

## **REPORT FOR:            Planning Committee**

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<b>Date of Meeting:</b>	12 December 2012
<b>Subject:</b>	Response to the Governments proposals for changes to permitted development
<b>Responsible Officer:</b>	Stephen Kelly, Divisional Director, Planning
<b>Exempt:</b>	No
<b>Enclosures:</b>	Appendix 1: Consultation Paper: “Extending permitted development rights for homeowners and businesses”

### **Section 1 – Summary and Recommendations**

This report seeks to confirm the Local Planning Authority response, on behalf of Harrow Council, to the consultation dated 12 November 2012 on proposed changes to permitted development rights for specific types of residential and non-residential development.

#### **RECOMMENDATION:**

That the response set out in Section 2 below be submitted to the Secretary of State as the Council’s formal position in respect of this consultation.

## **Section 2 – Report**

On 12<sup>th</sup> November 2012, the Government published a consultation on changes to the existing provisions relating to certain categories of “permitted development.” The consultation follows a Ministerial statement on 6<sup>th</sup> September 2012, which explained how the measures within the consultation would “...*make it easier for families to undertake home improvements: not just to cut red tape and strengthen individual homeowners’ rights, but also to help generate economic activity which will support small traders in particular...*” The Secretary of State went on to suggest that the proposals “...*will mean less municipal red tape to build a conservatory and similar small-scale home improvement and free up valuable resources in local authorities...*”

The full details of the consultation are reproduced as appendix 1. The proposals focus on parts of the existing Town and Country Planning Permitted Development Order; notably

### **Householder extensions & garages:**

- 1) Greater flexibility for homeowners in non-protected areas by increasing rear extension limits from a depth beyond the rear wall of currently 4m to 8m for a detached house, 3m to 6m for any other house type. This also includes conservatories. The provision includes limitations on the height of the development
- 2) The proposals do not change permitted development for flats or extensions of more than one storey.
- 3) The PD rights for construction of separate outbuildings or separate residential units are not changed.
- 4) The proposals also seek authorities’ views on how the planning system might make it easier to convert garages to habitable accommodation.

### **Extensions to shops and financial/professional services establishments and Office Extensions**

- 1) Outside of protected areas, the limits of extending premises and offices are proposed to be raised from 50msq to 100msq and floor spaces increased from 25% to 50% for a three year period
- 2) The consultation would allow the buildings to be built up to the boundary except where the boundary is with a residential property (where the extension should be 2 m away from the boundary)
- 3) Other limitations and conditions would still apply.

### **Industrial and Warehouse buildings**

- 1) Outside of protected areas limits for new industrial buildings and warehouses be raised from 100msq to 200msq and floor space increase from 25% to 50%.

## Consideration of the proposals

The Government's consultation seeks responses to a series of specific questions (see attached). Officers have given consideration to these questions and have suggested a position below by way of a response. Members of the committee are invited to endorse or modify as appropriate.

**Consultation question 1: Do you agree that in non-protected areas the maximum depth for single-storey rear extensions should be increased to 8m for detached houses, and 6m for any other type of house?**

Yes  No

### Proposed response

The current levels of permitted development rights, which have worked successfully for many years, are considered to strike the right balance between the unfettered freedom of a property owner to undertake works, and the need for proper and considered scrutiny of proposals in the interests of wider amenity and the public good. The evidence underpinning the proposed changes to permitted development is not robust.

The proposals, read alongside other existing permitted development - such as for the creation of HMO, has the scope to bring about both the significant and unmanaged enlargement of modest residential houses, and their conversion/subdivision into HMO. These "permitted" proposals together will lead to the significant and dramatic transformation of suburban areas where demand for housing is high. Evidence in London, and Harrow already supports the conclusion that these permitted changes will serve to reduce the quality of housing, change the character of areas and erode standards of living for occupiers (because of the already ltd control on room sizes) and neighbours.

There also appears to be no consideration of the cumulative impacts of automatically allowing larger extensions on the natural drainage capacity provided by gardens in urban areas, and upon biodiversity. The LB Harrow also considers that the effects upon neighboring properties has not been fully justified. Poorly designed larger extensions will almost certainly increase neighbor conflict, and the increase in size of rear length of extensions will also lead to the loss of natural light to neighbouring properties. The proposals do not support the NPPF commitment to positive planning that improves the quality and sustainability of the environment. The Right to Light only applies to dwellings who have had natural light for 20 years.

The government's proposal to limit the changes for a period of 3 years is an admission that the proposals are likely to lead to material harm. The proposition (that these proposals still amount to "sustainable development" under the NPPF) will undermine any subsequent attempt to argue that future extensions up to this size are unsustainable – and will impact upon both enforcement activity and future planning decisions.

