



**REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND REGULATORY SERVICES MANAGER**

**TO: POLICY AND RESOURCES COMMITTEE**

**DATE: 17<sup>th</sup> SEPTEMBER, 2020**

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## **NATIONAL PLANNING REFORMS**

### **PURPOSE OF REPORT**

To report reforms made by the Government in July 2020 to the General Permitted Development Order (2015) and Use Class Order (1987) and consider the implications for decision making and the Local Plan.

To summarise the proposed planning reforms to the standard methodology and to agree the Councils response.

### **RECOMMENDATIONS**

- (1) To note the changes to the Use Classes Order and General Permitted Development order 2015.
- (2) That Committee agree the comments in Appendix to form the response to the consultation.
- (3) That copy of this be circulated to Area Committees to inform them of the legislative changes

### **REASONS FOR RECOMMENDATIONS**

- (1) To ensure compliance with Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020, Town and Country Planning (General Permitted Development) (England) (Amendment) (No.3) Order 2020, Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Order 2020, and Town and Country Planning (Use Classes) (Amendments) (England) Regulations 2020
- (2) To represent the interests of the Borough of Pendle by responding to consultations regarding proposed national planning reforms

(3) In order to ensure Area Committees are informed of the changes as they make decisions on planning applications that may be affected by the changes
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## **ISSUE**

### Introduction

The Government is seeking views on changes to the planning system. It has already made changes to the Town & Country Use Classes Order 1987 (“the Use Classes Order”) and to the Town & Country Planning (General Permitted Development) Order 2015. These changes are discussed below. It is understood that there is a Judicial Challenge being lodged against the changes but unless and until that is decided in favour of the plaintiff the measures will be in place.

There are two consultations out for comment. The first is Changes to the Current Planning System. This is the subject of this report.

The second is the Planning White paper which seeks views on more structural changes to the whole planning system. This will be subject to report to this Committee in October.

The Government have introduced immediate legislative changes as well as longer term reform. Immediate reforms relate to an expansion of Permitted Development Rights (PD rights) which include the right to build-up above certain forms of development without the need for planning consent, and wholesale changes to use classes to expand PD rights for changes of use within the commercial sector.

### Immediate Reform

#### *Permitted Development Rights*

The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (“the GPDO”) grants planning permission for certain types of development. The Government has, over time, expanded the scope of development included in the GPDO with the intention of providing greater flexibility for residents and businesses to make alterations to their premises and to support the local economy. The latest set of reforms made seek to broaden PD rights further.

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020 introduces five new classes of PD rights and took effect on the 31<sup>st</sup> August 2020:

Part 1:

- Class AA: The enlargement of a dwelling house by construction of additional storeys.

Part 20:

- Class AA: New dwellinghouses on detached buildings in commercial or mixed use.
- Class AB: New dwellinghouses on terrace buildings in commercial or mixed use.
- Class AC: New dwellinghouses on terrace buildings in use as dwellinghouses.
- Class AD: New dwellinghouses on detached buildings in use as dwellinghouses.

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.3) Order 2020 enables to the demolition of any purpose built detached block of flats or detached building in B1 use and replacement with a purpose-built detached block of flats or dwellinghouse (Class ZA development).

The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Amendment) (Coronavirus) Regulations 2020 enable the construction of new dwellinghouses of up to two storeys on purpose built detached flats. In addition, any change of use of a premises to a residential use will need to ensure all habitable rooms have adequate natural

light. As a temporary measure, the Order extends the time that land not within the curtilage of a building can be used for temporary purposes. This Order applies from the 1<sup>st</sup> August.

As with wider PD rights, there are restrictions in place for the implementation of each of the above relating to the age, type, height, scale and form of the existing property. Further, certain permitted development rights do not apply to any Article 2(3) land, which in Pendle includes land within the Forest of Bowland AONB and designated Conservation Areas. PD rights also exclude Listed Buildings. Prior approval is needed before works can take place for any of the changes introduced to the GPDO which considers material planning issues such as impact on highways capacity/safety, flood risk and residential amenity.

The effects of expanded PD rights for Pendle will depend on the extent that they are taken up by the community. The scope for implementation is limited somewhat by the nature of existing housing stock in Pendle, especially within the main towns. However post war developments stock will provide opportunities for such forms of development. The prior approvals process provides a means for the Council to manage these forms of development.

The potentially most significant new PD right relates to building above existing houses. There are pressures, particularly in the M65 corridor to allow extensions to houses in the roof space. There are however restrictions most notably that the PD right does not apply to houses built prior to 1948. Therefore the majority of our terraced. Dormers are not allowed under this new PD right.

