



**City of Westminster**

# Planning & City Development Committee

**Date: 18 March 2021**

**Classification: General Release**

**Title: Proposed Class E to Residential Permitted Development Rights**

**Report of: Director of Place Shaping and Town Planning**

**Financial Summary: None.**

**Report Author and Contact Details: Oliver Gibson, Strategic Planning Officer  
(ogibson@westminster.gov.uk/ 07971026919)**

## **1 Executive Summary**

- 1.1 This report provides an overview of proposed changes to permitted development rights to enable changes of use from Class E uses to residential use without the need for planning permission, which the Government recently consulted on during December 2020 and January 2021. The report also highlights the potential impacts of these changes in Westminster.
- 1.2 The proposed permitted development right would result in the council having significantly less planning policy levers with which to deliver sustainable economic growth through planned growth of existing commercial clusters. Should the Government not introduce the mitigation measures recommended in the council's consultation response, the principal impacts of the new right are likely to be:
  - Large scale commercial floorspace within the CAZ could be lost to residential impacting in the unique contribution the city makes to the local and national economy.
  - Uncontrolled increases in residential floorspace in the CAZ at the expense of commercial floorspace, irrespective of whether it is vacant or surplus to current demand, would undermine its unique character and function of the area.
  - Uncontrolled loss of retail and complementary town centre uses at ground floor level within our international, major, district and local shopping centres leading to a loss of overall commercial character and function and an erosion of their vitality and viability. Initial analysis suggests most significant impacts could be in local and district centres outside the CAZ where the offset between commercial and residential property values is typically greater.
  - Permitted development schemes could be brought forward without the need to provide any affordable housing or infrastructure to support the increased population, unlike schemes granted planning permission.
  - The council's efforts to address the climate emergency would be undermined as permitted development schemes, which would not be required to comply with higher energy performance and sustainability standards in the London Plan and City Plan.

- Permitted development schemes would not be required to optimise the use of residential land leading to inefficient development that fails to meet identified housing demand.

## **2 Recommendation**

- 2.1 Members are asked to consider the contents of this report and to note the likely impacts of the proposed changes to permitted development rights to land uses and future development in Westminster should the Government bring forward the changes in the form consulted on, notwithstanding the significant concerns highlighted in the council's consultation response.

## **3 Background**

### Recent Changes to Use Classes Order

- 3.1 The Government amended the Town and Country Planning (Use Classes) Order 1987 (as amended) (the 'UCO') in summer 2020 via the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ('the 2020 Regulations'). These regulations, which came into force on 1 September 2020, consolidated many commercial, business and services uses (including retail shops, financial and professional services (estate agents etc.), offices, medical uses, gyms and other indoor sport uses, creches and nurseries) into a single new use class, Class E. Changes between uses now within Class E no longer require planning permission as these changes no longer constitute development.
- 3.2 In addition to Class E, a new Class F.1 was created titled 'Learning and non-residential institutions' to allow changes between education uses such as museums, art galleries, libraries, places of worship etc. without the need for planning permission. Additionally, a new Class F.2 titled 'Local Community' was also created to protect certain uses, such as isolated small shops (where they are less than 280m<sup>2</sup> and more than 1km from the nearest shop selling essential goods). Class F.2 also includes halls or meeting places for local communities, outdoor sport and recreation facilities and indoor or outdoor swimming pools and skating rinks. Changes between the Class F.2 uses would not require planning permission.

### Transitional Arrangements for Permitted Development Rights

- 3.3 In making the changes to the UCO in summer 2020, Government acknowledged that the changes resulted in a number of the existing permitted development rights within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO') becoming obsolete or inconsistent with the newly created use classes. To allow time to address these inconsistencies, the 2020 Regulations include a transition period until 31 July 2021 during which the use classes in force prior to September 2020 are to be used to interpret and apply permitted development rights.
- 3.4 During the transitional arrangements the council's Article 4 Directions remain in force and therefore the existing permitted development right, which permits office to residential conversion continues to be precluded within the Central Activities Zone (CAZ) at the current time, until the end of July 2021. Accordingly, the changes to the UCO in September 2020 have not yet had an impact in terms of increased development under permitted development.

