



Executive Committee

All Wards

7th October 2009

INCREASING NON-DOMESTIC PERMITTED DEVELOPMENT RIGHTS

(Report of the Head of Planning & Building Control)

1. Summary of Proposals

To endorse the suggested Council response to the CLG consultation 'Improving Permitted Development' as compiled by Officers.

The Government's reason for proposing the changes to permitted development rights is a combination of the current economic climate and the recent Killian-Pretty review of the planning system. However, some of the details contained within the proposals of the consultation paper raise concerns both in terms of new procedures and in terms of impacts on visual and other amenities, as well as the likelihood of successful enforcement and potential increase in caseload. Therefore there are potential negative impacts both on the built environment of Redditch Borough and on the Council administratively and it is therefore considered appropriate to raise these concerns with CLG.

2. Recommendations

The Committee is asked to RESOLVE that the response at Appendix 2 to Communities and Local Government regarding the consultation document 'Improving Permitted Development' be endorsed and submitted.

3. Financial, Legal, Policy, Risk and Sustainability Implications

Financial

- 3.1 There is no cost associated with submitting the consultation response.
- 3.2 There may be financial implications following the passing of amending legislation, as it could result in the need for fewer applications and thus less fee income. It could also result in a need for more monitoring, compliance and enforcement activity which generally does not generate any fee income and in some cases could be quite costly.

Legal

- 3.3 The consultation proposes to amend the following piece of legislation:
- a) Town and Country Planning (General Permitted Development) Order 1995 (as amended)
 - b) The proposed legislation would be the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.
 - c) This report and the consultation document from CLG also make reference to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Policy

- 3.4 There are no identified policy implications for the Council as a result of the consultation response. The principles of the legislation and thus the procedural arrangements for its implementation would remain unchanged, and thus only the detail would alter.

Risk

- 3.5 All consultation responses to Communities and Local Government must be submitted within the designated time period (responses must be returned by the 23rd October 2009). If a response is not made or returned within this time frame, Communities and Local Government will not have knowledge of the views of Redditch Borough Council when reviewing legislation and therefore may impose changes that impact negatively on this Council.
- 3.6 The impact of additional permitted development rights on the appearance of the Borough is unknown at this stage, however if substantial rights are introduced, it may be that more built form will fall outside the control of Redditch Borough Council and thus could result in poor design affecting streetscenes. It is difficult to assess this risk at this stage, as it is not known how many extensions etc are likely to be implemented as a result of any changes to the legislation.

Sustainability / Environmental

- 3.7 There are concerns raised below in the key issues section in relation to the impact of the proposal on sustainability.

Report

4. Background

- 4.1 Under the statutory framework for planning, the primary legislation sets out the definition of development, and then secondary legislation sets out what types of development are permitted, and therefore can be carried out without the need for planning permission. It is therefore the case that Planning Officers, when advising on the need for planning permission, refer to this legislation. This legislation is the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and has been amended several times since it was originally enacted.
- 4.2 The Permitted Development Order, as it is generally known, sets out what development is permitted without an application, depending on the type of development. For example, it has a section on domestic development, on statutory undertakers, on local authorities, on changes of use, on agriculture, on telecommunications, etc.
- 4.3 Recent reviews of the planning system have suggested that the planning system gives Local Planning Authorities too much control, and thus stifles development by introducing costly and time consuming barriers such as the requirement for planning permission. As a result of the Killian-Pretty review, in particular, the CLG has now responded to this, by proposing changes to the law and increasing permitted development rights on non-domestic properties.
- 4.4 It should be noted that in October 2008 the Permitted Development Order was revised to give additional rights to domestic properties, as reported to the Planning Committee on 7th October 2008.
- 4.5 The CLG consultation document is entitled 'Improving Permitted Development', and proposes changes to various types of permitted development to increase the freedom to develop without the need for planning permission. These changes are outlined below in section five, with accompanying Officer comments.

Prior approval applications

- 4.6 Currently, the prior approval system exists for developments relating to agriculture, telecommunications and demolition. Under this process, the principle of the proposed development is accepted by the legislation, and an application has to be made to the Local Planning Authority for prior approval of the siting and design (and external appearance for agricultural development) of the proposed development. This means that the Local Planning Authority has to follow a simpler process. Further, there is usually a timescale written in, such that if a decision is not made within the allotted time, then default consent follows, putting pressure on the Council to make a speedy decision. It is proposed in the CLG consultation document that this system be extended to other forms of development.