Fundamentally, LB Harrow questions whether this would result in a reduction in red tape. In order to confirm that works are permitted development (either prior to commencing works, prior to sale of the property or prior to the limited

period of 3 years coming to an end), homeowners and businesses will be advised to submit an application for a lawful development certificate. Especially where applicants are using finance from institutions (mortgage etc), they will be required to confirm that the project being funded has planning permission – or does not require pp from the LPA.

Data from the benchmarking project undertaken by PAS/CIPFA suggests that officer time undertaken for Lawful development applications is about two thirds of that for a planning application for a similar development, with the fee incurred half that of the corresponding planning fee. Such applications require the submission of technical drawings with their associated costs. In addition to the timescales and costs for the applicant, this would be likely to result in continued demand on officer time with reduced resources to support the work. Unless such applications are accompanied by proposals that allow planning services to become self-financing, the resources available to determine such applications will decline with consequent impact on processing times.

**Consultation question 2: Are there any changes which should be made to householder permitted development rights to make it easier to convert garages for the use of family members?**

Yes  No

**Proposed response**

The provisions must be subject to safeguards being introduced that will ensure the conversion is not, at a later date, separated from the main property and made into a separate dwelling. Harrow, alongside many other London Boroughs faces considerable challenges with the creation of “beds in shed” – often constructed using permitted development rights for incidental use. It is important that any use of PD to convert such space into accommodation, includes an explicit provision stating that such use must remain incidental to the use of the parent dwelling – and may not be used as a separate unit of accommodation. This will enable the LPA to apply simple and clear enforcement action in the event that the provision is abused.

For the majority of developments in Harrow, car parking conditions/restrictions are used only rarely – reflecting the Development Plans use of “maximum” parking standards. In the event that circumstances change (generally in respect of historical permissions) then owners are able to apply for removal of the condition, a relatively simple and affordable matter, requiring limited information and low cost without a full reassessment of the parent permission being required.

**Question 3: Do you agree that in non-protected areas, shops and professional/financial services establishments should be able to extend their premises by up to 100m<sup>2</sup>, provided that this does not increase the gross floor space of the original building by more than 50%?**

Yes  No

## Proposed response

The London Borough of Harrow already supports all appropriate proposals to boost economic recovery. The vast majority of proposals for commercial development are approved. Where proposals need to be refused – because of their unacceptable impacts – the LPA already tries hard to find a solution that safeguards the character and amenities of often tightly packed areas, whilst maximizing the potential for economic growth and prosperity of the enterprise.

In London, where commercial activities are usually part of a multi layered mixed use development (such as district shopping parades with residential and commercial uses), the areas to the rear of commercial premises perform a range of functions – as access for safe servicing, as parking for residents or service vehicles, as areas for bin storage (commercial and domestic) and as amenity space for occupiers of flats above. These proposals risk removing the functions and leading to a proliferation of waste bins, cars, servicing onto the street in such parades, as well as depriving residents of urban flats, the use of external amenity space.

This proposal would require extra safeguards – notably with regards to retail premises that are part of a mixed use residential development, to ensure that any developments do not jeopardize shared amenity / servicing and access areas. Clarification of what constitutes a ‘boundary’ to a residential property is also required, as flats can be located above commercial properties.

This extension of PD rights would also potentially result in significantly larger extensions which may have negative visual impact on an area. Shopping areas can be unique in their configuration and unregulated extensions (in terms of planning) of this size may have detrimental consequences.

**Question 4: Do you agree that in non-protected areas, shops and professional/financial services establishments should be able to build up to the boundary of the premises, except where the boundary is with a residential property, where a 2m gap should be left?**

Yes  No

## Proposed response

For the above reasons – regarding the use and function of spaces to the rear of such premises, this proposal would require extra safeguards.

In addition, given the functional needs of businesses and the often unrelieved form of such extensions (lacking windows or articulation) the 2metre buffer may not be sufficient to ensure neighbouring residents amenity are safeguarded from large extensions that may well extend the entire length of their property.

The proposed changes in PD rights will therefore result in significant and dominant commercial extensions alongside residential property. Conditions

relevant to the specific case circumstances – and used in tight, urban areas to enable such development will not be possible and neighbour conflict is likely to result if there are residents adjoining or living above. There also needs to be clarification of what is a ‘residential property’ as homes above shops can often share the rear amenity areas

**Question 5: Do you agree that in non-protected areas, offices should be able to extend their premises by up to 100m<sup>2</sup>, provided that this does not increase the gross floor space of the original building by more than 50%?**

Yes  No

### **Proposed response**

As above, this proposal would require extra safeguards, notably on the impacts that this could have on parking and transport – as normally adequate parking and access etc can be secured through condition.