## 4 Proposed Changes to Permitted Development Rights

### Government Rationale for Proposed Changes

- 4.1 Government consulted on its proposed amendments to the GPDO, to make it consistent with the updated UCO, between 3 December 2020 and 28 January 2021. The consultation cites changes in consumer behaviour, magnified by the COVID-19 pandemic, which have resulted in a shift to online shopping as a key driver for their proposals to introduce greater flexibility into how buildings in town centres are repurposed. The Government identifies in the introduction to the consultation that the use of surplus retail floorspace in town centres would contribute to housing delivery and deliver homes in sustainable locations close to services. The consultation paper suggests that increasing housing in town centres will also boost footfall and create additional demand for remaining shops and services.
- 4.2 The consultation also includes proposals to amend permitted development rights for schools, colleges and universities, hospitals and prisons so that they can expand and adapt their buildings to more easily respond to changes in demand and ways of working.

### Proposed Class E to Residential Permitted Development Right

- 4.3 It is proposed that the right would allow for the change of use from any use, or mix of uses, within Class E to residential use. The proposed permitted development right would go significantly beyond existing rights, allowing for restaurants, indoor sports, and creches etc. to benefit from the change use to residential under permitted development for the first time. Pubs, theatres, and live music venues are all now Sui Generis uses and therefore planning permission would still be required for a change of use to or from such uses. The permitted change of use would apply everywhere in all cases, not just on the high street or in town centres.
- 4.4 The uses in Class E that could be converted to residential under the proposed permitted development right are:
- Retail shops.
  - Restaurants and cafes.
  - Financial and professional services (including banks, building societies, estate agents etc).
  - Indoor sport, recreation or fitness facilities (gyms, sports centres etc.).
  - Medical and health service uses (doctors' surgeries, clinics, dentists etc.).
  - Creches, day nurseries or day care centres.
  - Offices and other commercial premises used for research and development premises or industrial processes (where these uses can be carried out in any residential area without detriment to the amenity of that area).
- 4.5 Government proposes that there would be no size limit on the buildings that can benefit from the proposed right (albeit development requiring an Environmental Impact Assessment would be precluded). The proposed right would allow for the building, or part of the building, to change use. The impacts of changes of use under the proposed right are intended to be managed through the use of prior approval applications.
- 4.6 It is proposed that the right would not apply to sensitive sites including listed buildings and land within their curtilage, and sites that are or contain scheduled monuments. The proposed rights are though currently proposed to apply within conservation areas; albeit with an additional prior approval consideration in such circumstances that would

allow the local planning authority to consider the impact of the loss of the ground floor use to residential would have on the conservation value that retail frontage brings to the conservation area.

- 4.7 The following issues are currently proposed to be included as matters for consideration as part of prior approval applications pursuant to the new right:
- flooding, to ensure residential development does not take place in areas of high flood risk;
  - transport, particularly to ensure safe site access;
  - contamination, to ensure residential development does not take place on contaminated land, or in contaminated buildings, which will endanger the health of future residents;
  - 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, to ensure consideration and plans to mitigate risk to residents from fire;
  - 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.
- 4.8 The consultation sets out that prior approval application fees would be set at £96 per new dwellinghouse, capped at a maximum of the fee for 50 homes, which is significantly below fee levels for planning applications (£462 per dwellinghouse up to 50 homes and £22,859, plus £138 for each additional 75m<sup>2</sup> up to a maximum of £300,000).

## **5 Considerations**

### Overview

- 5.1 The proposed permitted development right risks undermining attempts to achieve the objectives set out in the NPPF, which are reflected in our new City Plan, to build a strong, competitive economy, and ensure the vitality of town centres. It will become more difficult in future to use planning policy as a lever to deliver sustainable economic growth as the council will no longer have certainty over where the clustering of commercial uses will occur and be maintained. Similar challenges will be posed when seeking to manage the mix of uses within town centres if any commercial use within Class E can be converted to residential. The proposed permitted development right will therefore place significant additional responsibility in future on land owners to responsibly manage their building stock through the use of the tools at their disposal (such as leasehold clauses etc.), to ensure that appropriate and complementary uses are maintained throughout the commercial centres within the city.
- 5.2 Whilst the principal of any measure to promote housing supply within the city is supported, the council has demonstrated through the adoption process for the new City Plan that the new plan will enable the planned delivery of sufficient new market and affordable housing over the plan period in sustainable locations within the city to meet projected housing demand. Given this evidenced ability to meet projected local housing need, the unplanned consequences of the proposed permitted development right (as considered later in this section) would significantly outweigh the benefit derived from a windfall of market housing supply from future permitted development schemes.
- 5.3 In terms of decision making, planning conditions on existing permissions controlling the use of a building or premises may or may not continue to have effect following the

introduction of the proposed permitted development right, depending upon the precise wording of the condition in question. It will therefore be necessary in future for officers to undertake careful analysis of existing conditions on a case by case basis to establish whether they would preclude changes of use under the proposed permitted right.

