land supply through the loss of viable employment premises, or through the need to provide further employment land in less sustainable locations:

- providing employment land helps meet the needs of the modern economy and supports sustainable communities through access to employment opportunities
- The need to provide further employment sites in potentially less sustainable locations, possibly including greenfield and greenbelt locations could be detrimental to Rotherham's sustainable development theme.

## **11. Background Papers and Consultation**

- Appendix A – proposed consultation response
- Relaxation of planning rules for change of use from commercial to residential: Consultation Document:

<http://www.communities.gov.uk/publications/planningandbuilding/relaxationchangeconsultation>

The proposed response to this consultation has been prepared in consultation with Neighbourhoods and Adult Services and the Chief Executive's Office.

The proposed response is also being considered by Members of the Council's Improving Places Commission.

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## Appendix A

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

#### Question A:

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

No

#### **Please give your reasons:**

This proposal is not supported as it has the potential to undermine the plan-led system. It would effectively establish that the principle of residential use within B1 allocations is acceptable. Whilst B1 uses are considered to be compatible with residential uses, it does not follow that all B1 premises are in sustainable or suitable locations for housing. Equally B1 uses may be present within broader industrial areas. It is considered that the measures to address impacts arising from the proposal are inadequate. Any measures put in place could become more confusing and complicated than an actual planning application.

There is also a very real concern that the proposal would lead to viable employment uses being forced out as owners seek higher value land uses. There is the potential for any cumulative impact to increase the need to find and allocate sites elsewhere for employment land, potentially resulting in development in less sustainable locations.

The proposal would allow Council's no control over the standard of accommodation, amenity space, unit sizes and so on. Whilst other regulatory functions may allow consideration of some of these issues, there is potential that this could lead to lower quality housing.

#### Question B:

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

No

#### **Please give your reasons:**

This proposal is not supported as it has the potential to undermine the plan-led system. One of the key roles of the planning system is to mediate between the requirements of different land uses and to ensure that appropriate consideration and protection is given to issues of amenity and to the wider impacts of development.

This proposal would potentially remove many relevant considerations. It is considered that the measures to address impacts arising from the proposal are inadequate. Any measures put in place could become more confusing and complicated than an actual planning application.

It would effectively establish that the principle of residential use within general industrial allocations is acceptable. It is considered that excessive weight has been given to assuming that market forces will make 'appropriate' decisions regarding where changes of use to residential would be viable.

There is also a very real concern that the proposal would lead to viable employment uses being forced out as owners seek higher value land uses. There is the potential for any cumulative impact to increase the need to find and allocate sites elsewhere for employment land, potentially resulting in development in less sustainable locations.

The proposal would allow Council's no control over the standard of accommodation, amenity space, unit sizes and so on. For example warehouses on industrial estates could become residential, raising noise and air quality issues. Whilst other regulatory functions may allow consideration of some of these issues, there is potential that this could lead to lower quality housing.

There are also concerns that the proposals may in some circumstances result in Traveller sites being set up without the need for permission (for example establishing such a residential activity within a large B8 storage and distribution use).

**Question C:**

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

Yes

**Comments:**

None

**Question D:**

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

Yes

**If so, should there be an upper limit?**

No

**Comments:**

Such proposals could contribute towards increasing residential populations in sustainable locations within town or other centres, and subsequently to improving

their vitality and viability. As such there would appear to be no reason to artificially restrict the number of units which could be created on upper floors, providing any works meet the requirement of other regulations such as building control, health and safety and so on. It is also difficult to envisage how any national restriction on upper limit could operate as each case will be different and would need to be considered on its merits.

**Question E:**

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

Yes

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

Yes

**Please give details:**

Whilst the main issues have been identified, it is not considered that they have been given the appropriate level of consideration, nor that the very real impacts have been given appropriate weight.

For example, it is noted that issues usually addressed via any planning application, such as affordable housing, would not be considered and there would be no obligation on developers to address these. It is naïve to believe that such issues would be addressed voluntarily by developers, or that local authorities will have sufficient time and resources to address any issues arising itself.

Whilst few existing premises are likely to be suitable for conversion to residential use without external works, it is considered that insufficient weight has been given to the potential impact on viable businesses (displaced to make way for higher value uses) or to the potential cumulative impact on employment land supply. It is concerning that this potential displacement could be considered 'an efficient outcome' when it could mean a need to consider the allocation of land to accommodate them; such sites may be less desirable – for example on greenfield sites or in Green Belt locations.