Within extensions of this size there is significant scope for the nature of the use to alter to something that might have been otherwise controlled by condition if a formal planning application was required. For example office expansion of this size, may, in certain circumstances, result in additional demand on servicing, parking and/or cycle spaces which could be secured by condition on a planning permission. There is also no compelling evidence that the delay in securing planning permission (often only 8 weeks) has a debilitating impact on local businesses expanding.

**Question 6: Do you agree that in non-protected areas, new industrial buildings of up to 200m<sup>2</sup> should be permitted within the curtilage of existing industrial buildings and warehouses, provided that this does not increase the gross floor space of the original building by more than 50%?**

Yes  No

### **Proposed response**

The proposals are underpinned by a presumption that existing industrial building sites are relatively spacious, and are located within mixed urban areas. This is not the case in the London Borough of Harrow. Whilst the Council pro-actively engages with industrial users around the efficient and effective enlargement of floor space, the sensitivity of surrounding uses to industrial operations and activities means that the suitability of this provision depends upon site and use specific considerations that are best considered through the formal planning process.

Historical issues associated with congestion, servicing, waste and acre parking are not able to be addressed by the proposals – despite their significance in determining the associated impact upon surrounding users. Where appropriate, the Government might instead advocate the more expansive issue of Local development Orders by LPA seeking to remove barriers to industrial expansion in for example, purpose built industrial estates.

This is considered to be a more expedient, tailored and appropriate response to this challenge for business, that ties in with the aspirations for local determination and leadership.

**Question 7: Do you agree these permitted development rights should be in place for a period of three years?**

Yes      No

Comments

The proposal for the temporary application of these permitted rights is unsound. In the event that the provisions revert back to former levels, any application submitted after the time limit expires will almost certainly be compromised by arguments that:

- 1 The previous dimensions (currently proposed) must have been deemed to represent sustainable development under the NPPF and represent a “new benchmark” regardless of the existing provisions;
- 2 The passing of time with no other material change in circumstances establishes a strong precedent for the proposed measures.
3. The determination of appropriate impacts on amenity of an area within the proposals cannot be extinguished because of a specific date being passed.
4. There is a legitimate expectation created that certain forms of development are acceptable.

Further, Local Planning authorities will need to re-structure their services to reflect both the reduced resources available as a result of the reduced fee income, and the different nature of the workload – particularly and expectation of additional work around LDC’s and increased enforcement enquiries. They will inevitably have to determine such applications with cheaper (non professional) officers to address the reduced resource. The temporary proposals will mean that LPA will need to put in place temporary arrangements to address the changes – and then re-structure/organize once again at the end of the temporary period to meet the future demand.

The temporary proposals create significant uncertainty for the community and LPA/Councils and for homeowners seeking to make purchase decisions. The scope for large extensions to dwellings to be undertaken will also have a negative impact upon the value of tightly packed urban areas – where significant enlargement has the potential to undermine house values (with knock on impacts upon taxation and investment risk). They are inefficient and unsound. If the Governments view, despite the widespread concerns expressed, is that these proposals are acceptable, the provisions should change permanently.

**Question 8: Do you agree that there should be a requirement to complete the development by the end of the three-year period, and notify the local planning authority on completion?**

Yes       No

## Proposed response

The proposals will already undermine a large number of existing statutory enforcement notices and enforcement investigations. The requirement to complete the development raises significant resource implications for enforcing authorities – to determine precisely the state of development at the end of the temporary period. Further, the consequences for owners of homes where development may be substantially complete but not completed at the time that the permission expires, will be potentially significant, and adverse. This is likely to mean that both communities affected by the proposals, and developers undertaking works will face considerable anxiety as a result of this shift in approach.

It is questionable whether, having regard to principles of natural justice, the Courts can support action against those who construct but do not quite complete on the 3 year mark a “permitted” extension given that, at the time that they commenced work, the proposals were deemed to be “acceptable” in planning terms and that natural justice should prevail. The impact assessment makes no realistic assessment of the ability of authorities to instigate enforcement action which may be demanded by communities after the expiry period.

There is scope for significant debate around the determination of “completion.” The building regulations definition is the most expedient to use – but potentially the proposition is therefore both ill considered and ill defined and raises fundamental questions regarding the enforceability of such requirements. Placing a time limit on completing a development first requires the implementation of that development and runs contrary to the objectives that the Government has pursued since 2009 in avoiding permissions to lapse on stalled developments.

