

## **Planning Reform: Supporting the high street and increasing the delivery of new homes**

District councils are well aware of the evolution of town centres due to out-of-town shopping, migration to online shopping, loss of B1 space, library funding pressures and other pressures on retail. District councils are responding proactively to the situation that faces them in their towns and cities and recognising and driving changes, through:

- Producing and updating their Local Plan;
- Producing Supplementary Planning Documents and masterplans;
- Having regular, frank, discussions with building owners and developers; and
- Being realistic and pragmatic when considering proposals which are contrary to Local Plan policies, if the market is now significantly different.

Each town centre is unique, with its own history, pressures and hinterland. Often town centres have listed buildings and conservation areas, which impose further constraints and limitations for re-development and re-use. Chapter 12 of the NPPF (Achieving well-designed places) rightly emphasises how important good design is, with paragraph 127 seeking decisions and policies to be based on a coherent understanding of the character and function of an area.

The DCN notes that the Government's £675m Future High Street Fund (which will open for bids in spring 2019) has as one of its aim to "help local areas to respond to and adapt to [changes on High Streets]"; the DCN is very supportive of the principles of the Fund, and many DCN members are considering whether to make bids into the Fund.

We have some concerns about the proposal as it is set out in the Grimsey Review 2 recommends a similar approach if underpinned by an agreed Town Plan led by District Councils. The development of such plans should be business like, focussed on transforming places into complete community hubs incorporating business office space, housing, entertainment, some retail, leisure, health and education uses. We are supportive of the Grimsey approach if it reflects the position in each specific district.

For some areas located close to large cities such as London, the change outlined in Q1.1-1.3 *could* assist in counterbalancing some of the negative economic effects from permitted development (PD) rights from B1 to residential and the loss of day-time workers spend in high streets. Some towns close to such urban areas have lost much or all of their large-plan

B1 units to residential (through those PD rights), which is hard to bring back due to lower development values in building new B1 space. However, there is little evidence that the current planning system has proven a major barrier to those wishing to convert A1, A2 or A5 units to B1 uses.

The DCN have previously raised serious concerns that existing office-to-residential PD rights have led to some very poor quality conversions taking place, with very poor amenity resulting (in addition to no S106 or CIL contributions). Hot food takeaways often “cluster” in particular areas, and given the late-night opening hours, noise, odours, fumes, littering etc. that can often result, conversion of A5 units to residential C3 use should therefore not fall outside standard planning control (i.e. an application to be made and considered, taking into account all relevant considerations). There is a very significant risk (as has been seen in other contexts) that the residents of A5-C3 PD conversions could complain about the noise, disturbance etc. caused by other nearby A5 (and other) commercial uses, and try to get them closed down.

A Government-commissioned report, *High Street 2030: Achieving Change*<sup>1</sup>, published in December 2018, concluded (on page 37):

*“Best practice can only ever be what is right for a particular town. Local knowledge is needed to deliberate over, critique and evaluate ideas and advice. Local data, like footfall, is crucial to understand the fundamental functions and performance of the town. This enables baselines to be developed and progress to be monitored. Projects and ideas can be piloted and tested. Plans can then be adapted and changed. The process of working in this way creates valuable new knowledge, and a sense of confidence in decisions that are made using it.”*

Difficult and potentially controversial decisions to shrink primary shopping areas and allow a wider range of uses in town centres to add vitality and vibrancy) are being made by DCN members across England. It is therefore inappropriate for the one-size-fits-all approach of PD to be applied across England. These decisions should be remain for district councils to make, through the planning system, where their own Local Plan policies can be applied to the specific circumstances they face (and amended rapidly if needed). The Government encourages greater use of Local Development Orders (LDOs), and there is certainly potential for more LAs to explore this in a town centre context. The proposed PD changes also appear to run contrary to the very sensible strategic approach to the evolution of High Streets proposed by the Government.

Notwithstanding the DCN’s clear view on these questions, if the proposed PD changes are planned to be brought into effect, any conversions made under this change should have no subsequent PD right to change to C3 (residential use). **Any such subsequent change proposal should be subject to a full planning application.**

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767529/High\\_Street\\_2030-Achieving\\_Change.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767529/High_Street_2030-Achieving_Change.pdf)

Whilst in principle the DCN supports the flexibility of enabling new businesses and community uses to “test the market” through temporary change-of-use consent (for the reasons expressed in the consultation document), some similar concerns expressed in response to earlier questions apply here. This is principally that the patterns and timings of the uses and related activities of community uses can be significantly different to the existing permanent use (e.g. parking, noise etc.), and there might be some particularly negative effects. However, extending the period of temporary use to three years is not opposed by the DCN in principle. It would give longer time for new business start-ups to get established, test the market and help ensure premises are not left empty.