### *Use Classes*

This is potentially the most significant current change, particularly in respect to our town centres.

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 makes significant amendments to use classes, with Class A (retail) and D (assembly and leisure) uses removed and regrouped into the following classes (former use classes are provided in brackets):

- Class E – New Commercial, Business and Service use class: Shops (A1), financial and professional services (A2), restaurants and cafes (A3), offices, research and development, industrial premises (formally B1a-c), indoor sport, recreation or fitness (D2), medical or health services, A crèche, nursery or day centre (D1);
- Class F1 - Learning and non-residential institutions: Education, art galleries, museums, public library, public hall/exhibition hall, places of worship, law court (D1);
- Class F2 -Local community: A local shop (limited in scale and location – A1), hall or meeting place, place for outdoor sport or recreation, an indoor or outdoor swimming pool or skating rink (D2).

Class A and D uses which do not fit into Class E, F1 or F2 are now considered ‘Sui Generis’ uses (uses which cannot be included in a specific use class). This includes pubs, wine bars, drinking establishments, drinking establishments with expanded food provision, hot food takeaways, live music venues, cinemas, concert halls, bingo halls, and dance halls. Change of uses involving any of these types of development will still require a planning application.

The amendments took effect from the 1<sup>st</sup> September 2020 but is subject to a transitional period ending on the 31<sup>st</sup> July 2021 with the former use class applying for decision making where needed during this period. The changes to use classes hold significance given that Town and Country Planning Act 1990 sets out that a change of use of a building or land within the same use class does not involve “development” and therefore does not require a planning application.

So any former B1 use on an industrial estate can now be used for retailing.

The reforms could have a considerable effect on High Streets, retail sites, and office parks. The added flexibility granted by the change use classes enables a broader range of uses within High Streets, which could increase activity and footfall and see the role of High Streets diversify beyond being seen first as a shopping destination. However the reforms could equally result reduction in retail floorspace within town centres with retail uses instead relocating to fringe locations. The reforms could also result in reduction in the amount of available office space available in Borough where existing floorspace in B1 use is turned into other Class E uses such as gyms or restaurants.

The reforms significantly weaken the town centres first approach and policies which manage town centre activity. This represents a shift in local and national planning policy and, both existing and draft policies will need to be reviewed in response (currently being undertaken as part of the preparation of the Part two Local Plan). The reform is more problematic for Riverside Business Park, Barrowford where the broader Class E uses would move away from the Site's intended use at allocation.

### *Changes to the Current Planning System Consultation*

More immediate reform is proposed by the Government through the '*Changes to the Current Planning System*' consultation document. The changes are designed to achieve a national build rate of 300,000 dwellings per annum nationally and to promote home ownership. The consultation closes for comments on the 1<sup>st</sup> October 2020. It is anticipated that changes made will be implemented soon after the closing date through amendments to Planning Practice Guidance (PPG). The Council's proposed response to this consultation can be found in Appendix 1 of this report.

The first proposal is to amend the Standard Methodology ("the SM"), which under the 2019 NPPF, forms the starting point for determining the housing requirement for each local planning authority.

The starting point for the assessment is whichever is higher of the latest household projections or 0.5% of existing housing stock both over a 10-year period. A formulated adjustment is then made to account for the change in affordability over 10-years. No specific amendment is made to account for affordable housing need or employment growth, however scope for a further uplift in response to these issues remain in PPG.

The revised approach for the standard method would apply in all areas where the adopted requirement has been in place for more than 5-years. A transitional period is set for emerging Local Plans however is nevertheless likely to be applicable to the Part Two Local Plan.

What the changes need to be accompanied by is a change to the policy in the National Planning Policy Framework ("the Framework") and the national Planning Practice Guidance ("the NPPG"). The standard methodology was meant to produce a simplified way of assessing housing need. The Framework does not indicate that other factors can be looked at in assessing overall housing requirements yet the NPPG does. This causes confusion and slows the Plan Making Process down as it in effect opens up Councils for challenge on their housing numbers.

The Framework should make it clear whether a Council can simply adopt the SM figure, or its replacement, and not be challenged on the number thereafter. That was the intention when the concept was first put forward in the last Planning White Paper but has been diluted so that we are back to an ambiguous position.

