

Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 16 July 2015

Subject: Permitted development and changes to the Use Classes Order

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☒ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

Summary of main issues

1. The Government over the last couple of years has made changes to allow certain types of development to go forward without the need for planning permission, some for a temporary period of three years, to make it easier for businesses to make the best use of their premises; to deliver more homes; support high streets and retailers; allow larger home and business extensions and support sustainability through the reuse of buildings.
2. The recent changes to the General Permitted Development Order (GPDO) and Use Class Order (UCO) , which came into force on the 15th April 2015, sought to consolidate many of the previous amendments, but also introduce a number of new measures.
3. Whilst it is too early to predict the impact of the new permitted development (PD) changes, it is possible to assess how the PD arrangements introduced in 2013 and 2014 are working and make some general comments about the implications for future development in Leeds.

Recommendations

4. Members are asked to note the report and comment as they feel appropriate

1 Purpose of this report

- 1.1 This report was requested from the Chairs of the North & East and South & West Plans Panel into how well the arrangements brought about the new permitted development rights and Use Class changes were working and the implications it may have in Leeds.
- 1.2 This report is presented for information.

2 Background information

- 2.1 The government in its *Technical Consultation on Planning 2014*, described a three tier planning system which promotes a proportionate approach, taking into account the size and complexity of schemes and that the consideration given by local planning authorities (LPA) should be proportionate to the proposal. The government recognises the role of local authorities in considering major developments and those with the greatest potential impact on localities. The three tiers are:
 - **full planning application** – an application for planning permission is usually appropriate for large scale, complex developments, or those with greatest impact on neighbours, the wider community or the environment;
 - **permitted development rights with prior approval** – this sits between permitted development and a full planning application. Prior approval is a lighter touch process that applies where the principle of the development has already been established, but certain specific planning issues still require local consideration. Unlike a planning application, when considering prior approval, local planning authorities should only consider specific planning issues such as visual amenity, highways and transport, traffic management, noise levels and flooding risks. Prior approval provides applicants with a less complex and less costly process. Prior approval in the context of this consultation grants automatic permission if the local planning authority has not responded in 56 days, other than the householder neighbour notification scheme which has a shorter timescale of 42 days
 - **permitted development rights with no prior approval** – removes the need for a planning application as planning permission is granted nationally by the Secretary of State. This approach is more appropriate for small scale changes.
- 2.2 Some permitted development rights were first introduced in 2013, to allow certain types of development to go forward without the need for planning permission for a three year period. Further changes to Permitted Development rights came into force on 6th April 2014. They are titled as ‘amendments’ to the existing General Permitted Development Order and should be read alongside the original document.
- 2.3 In the last few days of March the outgoing government laid before parliament a series of secondary legislation bringing into effect a range of new PD rights and changes to the Use Classes Order 1987 in England. These came into force on 15 April 2015.
- 2.4 The main purpose of the new GPDO is to grant planning permission for certain classes of development without the requirement for a planning application to be made, although in some cases these would be subject to a prior approval

process. This brings a whole raft of planning proposals into the middle and bottom tiers, reducing the number of development proposals which are required to go through the full planning process.