However the DCN is concerned that the Government has in recent years brought in several new PD changes (whether for permanent or temporary change-of-use) for a time-limited period, and then later making them permanent, without necessarily having had sufficient time to undertake a fully robust appraisal of the advantages and disadvantages of such changes over the longer-term. Part of this concern is that individual PD changes can sometimes have a cumulative negative effect over the medium- or long-term, which cannot easily be militated against through more strategic and planned changes to an area.

Another point is that whilst the proposal seems to be aimed at “bigger” High Streets, the implications of a PD change-of-use (temporary or otherwise) can be much more significant where there are only a small number of retail units in an area (in a village, for example). The fact that an A1 retail premises may be vacant at a point in time does not necessarily mean that it is destined to always be so – for example allowing a PD change-of-use to (a museum might mean that others who might have later wanted to potentially re-open the village shop could be denied that opportunity. If the proposal is decided to be progressed, other uses including crèches, day nurseries, gyms, and non-residential education and training centres could be considered.

A single use class covering A1, A2 and A3 uses could be helpful in providing some flexibility, particularly for businesses that provide a mix of uses (e.g. retail, leisure/entertainment and café/food & drink). That being said, there is potential for the ‘law of unintended consequences’ to come into effect: some of the patterns, timings, types and intensities of activities associated with restaurants and cafés (A3) can be quite different to, an A1 hardware shop. Where there is residential above shops this can sometimes be a particular issue if there is a change to a restaurant.

There have been a number of piecemeal changes to the Use Classes Order in recent years, which whilst seeking to meet specific objectives, are narrowly-targeted (e.g. to deliver more housing). Unintended consequences have sometimes resulted from the changes (such as increased numbers of bookmakers and, in some locations, particularly some commutable locations near London, a near-total loss of B1 office space). Given the significant pressures facing town centres – which the DCN members fully recognise – there should be a wider review of the whole Order, taking a long-term strategic view of the matter. With the Government publishing details on the Future High Street Fund and the publication of the revised NPPF in July 2018, the DCN believes the time is now right to undertake such a review, and would be delighted to assist MHCLG with this.

In conclusion, whilst merging the A classes to create a single use class has some attractions, providing the most flexibility to bring empty units back in to active use, on balance the DCN prefers a more simplified A1 use class. Should the option to introduce a single use class be preferred by the Government, however, there should be a requirement that such premises provide a shop window or otherwise active frontage, unless in a designated business zone within a high street.

District councils treat applications for upwards extensions to premises appropriately, recognising that there can be benefits from providing additional units of accommodation. However, such extensions can, obviously, sometimes raise concerns in relation to design, overlooking and parking (to name but some issues) which means that a blanket PD right is not appropriate – such proposals are most appropriately determined through the normal planning process.

There may well be a place for local design codes in providing guidance and assistance to those considering adding an additional story as a form of ‘PD-lite’, but this should not supplant the normal planning process, which enables the right balance between benefits and drawbacks to be struck (and which will naturally vary from case-to-case).

Whilst the DCN fully recognises that there can be benefits from providing additional units of residential accommodation, adding a further storey (or more) has the potential to cause various harms to the surrounding areas (design, layout, parking, overlooking etc.). Making such a proposal PD would be a simplistic national process which cannot properly allow relevant local factors to be adequately considered, unless the prior approval process was extremely detailed – which would therefore minimise the benefits of simplicity and certainty of a PD regime.

Some of the other shortcomings with PD rights allowing the development of (or conversion to) residential units have been mentioned by the DCN in responses to previous MHCLG consultation exercises. They are not repeated at length here, but the two key ones are:

- i) The limited (or even zero) control of amenity and space standards that the local authority can practise – the RICS report <sup>2</sup> of 1<sup>st</sup> May 2018 highlights the very low standards that have been observed on a sample of sites, for example; and
- ii) The complete absence of any S106 and/or CIL contributions, which adds significant (unfunded) pressure to local infrastructure – and also does not generate any affordable housing units or contributions.

A proper, sensible and fair way to assess proposals to increase the height of a building is through a planning application, which would allow full public consultation and enable all material planning considerations to be taken into account.

