



Relaxation of planning rules for change of use from commercial to residential

We are writing in response to the above consultation. Environmental Protection UK (EPUK) has considered the documents and welcomes the opportunity to comment.

If you have any questions on this response, please contact:

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About Environmental Protection UK

EPUK is a national charity that provides expert policy analysis and advice on air quality, land quality, waste and noise and their effects on people and communities in terms of a wider range of issues including public health, planning, transport, energy, climate and ecosystems services.

We offer clear and critical analysis of UK government and European Union policy proposals, through a range of high-quality publications and expert-led events, as well as up-to-date regulatory information through our comprehensive guide to UK and EU environment legislation.

We bring together policy makers, business, local authorities and academics to enable and foster successful partnerships for environmental action, and provide networking opportunities to support the careers of environmental professionals and allow them to share best practice.

Our structure enables us to take a progressive and pragmatic approach to the issues which concern us and, on behalf of our wide and extensive cross-sector membership, to promote integrated and effective policy making which supports sensible and workable solutions to pressing environmental challenges.

Environmental Protection UK works with and for UK national and devolved governments, local authorities, business, academics and the general public, and with relevant EU institutions and NGOS.

Given the interests outlined above, our comments focus on issues the consultation raises that concern our areas of interest and specialism – in this instance noise impacts, land contamination and air quality and transport.

Overview

In order to provide healthy, sustainable homes and neighbourhoods, regard must be given both to the existing quality of the local environment, and the impact the introduction of homes might have on existing business or industry, as well as the impact of the surrounding neighbourhood on newly introduced homes.

Regard must also be given to the infrastructure of the neighbourhood in terms of access to transport, access to parks/open space as well as to local schools, shops, community facilities and to the jobs which these and local business provide within a community.

Our main concerns are:

- While the community infrastructure needs are to some extent acknowledged, we believe this proposal is flawed in that its sole driver is to deliver economic growth. This is at odds with emerging government planning policy¹, which advocates 'sustainable development' and puts growth in the context of improving quality of life; creating vibrant communities; climate change mitigation and adaptation and appropriate use and preservation of natural resources. Further, we believe the policy context presented in paragraphs 17 to 21, which states that there is an undersupply of land for housing is fundamentally flawed. Research by CPRE² found that there is ample land, with planning permission, available for housing, and that it is market conditions rather than land supply that are the current barrier to growth; our local authority members confirm this to be the case.
- Considering this proposal in the context of planning policy, at paragraph 30 it is proposed that change of use from commercial to residential might be reversed if it fails in 'market' terms alone – we question why a potential reversal is not considered should it prove to fail in social or environmental term. We also disagree that this be allowed as during 5 years the surrounding land use may well have changed.
- The process of planning allows community infrastructure issues to be considered along with environmental impacts, and we are not convinced permitted development and neighbourhood planning alone will be equipped to fully deliver healthy, sustainable housing and communities. We are further concerned that any cost saving to developers and local authorities that comes from by passing any planning requirement for change of use will be negated. Potentially much greater additional costs/burdens will be incurred where mitigation measures required in neighbourhoods, where problems of noise, contamination or poor air quality may well arise. These impacts will likely lead to potential health societal disbenefits – which have cost in terms of health care and economic productivity.
- At paragraph 35 it is stated 'Government believes that it is possible to frame a permitted development right that will provide sufficient safeguards against undue undesirable impacts.' There is no demonstration that this is the case in this proposal – what we do have is a list of disbenefits in paragraphs 34 - 48, somewhat more extensive than the list of benefits in paragraphs 22 - 30.

The consultation questions

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

This proposal does not reassure us that effective measures will be put in place to mitigate risk. We do not believe this change is appropriate for the following reasons:

1. Air quality

Change of use can affect air quality management in two ways. Firstly it may increase emissions of air pollutants, for example via emissions from vehicle journeys to and from a housing development. Secondly it may introduce more people into an existing area of poor air quality ('new exposure'); as the consultation document suggests the level of risk deemed acceptable for a commercial or industrial development is generally greater than for a residential development. Both of these air quality issues are currently assessed through the planning system.

The impact on emissions of air pollutants associated with a small number of new homes is likely to be small (but not in every case); however the proposals in the consultation document produce a significant risk that housing development given permitted development rights would introduce new exposure into areas where the air is polluted and unhealthy.

Local authorities are required to periodically review and assess air quality in their area and declare Air Quality Management Areas (AQMA) where concentrations of pollutants in the air exceed nationally set health based standards. It may be suggested that AQMA designations could be used to provide limited restrictions on permitted development rights on air quality grounds. However, local authorities are only required to designate AQMAs when there is 'relevant exposure', i.e. people are living in the area, and consequently AQMAs are not a reliable mechanism for indicating where air quality is too poor for residential development.

Introducing new exposure into an area of poor air quality would trigger the need for a local authority to declare a new AQMA. This would put the local authority in a position where permitted development was creating onerous new duties for them to act to improve air quality.

In conclusion the proposals could increase emissions of air pollutants where it might increase road traffic and introduce significant numbers of people into areas where the air is polluted and unhealthy, this in turn would trigger the designation of new AQMAs with associated new duties for local authorities.