3 Main issues

- 3.1 The proposed change to permitted rights has been driven by a need to effectively use existing buildings that have been caught up by a changing retail market and the need to significantly increase the supply of housing and include:
- Extending the larger householder rear extension rights to 2019 (Part 1)
 - Temporary, for 3 years, permitted development right to allow up to 500sqm of storage and distribution buildings to change to residential. Additional requirements are that the building must have been in B8 use for 4 years and in use or last used as B8 on or before 19 March 2014;
 - Amusement arcades and casinos up to 150 square meters of floor space to residential use, subject to a prior approval process covering transport, highways, flooding, contamination and where building works are to be carried out under the PD right, design
 - Betting shops and pay day loan shops removed from A2 and become sui generis. Premises that have previously changed to betting shop or pay day loan shop under Class D temporary permitted development right retain their original use class and will revert to that at the end of the temporary two year period;
 - Permitted development for retailers to erect click and collect facilities within curtilage of existing premises. Only one is permitted per retail premises and is limited to 4m high and gross floor space of 20sqm;
 - Permitted development for the temporary filming for commercial film making inside existing buildings and outside on sites of up to 1.5 hectares. The right is limited to 9 months in any 27 month rolling period
 - Permitted development for shops to change to financial and professional services
 - Changing A1 shops, A2, betting offices, pay day loan shops and casinos to A3 restaurants and cafes. This is subject to prior approval process covering noise, smells, odours, transport and highways, hours of opening as well as siting and design in relation to extraction, ventilation, waste management, storage and undesirable impacts on shopping facilities
 - Permitted development for shops and financial and professional services to change to assembly and leisure uses, with an upper threshold of 200 square metres, subject to a prior approval process.
- 3.2 The period for office to residential conversions (now in Class O) still expires on 31st May 2016 and was not changed in the latest set of changes. However it is likely this class will be reviewed shortly and an announcement is expected before May next year as to whether this arrangement will continue, become permanent or be changed.
- 3.3 Whilst it is too early to predict the implications of the new changes, it is possible to provide information on some the PD changes and with prior approval introduced in

2013 and 2014 for large house extensions, office to residential, and agricultural buildings to residential.

3.4 Larger house extensions

- 3.5 The legislation allowed an increase in the size limits for the depth of single-storey domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses), in non-protected areas, for a period of three years. A neighbour consultation scheme on new extensions was introduced by the then Government in response to concerns about the original proposals. This temporary permitted development was originally for a three year period to 2016.
- 3.6 The larger house extension proposals were controversial with local planning authorities (LPA) and in the House of Lords and a late amendment introduced a neighbour notification process. This means immediate neighbours are informed of proposals and they have the opportunity to make an objection. Applications without any objections after the 21 day notification period are permitted development (PD) and there is no further involvement by the LPA. Where there are objections from neighbours the LPA must decide them through the prior approval process. In such cases, the LPA can only assess the impact on amenity and no other issues can be considered.
- 3.7 Since the changes were made there has been a total of 328 larger house extensions notifications received in Leeds - 207 were received in 2014-15. In 2014-15, 194, or 94% did not need prior approval, that is, these applications did not receive any representations and therefore were deemed to be permitted development. Of the 13 that came to the LPA for determination following neighbour representations, three were approved and ten refused.
- 3.8 It appears in Leeds that the larger single storey rear extension PD option has not been taken up as enthusiastically as in other authorities. Birmingham City Council for example has received 1,175 applications for larger extensions since May 2013. Nor does it appear in Leeds that the relaxed rules have caused huge numbers of neighbour representations objecting to schemes. The London Borough of Croydon reports that around 50% of prior approval household applications in the borough attract objections; this compares to around 6% in Leeds.
- 3.9 However, the resource implication is significant as those notifications where representations have been received come back to the LPA, who makes a decision about whether the impact on the amenity of all adjoining properties is acceptable; essentially going through the same process as a planning application. Whilst Leeds does not have the volume to deal with there are still resource implications - officer time in sending out notifications to neighbours and handling their objections – all for no fee. In Leeds some £56,400 has been lost in fees from householder extensions which would have otherwise led to planning applications. On the other hand it is known that the average householder extension application costs the Council well over £300 to process and the present fee of £172 does not cover the cost so removing some applications from the system may have led to some cost saving.