- 5.4 The following paragraphs set out potential Westminster specific impacts of the proposed permitted development right, should it be introduced by Government later in 2021 in the form recently presented for consultation.

#### Impact on the Unique Character and Function of the CAZ and International Centres

- 5.5 The proposed right proposes a one size fits all approach that has no regard to the unique role of much of Westminster as an area for commercial agglomeration in economic growth sectors, providing jobs for Londoners and commuters across the south east and beyond, and drawing in visitor spend from domestic and international tourism. In particular it fails to recognise that the scale and mix of mutually supportive commercial uses in the CAZ is unlike anywhere else in the country, and that the West End is a global symbol of London and the UK's success. It also fails to recognise that the shopping, leisure and tourism offer in Knightsbridge (which falls within the CAZ but not the WERLSPA) also plays a significant role in the attractiveness of the capital to visitors – hence its designation as an International Centre in the London Plan and the new City Plan.
- 5.6 The CAZ provides a rich mix of commercial uses that make a vital contribution to the national economy, and central London's wide appeal. It includes over 75 million sqm of commercial floorspace. If harmed by uncontrolled and unmanaged conversion to residential as could be enabled by the proposal, its vibrant mix of uses will never return. In this context the council has responded to consultation to assert that it is vital that an exemption is made for Westminster's portion of the CAZ, or as a minimum, the WERLSPA and Knightsbridge International Centre. A temporary two year exemption for these areas would then enable consideration to be given to the introduction of targeted, non-immediate Article 4 Directions (subject to the impact of amendments to the criteria for making Article 4 Directions that Government has included in the recently published draft NPPF). Without an exemption, most of the commercial uses in these areas, other than theatres, pubs, bars, cinemas and hotels, would be vulnerable to unmitigated loss to residential without the need for planning permission.
- 5.7 Pre-pandemic, the economic activity in Westminster generated over £63 billion GVA to the national economy (2018), of which over £60 billion can be attributed to the parts falling within the CAZ. Businesses in the CAZ contributed 25% of all business rates in London and 8% of all business rates in England. Footfall data (CACI, Jan - Feb 2020) also indicates the majority of people in the CAZ generating such high levels of GVA are visitors (82%) and workers (13%) rather than residents (5%). This highlights the different role this area plays to smaller centres elsewhere in the country that have that suffered from long term decline.
- 5.8 Given the above, in response to consultation the council has called for transitional arrangements to be introduced that ensure that existing well justified protections against the loss of office floorspace from the CAZ, which includes major clusters of office floorspace not just in the West End, but also Opportunity Areas such as

Paddington and Victoria, remain in force until superseded by any subsequent targeted Article 4 Directions related to all forms of Class E use.

#### Impact of No Size Limit on Permitted Development Schemes

- 5.9 Within the CAZ there are likely to be more frequent opportunities for re-purposing of large commercial buildings under the proposed right given that it is applicable to all buildings in Class E use on 1 September 2020 and not just those which become vacant or surplus to requirement by their current occupier in future. The principle the conversion of genuinely vacant or redundant commercial buildings to a variety other economic purposes (as already enabled through the recent introduction of Class E), or by mixed-use developments that provide for housing growth alongside a retained economic function is supported. However, the lack of restrictions proposed on what buildings the proposed right will be applicable to has the potential to result in the closure of viable businesses that could then struggle to find alternative space to let in suitable locations, potentially leading to otherwise avoidable job losses.
- 5.10 As an example, the lack of restrictions on the types of buildings that can benefit from the proposed right would enable wholesale loss of large flagship retail stores from key shopping destinations in the CAZ, such as Oxford Street, or from one of our unique high streets, to 100% residential schemes (including at ground level where outside a conservation area), which would harm, rather than enhance, the vitality and viability of our town centres, some of which are of international importance. Similarly, it could result in wholesale loss of large office floorplates from parts of the CAZ such as in the West End, Paddington or Victoria to wholly residential schemes, with no re-provision of any commercial floorspace, would undermine their role and function as areas for commercial-led growth of national importance. Such losses would pose a significant threat to city's post pandemic economic recovery.
- 5.11 In light of these concerns in response to consultation the council has recommended that if the proposed new right is introduced it should be limited to developments of not more than 10 new homes and that a minimum vacancy period be required. These restrictions would enable the new right to contribute towards speeding up housing delivery, whilst ensuring it does not compromise the role and function of town centres or other commercial areas of significance. Such an approach would not rule out proposals for larger scale conversions of Class E floorspace coming forward, but instead ensures these are subject to more detailed consideration via a full planning application as is currently the case.