If, despite the DCN’s significant concerns about this proposal, the Government proposes to implement the proposal, the DCN would prefer the option of allowing premises to be extended to the roofline of the highest building in a terrace.

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<sup>2</sup> <https://www.rics.org/uk/news-insight/latest-news/press-releases/lack-of-pdr-regulation-is-producing-low-quality-housing/>

There should not be a separate right for additional storeys on free standing blocks of flats (largely for the same reasons as above). As it will also not always be known easily whether such a building would have the structural stability to enable extra floors to be added safely and given fire safety concerns about high buildings, it would be particularly important that the building control regulations and regime is tightened up to address these two areas of concern, were it still decided to progress with this proposal.

For the reasons given in answer to earlier questions, the DCN does not support permitted development rights allowing change of use of these buildings into new homes. However, if – despite the DCN's strong concerns – MHCLG intends to progress with this, then it would be vital for the local authority to consider the extent of the works required.

The matters set out in paragraphs 1.25-1.27 are the bare minimum that would need to be considered for a prior approval process, should this – despite the DCN's concerns – be progressed. However, the sheer complexity and interplay of the issues mentioned in these paragraphs (not even including other relevant factors), and their interplay, very effectively makes the case as to why such proposals should be subject to the full planning application process.

Proposals should go through a full planning application process so that all material planning considerations can be taken into account when deciding to grant or refuse planning permission. Again, issues of overlooking, design quality and coherence, and parking (to name but three) can be significant factors needing to be weighed in the balance. Design inevitably can be a subjective matter, and whilst planning officers are well-placed to make decisions as to whether the design is good enough to approve, it has to be recognised that other such consultees (such as neighbours, parish councils etc.) can quite legitimately come to a different view to a professional planning officer.

This could be an area where local design codes or Local Development Orders could play a very useful role in achieving a similar result to PD, but with the benefit of such proposals being developed and administered locally.

Should, despite the DCN's concerns, this proposal be progressed, the three issues mentioned above (design (including materials), overlooking and parking) should be considered, alongside flood risk and drainage.

The DCN agrees with both proposals in regards telephone kiosks and welcomes the recognition of the way that the current system has been exploited by some to bring in "advertising kiosks".

The DCN is very supportive of measures to help increase the availability of electric vehicle charging points. However, our members do have some concerns about the potential impact of 2.3m high charging points on local amenity and character, not just the height of such structures but the width and overall bulk too – there is the risk that they could be over-imposing structures, particularly on narrower streets. On balance, it is considered that structures of these heights should remain within full planning control, although this is something that could and should be kept under permanent review.

There are two linked reasons why the DCN does not agree with even the current time-limited PD right.

The first is that distribution facilities are critical to the national economy, providing infrastructure for the import and export of goods. Some areas may have over-provision of

such facilities, whereas other areas have an under-provision. Irrespective, virtually all Local Plans have a policy requiring developers/owners to prove 'market failure' for storage and distribution uses (as other commercial uses not covered by other PD rights) to ensure storage and distribution infrastructure and jobs are protected where there is a clear market demand. Such policies are very sensible, as they ensure that needed B8 facilities cannot simply be converted to other (more profitable) uses too easily.

Secondly, B8 facilities often have patterns of use and movement that are not neighbour-friendly. 24-hour working and significant volumes of HGV and LGV movements are not uncommon requirements, and so where such sites exist, they are important. Given these characteristics, it can often be very difficult to get community acceptance/agreement for new such facilities if they are reasonably close to residential areas, and so they can struggle to secure planning permission.

In addition, unless the proposed re-development was replacing the B8 use in its entirety, there is a significant risk that the residential accommodation could see elevated levels of noise and air pollution from still-existing B8 uses on the same site. This would potentially be deleterious to the living experience, and would run the risk of residential occupiers seeking to have the remaining B8 uses closed down completely, or at worst have working hours restrictions introduced or tightened. As noted above in the answer, this would place further pressure on already vulnerable and important B8 sites, necessary to support the country's economic growth.

It is acknowledged that the current regulations require that the impacts of a PD change on other nearby B8 or B1(c) uses to be considered, as well as air quality, noise and transport considerations, but this cannot (and does not) fully duplicate the formal planning process, where all material considerations can be taken into account in making a decision.