It is not considered that the impacts upon amenity have been appropriately considered. It could lead to the development of housing in areas of lower environmental quality uncontrolled by planning conditions, and equally impact upon the operation and amenity of adjoining employment uses. Where pockets of residential use arise in or adjoining existing employment areas allocated for such uses, it may be detrimental to the local economy if businesses are limited in their activity due to the presence of housing. Within the plan led system, where policies clearly set out appropriate uses within certain locations, existing occupiers may feel that their operations could be undermined in the future.



There is concern that the consultation underestimates the effectiveness of other regulatory controls.

**Question F:**

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

Yes

**Comments:**

If implemented, these proposals would most certainly need mitigation measures to be introduced. However it is considered that the approaches suggested are all far less effective than the present planning application requirements, and that the overall benefit from the proposal is unlikely to outweigh the costs in terms of reduced ability to address issues at a local level.

**Question G:**

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

None

**Question H:**

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

The use of conditions is appropriate; however would any standard set of conditions be introduced at a national level? If so then this 'broad brush' approach is unlikely to ensure that the impacts of development respond to the local circumstances of each case. A more appropriate approach would be for conditions to be considered at local level, as per current arrangements in respect of planning applications.

Should this approach be taken forward then a prior approval approach would be a far more transparent mechanism than relying on the self certification of developers.

A threshold approach would also be supported.

**Question I:**

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

It is not considered appropriate that the Government should remove the provisions of section 189 of the Planning Act 2008 should Article 4 directions be introduced. The consultation notes that this action would be conditional on any permitted

development rights addressing significant adverse impacts. On the evidence presented it is not considered that the mitigation measures proposed would allow adverse impacts to be appropriately addressed as they generally remove the detailed consideration of issues arising from development at a local level. Mitigation introduced at a national level is unlikely to be detailed enough to allow appropriate consideration of issues at a local level, or alternatively result in excessive 'catch all' measures which would outweigh the benefits likely to arise in terms of housing numbers.

**Question J:**

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

No

**Please give your reasons:**

It is considered that this would further undermine the plan led system and lead to less local influence upon the appropriateness of uses in different locations. Along with the proposal to allow change from B uses to C uses, this would appear to undermine the Governments moves towards localism.

**Question K:**

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

Broadly the principle of allowing permitted change of B uses to housing is not supported as it is considered that it undermines the plan led system, does not appropriately allow for mitigation of issues arising from such a move, and appears to be against the spirit of localism. Local people and neighbours would have no say on the change of use, which is contrary to the messages emerging from the Localism Bill.

There is a concern that it will lead to pockets of housing in inappropriate locations and with lower environmental conditions, potentially detrimental to those at the lower end of the housing market. The consultation fundamentally misses the point that many of those on a lower income have no real choice to rent sub standard accommodation. The free market may prevent home owners moving to unacceptable housing, but the low income private renters may have no option.

Whilst the consultation is reasonably explicit in stating that the intention is to 'make better use of buildings that are no longer needed and/or unsuitable for their original purpose' this not addressed by any of the mitigation measures proposed; indeed the proposal would leave the door open for existing suitable, viable employment premises to be changed to residential use in pursuit of higher land values. Establishing this principle appears to be detrimental to providing stability and certainty for developers and for existing businesses.

# The impact assessment questions

## **Question 1:**

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

No

### **If not why?**

It is considered that insufficient consideration has been given to the impact on BME communities, those with lower employment skills and other disadvantaged groups. The potential for developments to create housing in lower quality environments may result in properties most attractive to those less affluent within our communities or who have less choice in the housing market. There is potential for this to lead to an over representation of such groups in particular areas – this does not encourage community integration/cohesion.

The proposal could potentially impact upon the supply of employment land – either reducing availability or potentially requiring alternative provision in less sustainable locations. This lack of appropriate or sustainable employment land supply could have a disproportionate impact on BME and low skilled employment rates, which are double compared to the indigenous population.

## **Question 2:**

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

Yes

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

See question 1

## **Question 3:**

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

No comment

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

## **Question 4:**

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

No comment

**If so please describe:**

**Question 5:**

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

No

**If not, why not?**

See response to question 1

**Question 6:**

**Do you think there are any groups disproportionately affected?**

Yes

**If so please give details:**

See question 1

**Question 7:**

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

Yes

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

See question 1

**Question 8:**

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

Since 2006 there have been three applications within Rotherham which explicitly refer in their proposal descriptions to a change of use from B1 offices to residential use.