#### Affordable Housing & Infrastructure Provision

- 5.12 Any new housing delivered through the proposed new right, regardless of scale, would not be required to provide affordable housing, either on-site, off-site or as a financial contribution to the Affordable Housing Fund. In areas of a highly commercial character, such as in the CAZ, a high take up of the proposed right would severely impede opportunities for the delivery of the council's target of at least 7,240 new affordable homes (i.e. over 35% of all new homes) by 2040. As set out in paragraph 5.8, the

inclusion of a limit of 10 residential units would help mitigate against the adverse impact the proposed right would have on affordable housing delivery.

- 5.13 It is also unclear how any new housing under the proposed right would contribute towards the infrastructure provision needed to support a larger resident population. New housing delivered under the proposed right would not be subject to s106 contributions, and it does not appear that it would be subject to the CIL. Funding currently secured through CIL and s106 pursuant to planning permissions makes a valuable contribution towards a wide variety of infrastructure provision across the city, including in education and health sectors, transport infrastructure, community facilities, public realm, and carbon off-setting. These are all essential in delivering high quality, sustainable developments in environments where people want to live. This issue is further exacerbated by the fact that some forms of vital infrastructure will also become vulnerable to being lost through the new right, given they now fall within Class E (i.e. creches, nurseries, medical centres and gyms).
- 5.14 Once again the council has recommended in its consultation response that a sensible size limit is introduced in terms of when the proposed permitted development right applies so that smaller developments that help deliver residential growth without introducing significant infrastructure demands can comprise permitted development, whilst larger developments placing greater demand on infrastructure continue to be assessed in more detail through a planning application, via which s106 and CIL contributions can be secured if permission is granted.

#### Loss of Commercial Uses at Ground Floor Level

- 5.15 The Government proposes to make the retention of a commercial use at ground floor level within conservation areas a matter for consideration during prior approval applications and the council has strongly supported this proposed safeguard. Historic retail areas form part of the historic interest and character of many of the city's conservation areas, such as St Johns Wood, Harley Street, East Marylebone, Pimlico, Soho, Knightsbridge, and Belgravia. Unmanaged ground floor conversion of commercial premises to residential use would fundamentally harm local character, particularly when done on a piecemeal basis by different landowners. Currently the retention of a continuous high street character, and historic design features under the application of heritage and townscape policies in the City Plan, is essential to maintaining the character and appearance of conservation areas. Where neighbourhood plans have or are coming forward, the protection of the character of high streets in conservation areas has also been identified by neighbourhood forums and the communities they represent as a key priority.
- 5.16 The agglomeration of a range of commercial uses providing active frontages at ground floor is a defining feature of our successful district and local centres, and much of the CAZ - not just the centres that happen to fall within a conservation area. Whilst the pandemic has heightened the challenges commercial areas in the city face, the recent merging of several types of commercial use into a single Class E has now provided significant flexibility to enable the diversification of commercial activity, whilst ensuring

the core function of town centres as places to work, shop, and spend leisure time is maintained.

- 5.17 In this context, the proposed right to allow unchecked the loss of ground floor Class E uses to residential use outside of conservation areas will have negative economic and townscape impacts on all of the city's designated town centres and much of the CAZ. The piecemeal fragmentation of ground floor uses to residential in town centres or the CAZ, which under the proposals would be entirely dependent on landowner appetite to put forward such proposals, rather than any overarching policy framework, will compromise the vitality and viability of town centres, making them less attractive to visitors. It will also result in dead frontages that are detrimental to the appearance and vitality of traditional high street frontages. Initial analysis suggests the most significant impacts could be felt in local and district centres outside the CAZ where the offset between commercial and residential property values is typically greater, providing owners and developers with greater incentive to utilise the proposed permitted development right.
- 5.18 Well planned new residential development on upper floors of commercial premises, or in peripheral areas of town centres with low footfall, can be beneficial and would also overcome challenges presented by introducing new living accommodation at ground level, such as securing adequate levels of privacy and ensuring satisfactory noise levels. In light of these concerns, the council has recommended that the appropriateness of retaining a commercial use at ground floor level should be a matter for consideration as part of all prior approval applications irrespective of whether a site is inside or outside of a conservation area.