In Pendle, the revised standard method would increase the baseline housing need of the Borough from 141 dwellings to 213 dwellings per year. This is largely a result of changes to demographic projections in Pendle being higher in the most recent household projections (this is also marginally higher than a stock based approach). The five year position of the Council will initially improve (as this is currently measured against the Core Strategy requirement). The Council is at risk of failing

the Housing Delivery Test however if a higher rate of completions cannot be maintained. Allocated sites identified through the emerging Part Two Local Plan and the implementation of existing planning consents both play a key role securing higher rates of delivery.

The demographic projections for Pendle have historically varied significantly when new statistics emerge each year. It is concerning that the modelling varies so much as it does not give confidence in the robustness of the methodology.

The second proposal relates to First Homes. First Homes are defined as homes for first-time buyers with a 30% discount against market value. Proposals regarding First Homes were consulted by the Government in February 2020. The Government indicates that it will expect a minimum of 25% of affordable homes on housing developments to be First Homes. First Homes are intended to be secured alongside other Affordable Home tenures outlined in current policy. It is the Government's preference for First Homes to replace shared ownership products.

In Pendle, the 2020 Housing Needs Assessment prepared by Lichfields confirms a need for affordable homes to be delivered as 25% intermediate and 75% social/affordable rent. The amount of social/affordable rent dwellings delivery would therefore remain unchanged at 75% with 25% built as First Homes if the Government's proposals are adopted. However what the consultation is bereft on is whether economic factors should be taken into consideration on the required percentage. Should 25% of houses need to be affordable with a 30% discount there will be few viable sites in the Borough.

The third proposal is to increase the minimum threshold for requiring affordable housing from 10 dwellings to 40 or 50 dwellings. This means that no affordable homes would be required on sites below this threshold. The intention of this policy is to support small and medium-sized developers in the construction industry by reducing the cost burden for this scale of development. This amendment is intended to be temporary to support economic recovery following COVID-19. This in reality will not affect Pendle significantly as current affordable targets are low across the Borough except in rural areas which overall do not contribute significant numbers to our housing delivery.

The final proposal seeks to expand Permission in Principle (PiP) to include major development sites. PiP provides a simplified planning route for housing-led sites where the principle of developing a site is established ahead of and separate to technical considerations. At present only minor housing developments can apply for PiP. The aim of the proposal is to secure a boost in land which is available and can be delivered for housing and other forms of development, and to support small and medium housebuilders whom might take on smaller sites.

There has been some interest in PiP in Pendle with several schemes coming forward using this type of application. Expanding PiP to include major development may therefore benefit the supply of housing land within the Borough and aid its regeneration. PiPs are to be determined within five weeks and form a less costly route to securing planning permission for applicants. They do not however consider many technical details. As these are key issues on larger sites, which often require infrastructure which is not delivered by a PiP it is recommended we object to this.

The implication of the proposal may therefore place additional resource constraints on the planning department to determine received applications within the required timescale. Revenue from applications may also fall should PiPs be used to progress sites instead of other forms of planning application.

## **IMPLICATIONS**

### **Policy:**

*PD rights:* Protected employment floorspace may be lost to other uses.  
*Use classes:* Town Centre uses policy and allocations for retail and offices may now be out-of-date and need of review

*Changes to the Current Planning System:* The Part Two Local Plan will need to reflect the revised Standard Method and policy for First Homes. Our housing assessment will also quickly become out of date.

- Financial:** Increases the role of and scope for PiPs may result in resource pressures for development and a reduction in planning fees. It is not clear if the new class E would impact on our town centres but any pressure placed on them due to out of centre retailing will impact on economic performance..
- Legal:** *No direct impacts.*
- Risk Management:** *There are no direct risks other than financial resulting from these changes.*
- Health and Safety:** None arising directly from the report.
- Sustainability:** *Permitted Development Rights and Use Classes:* risk of unsustainable forms of development taking place as a result of relaxed planning controls. Planning tools available to reduce potential for this.  
*Planning For the Future:* Infrastructure Levy may not support delivery of necessary infrastructure if threshold value is not achieved by developments within the Borough. Removal of SA maybe countered by Sustainability Test for Local Plan.
- Community Safety:** None arising directly from the report.
- Equality and Diversity:** *These reforms are nationally set. One of the grounds for judicial review has been the lack of any Equality Assessment. The courts will determine if the changes affect equality and diversity.*

## **APPENDICES**

Appendix 1: Proposed representation made in response to Proposed Changes to the Current Planning System.

## **LIST OF BACKGROUND PAPERS**

Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020  
Town and Country Planning (General Permitted Development) (England) (Amendment) (No.3) Order 2020  
Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Order 2020  
Town and Country Planning (Use Classes) (Amendments) (England) Regulations 2020  
Proposed Changes to the Current Planning System Consultation Document