**Question 9: Do you agree that article 1(5) land and Sites of Special Scientific Interest should be excluded from the changes to permitted development rights for homeowners, offices, shops, professional/financial services establishments and industrial premises?**

Yes  No

## Proposed response

The Council believes that the proposals will result in significant, long term harm to the built environment. Protection of sensitive areas from the effect of the proposals is welcomed

**Question 10: Do you agree that the prior approval requirement for the installation, alteration or replacement of any fixed electronic communications equipment should be removed in relation to article 1(5) land for a period of five years?**

Yes  No



## **Proposed response**

The equipment associated with Broadband can be visually imposing in sensitive areas. Feedback from our residents suggests that the existing system is already too relaxed and there should be greater control of setting and appearance than is currently possible. The current prior approval process is an appropriate means to enable dialogue between providers and the LPA and allows authorities to broker proposals that protect their most valued localities.

## **Do you have any comments on the assumptions and analysis set out in the consultation stage Impact Assessment? (See Annex 1)**

Yes  No

## **Proposed response**

There does not appear to be any environmental impact considerations.

Whilst the prior approval process is shown to cost developers wishing to install communications equipment, there is no statistical evidence in this assessment to show that this cost, or the time taken for approval, is hindering the rollout of new equipment.

The impact assessment of the cost to implement the measures is simplistic and fails totally to predict the consequential impact upon developers behaviours, and the reasonable costs associated with additional enforcement activity and organisational re-structure. The proposals are based on the proposition that development is prevented by the need for planning permission. It does not consider the fundamental issues surrounding the availability of finance to undertake development or the opportunity costs arising from the negative impacts upon property values adjoining the development sites which are likely to be significant and permanent. This will have impacts upon primary and secondary taxation.

## **Financial Implications**

The proposals will reduce the number of applications for planning permission, and replace this work with proposals for certificates of lawful development. Such applications attract a fee that is 50% of the planning application fee. Evidence from activity based costing exercises within the service suggest that the processing of LDC's accounts for 2/3 of the costs associated with planning applications. The current fee regime does not cover the cost of providing the service. With some 600 household applications per year, the potential impact upon resources will require a re-structuring of the service to service the lower level demands of LDC.

Given the existing enforcement workload (some 700 complaints per year, and the significant impact that the proposals are expected to have on the amenities of neighbouring properties, officers expect to see an increase in enforcement complaints, and demands for investigation. The change in the

thresholds for what is, and is not, acceptable, may allow the service to “close” a number of existing and outstanding enforcement complaints, but officers expect to have to investigate both development, and if the temporary time period proposed is brought forward, compliance timetables.

The service would need to re-structure, and re-focus, its resource in the event that the proposals were to be implemented. The existing professional resource is unlikely to be able to be sustained within the Council, without additional funding growth. The move from applying officer time to matters of judgement to matters of fact, would provide opportunities to migrate applications from professional officers to technical support staff (who are not necessarily qualified planners) as a means to mitigate the impact of declining fees but it is uncertain how far these measures alone could help contain existing budget pressures.

## **Risk Management Implications**

The proposed response raises no direct risk matters for the Council. In the event that the consultation proposals are enacted in part or in full, the Planning Service will need to revisit its organisational arrangements to identify new areas of risk – particularly around resource use and finance.

Given that the proposal is a consultation – with no certainty of legislative change at the present time, there are no other risks to consider at this stage.

## **Equalities implications**

The government will have to undertake an EQIA on the proposals. The Councils response does not, on its own, relate to any specific protected category.

## **Corporate Priorities**

The proposals will impact upon the ability of the Council to manage the appearance of the built environment, and the amenities of residents and businesses across the borough.

Inappropriate development gives rise to adverse impacts upon environmental, physical social and emotional wellbeing of our residents. The proposals are therefore at odds with the significant work across the Council that seeks to:

- Support town and Local Shopping centres
- Support and protect people who are most in need
- Keep neighbourhoods clean, green and safe
- Unite and involve communities.

### Section 3 - Statutory Officer Clearance

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 7.12.12		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 7.12.12		

### Section 4 - Contact Details and Background Papers

Contact: Stephen Kelly 020 8736 6149  
[stephen.kelly@harrow.gov.uk](mailto:stephen.kelly@harrow.gov.uk)

Background Papers:  
Consultation on Extending permitted development rights for  
homeowners and businesses

Background Papers: None

If appropriate, does the report include the following  
considerations?

1.	Consultation	NO
2.	Corporate Priorities	YES