#### Sustainability & Energy Performance

- 5.19 The built environment contributes 86% of Westminster's carbon emissions and represents a key area for reducing emissions in the council's commitment to achieving net carbon zero status by 2040. A significant proportion of emissions originate from older commercial buildings which could be subject to change of use under the proposed right. Ensuring these buildings are retrofitted to a high standard would help make a positive contribution towards the addressing the council's declared climate change emergency, and the emphasis in the NPPF on sustainability. However, the prior approval regime proposed in tandem with the new permitted development right does not include any assessment of the energy efficiency or sustainability of the converted building, with prior approval schemes only required to be compliant with building regulations. Conversely development delivered by virtue of planning permission will be required to be compliant with the higher energy performance and sustainability policies in the new London Plan and City Plan. The council has therefore recommended that the prior approval regime is modified to give local planning authorities the ability to assess the energy efficiency and sustainability of Class E to residential schemes.

#### Size & Type of New Homes

- 5.20 The proposed right would undermine the efficient use of land to maximise the delivery of new homes in the city that meet identified need as the mix of units and the size of the units proposed would be specified by the developer, provided all units exceed the space standard set out in the Technical Housing Standards. Given the high targets for

housing delivery in Westminster, and the constrained nature of land supply, the new City Plan policies seek to address this issue through introducing maximum dwelling sizes. However, as proposed, the new rights would remove any opportunity to consider such matters in cases where the new units are delivered via the new permitted development right.

- 5.21 To address this concern the council has recommended that further thought is given to how the permitted development right can be structured to incentivise efficient use of land that meets housing need in accordance with the NPPF. Further controls are also recommended to avoid new homes delivered via permitted development being left vacant or predominantly used as short term lets, which do little to improve the availability of homes for those that need them.

#### Amended Permitted Development for Certain Public Buildings

- 5.22 Whilst existing permitted development rights to enable schools, colleges and universities, and hospitals to be amended and enlarged are supported as a vital tool to allow them to respond to changing demand and working practices, the proposed further relaxation of these rights is of concern.
- 5.23 In dense urban environments, such as many parts of Westminster, large public infrastructure sites such as schools and hospitals are often surrounded by residential and mixed used neighbourhoods. As a result, increasing the allowance for enlargement of these buildings to 250m<sup>2</sup> or a 25% increase in the cumulative footprint of all existing buildings, whichever is greater, and up to 6 metres in height, could result in new or extended buildings that are disproportionate in scale to the original buildings and which could have significant amenity impacts on surrounding neighbourhoods. The council therefore responded to consultation to advise that proposals of the scale proposed should continue to be subject to detailed consideration either through a planning application, or by making appropriate provisions in the prior approval process pursuant to the permitted development right.
- 5.24 Other detailed questions related to widening of permitted development rights schools, colleges and universities were posed by the Government in the consultation (questions 7.1 to 18) and the responses to these can be seen in of the council's consultation response in the Background Papers.

## **6 Financial Implications**

- 5.2 There are no current financial implications as the proposals are at draft stage. The financial implications of the changes to permitted development rights will need to be assessed following the introduction of finalised changes to the GDPO later in 2021. Note that the proposed right could generate additional change of use development in addition to more complex schemes that would continue to require planning permission and therefore the financial implications are likely to be complex to assess.

## **6 Legal Implications**

- 6.2 None.

## **7 Conclusion**

- 8.1 The proposed Class E to residential permitted development right could have significant implications for Westminster in terms of the future character and function of the CAZ and our designated town centres. Whilst the rationale for delivering flexibility to certain commercial properties through the introduction of Class E in September 2020 is understood in light of the changes currently occurring in consumer habits and work patterns, the relatively unchecked conversion of Class E properties to residential risks irreversible damage to commercial centres that are important to local residents, workers and visitors, as well as being vital to the economic prosperity of the city and the UK as a whole.
- 8.2 However, the most significant adverse impacts of the proposed permitted development right could be mitigated via the measures recommended in the council's consultation response and by introduction of a rigorously justified and targeted Article 4 Directions.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)**

**Background Papers:**

1. Westminster's formal consultation response to MHCLG consultation titled 'Supporting Housing Delivery & Public Service Infrastructure'.