2. Noise and nuisance

At paragraph 46 the proposal acknowledges that change of use may result in noise problems. There may be existing premises such as industry, sports or entertainment premises, retail, transport – for example a heavily trafficked road – that would give rise to a noise problem if in proximity to residential development. In the case of road traffic, premises may lie on roads identified by the noise maps produced to meet requirements of the Environmental Noise Directive and noise action plans,³ as being priority areas for reduction of noise impact, and therefore requiring investigation as part of the noise action planning process. With no planning requirement the risk of exposure of potential residents to unhealthy levels of traffic noise will not be identified.

The proposal states ‘that if impact were higher than previous use there may be other routes for dealing with problems that arise, such as through environmental health legislation’ – thus effectively transferring the ‘burden’ from planning to environmental health. Equally at paragraph 48 it is acknowledged that ‘bad neighbour’ situations might arise – leading to tighter environmental or operational controls being placed on existing surrounding activities. Therefore, the burden of establishing an environment where an improved quality of life for residents is to be achieved will fall on existing business and on local authority enforcement.

The proposal also fails to take into account potential nuisances from odour, light and dust.

In conclusion, the proposal acknowledges that failure to account for potential noise problems during conversion from commercial to residential may well result in protracted nuisance investigations, with adjoining business or entertainment premises being required to alter working practices or the requirement for noise mitigation or insulation, for example from transport routes or hubs. This will be infinitely more burdensome both on neighbouring business, local authority enforcement teams and on residents who may suffer in terms of quality of life and health while awaiting a resolution, than the processing of a planning application which takes potential impacts into account.

3. Contaminated land risk

The proposal states at paragraph 47 that some sites may not be acceptable for housing, due to contaminated land or hazardous substances. It further states that development on land affected by contamination should be excluded from the permitted development right. We cannot disagree with this exclusion, although we question how land contamination will be identified if no planning permissions are needed (ie. the planning process is a primary tool for regulating land contamination). For example, if a site has been assessed for commercial use, acceptable contamination levels will generally be higher than would be acceptable for residential uses, and so that site will not be classed as contaminated land for its commercial use. It is not only the land but the building itself that could be contaminated. There is a very real possibility that the offices that are to be converted into housing were themselves converted from an industrial building. How will the suitability of a site be assessed if planning permission is not required?

Contamination might only be revealed when a potential home purchaser undertakes an environmental search. This could result in the need for an investigation under Part IIA of the Environmental Protection Act 1990, creating a substantial burden for both the developer, potential homeowners/landlords and the local authority.

In conclusion, failure to manage land contamination during the conversion of commercial to residential resulting in the need for a Part IIA inspection will be infinitely more burdensome than attaining planning permission.

Question B

Do you support the principle of granting permitted development rights to change of use from B2 (general industrial) and B8 (storage and 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

This proposal does not reassure us that effective measures will be put in place to mitigate risks. As stated in our answer to question A, we do not believe that current mechanisms in place are sufficient to identify potential risks. There is an air quality risk, potential for noise problems and the likelihood of the site being affected by contamination from these uses. Development of systems that adequately identify and mitigate risks could potentially be more costly and burdensome than the current system of assessing change of use on a case-by-case basis through the planning system.

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?

No

The grounds stated for this at paragraph 30 are exclusively economic failure – environmental and social considerations could also mean that premises may not be suitable for residential use. Having said that, reversion should not be automatic given that surrounding land use may have changed.

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? If so should there be an upper limit?

Any permitted development rights for dwellings above shops etc risk the same impacts outlined in our answer to A above. With the additional risk that late night opening etc from shop use and transport/traffic activities may cause disturbance.

Question E

Do you agree that we have identified the full range of possible issues which might emerge as a result of these proposals? Are you aware of any further impacts that need to be taken into account? Please give details.

There are a number of issues not identified – and we have detailed these in our answer to A. In particular, no account has been taken of development in areas where:

- air quality might be poor
- transport noise impact
- licensed premises/entertainment noise
- nuisance from odour, fumes, light, dust
- the building itself could be a source of contamination, not just the land.

Question F

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

It is the experience of our members that standard conditions do not cover all aspects of nuisance. As stated in our answer to A there are many instances where the current requirement for planning permission is far less burdensome than the retrospective work required to mitigate the problems that planning is intended to prevent.

Question G

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

We believe this route is inappropriate.

Question H

How, if at all, do you think mitigation could best be deployed?

We believe this route is inappropriate.

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

No comment

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? Please give your reasons.

No

All the concerns outlined in our answer to A would apply – in that any business use might impact adversely on residential neighbours, and therefore be constrained by mitigation that might be required.

Question L

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

While there may be room for some streamlining in the planning process, wholesale removal will potentially lead to conflict between business and residents and there will be a difficult and costly burden to be borne by all, as well as regulators tasked with resolving impacts that arise. We believe that a permitted development right would not be in the interests of public health or business viability.

1. National Planning Policy Framework – a proposed draft by the Practitioners Advisory Group May 2011 <http://www.nppfpractitionersadvisorygroup.org/wp-content/uploads/2011/05/A-proposed-draft-from-the-Practitioners-Advisory-Group.pdf>
2. Will Planning Reform Rescue the Economy – CPRE March 2011 <http://www.cpreherts.org.uk/cpre-docs/CPRE%20NO%20Planning%20Briefing%20March%202011.pdf>
3. Noise Mapping England <http://services.defra.gov.uk/wps/portal/noise>

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