- 3.10 The PD right has been extended for a further 3 years to 2019 but has not been made permanent.
- 3.11 The impact on neighbours from a larger extension can be significant if built close to a boundary but can only be considered if an objection is received. There has not been any noticeable increase in enforcement cases as a result of the introduction of this increased size limit. There is an impact on the openness of the Green Belt as the measures apply equally in the Green Belt and can give rise to substantial extensions which exceed the 30% threshold set out in the Council's adopted Householder Design Guide as a figure below which an extension is not considered a disproportionate addition to the size of the original dwelling.
- 3.12 There have only been a couple of appeals in Leeds against the refusal of prior approval for larger extensions with mixed results but nationally it appears that a more relaxed approach has been taken by Planning Inspectors has been taken and that significant amenity impacts need to be demonstrated to overcome a right which the Government has introduced across the country.
- 3.13 Office to residential**
- 3.14 The office to residential changes were also controversial, with concerns over the loss of prime office space. The government offered local authorities the opportunity to seek an exemption to the permitted development rights and Leeds City Council sought an exemption for office to residential schemes for the prime office area in the city centre which is a major employment hub for the city and region. Like many other authorities, Leeds was unsuccessful. A light touch prior approval process to enable transport, contamination and flooding issues to be addressed by LPA is in place, with no further approval required.
- 3.15 The Council has received a total of 66 office to residential schemes since the PD changes were made. In 2013-14 there were 20 grants of prior approval and three refusals. In 2014-15, there were 34 prior approvals received for office to residential schemes, in all but two cases prior approval was given.
- 3.16 Schemes have generally been small scale and outside the city centre. Within the City Centre the notable bigger schemes have been for 34 units at 117 The Headrow, 63 units at Rivers House, Park Square and the conversion of Brunswick Point on Wade Lane. Whilst £80 prior approval fee is payable for each proposal, this is considerably less than if a planning application had been submitted. Additionally no Section 106 contributions are payable towards green space, affordable housing and public transport etc. on prior approvals. Figures provided to the Core Cities for the impact in financial terms for the period ending December 2014 showed that the council had "lost" some 57 affordable housing units, around £273K in planning fees, £1.5m in green space contributions and £170K in transport contributions if it could have achieved full contributions through planning approvals. However, prior approval was given for 906 new homes, some of which have been or are being implemented – Brunswick Point near the Merrion Centre is the most prominent example. To date the PD right to change from offices to residential has not impacted significantly on prime city centre office space as it has in some cities and towns.

3.17 Agricultural to residential

3.18 The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 introduces a new Class MB into the GPDO. This new class allows for the change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Use Class C3 (dwelling houses). Under the new rules, in class MB of the General Permitted Development Order, applicants must notify councils to decide whether prior approval is needed.

3.19 To qualify for the new Permitted Development rights, the buildings must have been “used solely for an agricultural use, as part of an agricultural unit on 20 March 2013”. Applicants have to notify the LPA to determine if prior approval will be needed relating to the issues listed below:

- Transport and highways impacts of the development
- Noise impacts of the development
- Contamination risks on the site
- Flooding risks on the site
- Design or external appearance of the building
- Location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a house.

3.20 The service in 2014-15 received 11 agricultural to residential proposals; nine have been refused. Of the nine, four went to appeal with one lodged, one in progress and two dismissed. The high refusal rates show that the new rules have prompted a number of applications that do not fulfil the PD criteria. The Planning Inspectorate (PINS) appears to be backing the refusals nationally. Analysis of the ten decisions made up to the end of January 2015 on appeals against refusal of applications under class MB shows nine to have been dismissed by inspectors.¹

3.21 In response to concerns about the high numbers of prior approval applications being refused nationally the Government in March 2015 amended National Planning Policy Guidance to clarify what was meant by “impracticable or undesirable” and to make it clear that there is not a test in the prior approval as to the sustainability of location as many agricultural buildings will not be in villages or served by public transport.

3.22 Implications of future PD changes

3.23 As demonstrated in the examples above the permitted development changes have implications for the City Council in terms of revenue and resources as well as potentially impacting on the quality of life of local residents in Leeds. The changes to the regulations have impacted on the level of revenue through reduction in planning fees and loss of S106 income. In addition, the changes have had an impact on residential amenity through uncontrolled domestic and commercial extensions and changes of use.