DCN members acknowledge that the proposal to make permanent time-limited permitted development right for larger extensions to dwelling houses has been popular with homeowners. However, as noted in our answer to earlier questions, since the policy has only been in place since 2013, the longer-term implications cannot be known for certain, and a formal review of the impact would be welcomed. The DCN does not consider that the time-limited right should be made permanent until an independent review is undertaken of its impact – both on neighbouring residents/businesses but also the capacity of local planning authorities.

DCN members have always had serious concerns about the lack of fee that larger PD extensions have attracted. Information from our members is that the cost to LPAs in dealing with such proposals is frequently similar to a similar planning application (neighbour and other consultations etc.); DCN members are therefore "subsidising" these PD submissions. The proposed introduction of a fee is therefore welcome. However, there is little evidence that having to pay the standard application fee of £206 rather than the proposed £96 would put off many applicants. Whilst most larger extensions requiring planning permission are approved anyway, the (greater certainty of a PD approval is considered by our members to be a far more significant advantage incentivising householders to follow this route. An additional £110 on a total extension which can often cost upwards of £10,000 is likely to have a limited impact, and the additional income generation to local authorities would be a significant step towards self-sufficiency of funding and to support planning authorities in approving more homes.

Whilst ideally full cost recovery would be achieved for such PD proposals, if the cost was £206 rather than £96, the DCN would not have any significant concerns in principle with it being made permanent.

The DCN opposes the proposal of permitted development right for the high quality redevelopment of commercial sites which retained the existing developer contributions. There is concern this could result in the loss of valuable employment land, particularly for light industrial uses where demand for quality space generally outstrips supply.

Some local areas may have an over-provision of older commercial property space not suited for modern business uses where other areas will have an under-provision.

Developers/owners should be required to prove market failure for uses to Local Planning Authorities to ensure commercial developments are protected where there is a clear market demand. Without such mechanisms there is a danger that developers/owners will simply seek higher value residential values, sterilising the growth of local economies.

Where a lack of real market demand is proven, it would allow additional housing but where demand for employment uses is proven it would protect local employment. If such an approach is not implemented such it will work against the Government's approach to growing the national economy via the implementation of the UK Industry Strategy.

Additionally, allowing some B8 land/facilities to be demolished and rebuilt as residential (through PD) to residential could all too easily provide both low-quality accommodation itself (poor natural light, low space standards, low design quality etc) but also in at least some cases could be distant from shops and services, with poor or non-existent nearby bus services and cycle paths.

The fact that paragraph 1.47 of the consultation document talks about whether "*the relationship with local plan policies for key sites and areas where the [PD] right should apply*" and similarly, questioning (paragraph 1.49) how affordable housing and other developer contributions could be secured through a PD process makes the point effectively that such proposals should be considered through the formal planning process, where all material considerations can be taken into account. Were this to be brought forward, is likely to be a complicated, bureaucratic and uncertain process which (as recognised in paragraph 1.48) may not result in an appropriately-sized fee either.

Widening the scope of PD to allow demolition of B8 buildings with residential replacement is flawed. The premise of the approach is also wrong, in that it is seeking "to ensure it brings the most sites forward for redevelopment". A more sensible approach – which DCN members practise already – is to take each proposal on a case-by-case basis, and seek evidence of the reasons why the continued use of the site for B8 activities is not viable (if this is so) to avoid the unnecessary loss of valuable B8 space.

Should the Government still be minded to bring in this proposal, it is therefore vital that, in addition to the current areas already considered (air quality, highways)

The DCN considers that the threshold for the existing general consent for the disposal of land held for purposes other than planning or housing at undervalue should be removed completely so that district councils could dispose of land at any undervalue without needing to seek consent from the Secretary of State. This would streamline the existing process and, with the existing safeguards, should still minimise the potential for inappropriate

undervaluing of land. The DCN considers that the new general consent should apply to all disposals, regardless of the undervalue and we consider it sensible that the economic, social or environmental well-being criteria of existing general consent should also apply to any new general consent for the disposal of land held for planning purposes.

The DCN welcomes this additional guidance on new town development corporations and concurs that it would be sensible to incorporate the final guidance into the existing guidance on the compulsory purchase process.

DCN members welcome the recognition in the guidance that it will not always be possible or desirable for new town development corporations to have detailed development proposals which have secured approval, prior to proceeding with a compulsory purchase order – this reflects the messy reality that often exists on the ground in dealing with these complicated situations.

The final guidance should be reviewed after a certain period of time (perhaps 24 months), working with local authorities and other key stakeholders. This will provide an opportunity to ensure that it remains fit-for-purpose and encourage local authorities to progress with proposals.