¹ Planning Resource *Barn Storm*, 30 January 2015

- 3.24 There are costs for the service in sending out notifications to neighbours and then handling their objections. Should a representation be made, there is also the work of the officer in deciding if prior approval should be given. Even though in Leeds only 6% of the applications come back to the LPA for decision, the service needs to prioritise applications for prior approval as they are deemed to have been approved, if they are not considered within six weeks. All of this work is done without a fee.
- 3.25 The fear that prime office space in the city centre would be lost has not been realised yet, most of the schemes are in the outer areas of the city, but there is concern on the future availability of business premises, the impact on surrounding businesses and the quality of the new dwellings. Although the increased flexibility of office to residential results in the creation of a significant number of new homes which otherwise may not have been built, the loss of Section 106 is significant, both financially and in terms of the numbers of affordable homes that have been lost.
- 3.26 In terms of the new permitted development changes from others uses such as shops to residential, it does not allow for residential amenity impacts to be considered, such as noise, air quality, access, privacy or outlook for future occupants, potentially resulting in substandard forms of accommodation being provided. The introduction of residential accommodation in commercial areas, with no noise and air quality protection, could impact on adjacent commercial uses, where a statutory nuisance could arise. It is too early to assess this impact on the schemes that have been approved as most have not been brought into use yet.
- 3.27 There are real concerns about what the future of some local centres will be where there could be pressure to convert shops to other uses and about what the physical impact may be on the high street from unrestricted changes to a number of different uses in close proximity. Whilst there is some control in the case of a change from A1/A2 to A3 via the prior approval route as LPAs can take into account the impact on the sustainability of a key shopping area and noise / odour impacts this is not the case in Class D where changes of use from A1 to A2 (financial and professional services) is PD and there is no prior approval process and no national conditions. This could have significant impacts in certain areas where there is pressure for particular A2 uses and may lead to a loss of local shopping and an unbalancing of the mix of uses in a centre.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This report is presented for information and there has not been the need for wide consultation.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no specific equality considerations arising from this report. As such it has not been necessary to prepare an Equality Impact Assessment.

4.3 Council policies and the Best Council Plan

- 4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda. The service makes a key contribution to the delivery of housing growth, an objective in the Best Council Plan.

4.4 Resources and value for money

- 4.1.1 Potentially if the government continue to increase the type of applications which are permitted development or permitted development with prior approval, there may be a significant loss of planning fee income. In dealing with prior approval, the LPA must still input some officer resource and there are other financial implications in terms of notification costs.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 There are no specific legal implications arising from this report and this report does not relate to any key or major decision.

4.6 Risk Management

- 4.6.1 There remains a risk that Grade A offices in the city centre will be converted into residential units, reducing the office accommodation available in prime locations. This could have significant implications in attracting new development opportunities in the key employment hub for the city.

5 Conclusions

- 5.1 The service continues to monitor applications and assess the impact of the recent changes. The range of considerations under the prior approval process, whilst limited, does at least provide the LPA with opportunity to make positive changes and improvements to schemes wherever possible. However, as it can be seen from the examples cited above, where schemes meet the criteria, prior approval has been granted, even if schemes, had they come forward as an application may have been refused.
- 5.2 The three-tier system to decide the appropriate level of permission is now in place: permitted development for small-scale changes, prior approval rights for development requiring consideration of specific issues, and planning permission for the largest scale development. However, moving large numbers of non-major applications out of the planning application system does have potentially significant implications of a lack of control and influence resulting in a higher likelihood of poor quality and ad hoc development that could threaten further investment in an area and its character and the loss of planning benefits.
- 5.3 It is clear that the Government sees the changes as a positive step in promoting brownfield regeneration, boosting housing supply, making it easier for business to grow and allowing homeowners to meet aspirations for improving their homes. What is disappointing, however, is that significant new prior approvals have been introduced before the effectiveness and impact of the prior approval process has been reviewed and reported by the Government.

6 Recommendations

- 6.1 Members are asked to note the report and comment as they see appropriate.

7 Background documents²

- 7.1 None

² The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.