Article 4 directions

- 4.7 Article 4 directions are a tool granted to Local Planning Authorities within the Permitted Development Order. The directions allows them to define an area where permitted development rights should be restricted for a particular reason, and restrict them as necessary. For example, extensions as large as those normally permitted might be considered to be out of character within a Conservation Area, and so within the Conservation Area an article 4 direction could be placed which restricts extension rights, or any others as appropriate. There are two different types of article 4 direction, one for general use where the Local Planning Authority identifies a perceived need and the other for use on dwellings in Conservation Areas. A third sort is a temporary measure that can be brought into use more quickly, where a LPA perceives an immediate threat.
- 4.8 In order to impose an article 4 direction, there are lengthy administrative procedures to follow, including public consultation in some cases and in some situations the directions need to be confirmed by the Secretary of State. There are also some cases where compensation for the removal of rights can be sought in particular circumstances.

Other issues to note

- 4.9 Members need to be aware that whilst the introduction of additional permitted development rights could benefit commercial interests in terms of allowing development without the delay and expense of engaging in the planning process, it would also be likely to result in a decrease in the quantity of applications received by the Development Control team, and a resultant loss of income. Further,

the concern mentioned at paragraph 3.7 above in relation to the risk to the appearance of the Borough is also an appropriate consideration.

- 4.10 In formulating a response to the CLG consultation document, Officers have taken into consideration the following matters, and any others that appeared to be appropriate: amenity, character, sustainability, harm, policy and safety, as well as efficient and effective procedural matters. Officers are keen to ensure that any changes made to the legislation give the Council powers to maintain and improve the quality of the built environment in an efficient and effective way.

5. Key Issues

- 5.1 The issues have been separated into the headings that are within the CLG consultation document, and at the end of each heading is a reference to the relevant question number in the response at Appendix 2. This should enable cross referencing to occur.
- 5.2 There are some factors of concern that are repeated under the various headings, for example where protection for Conservation Areas has been omitted from the draft legislation. Within the report, however, there is no such repetition, but for clarity it is included under each question in the proposed response to CLG which is found at Appendix 2. There are also some general comments made at the beginning of the response.

Shops (Q1)

- 5.3 The principles of the proposed changes relating to shops, retail and all other uses falling within Class A (which include shops, hairdressers, undertakers, banks, building societies, financial institutions, professional services [estate agents, recruitment agents etc], restaurants, pubs and bars, and takeaways) are accepted in that it is clear that such establishments would benefit in some way if permitted development rights were provided in some form. However, concerns are raised about the proposed size of extensions and alterations that would be permitted under the new legislation. These developments, which would be outside the control of the Council, are of a sufficiently large size that they could result in inappropriate development. Further, because the proposed limit of rear extensions is 25% or 50m² (whichever is the smaller), in some cases, this could be a significant extension, for example on a unit in a district centre or a small row of shops in a residential area. This could also lead to additional retail floorspace in areas where current planning policy would seek to contain and minimise this. Similarly,

extensions to pubs could lead to additional impacts on neighbours, which the Council may not be able to control.

- 5.4 Officers have significant concerns regarding proposals to make trolley stores permitted development. This is partly as there would be no limit on how many of these stores could be placed within any car park. Whilst in sustainability terms the loss of spaces would not be a concern, the visual impact of a plethora of trolley stores would be. Further, the size limit of 20m² in floor area is larger than most individual parking spaces, and when added to the fact that the Council would have no control over the appearance of these structures, gives cause for concern.

Offices (Q2)

- 5.5 The principle of extending permitted development rights for office accommodation (Class B1 which includes R&D and labs/studios) is seen to be a potential benefit, although again, the large sizes proposed to be granted as permitted development give cause for concern. Similarly, it is considered that the draft legislation is not well set out and thus it would not be easy for LPAS to interpret and implement.

Institutions (universities, colleges, hospitals) and schools (Q3 & Q4)

- 5.6 The principle of allowing small extensions at institutions and schools is considered to be acceptable. However, doubling the number of buildings on a site without a need for permission raises cause for concern. There is also the difficulty of establishing whether school extensions will result in an increase in pupil numbers, which although may not be the case initially, may be in the future. Whilst it would be possible to liaise with the County Council on the latter matter, it would be difficult to ensure that pupil numbers never increased, or to take remedial action if they did. Nor is it clear why an increase in pupil numbers is significant in planning terms.

Industry and warehousing (Q5)

- 5.7 Whilst the principles of allowing small extensions to industrial properties is considered reasonable, providing that they are of a similar design and appearance to the original building, the size limits proposed are so large that significant concern is raised. It is noted that for most premises, the floor area of an extension could be up to 1000m² without requiring an application for planning permission. However, this is the current threshold for when a minor extension becomes a major extension under the National Indicators, so whilst the logic of making minor extensions permitted development can be

followed through, some of these are a significant size and could have large impacts on the Borough. This would be reduced in Conservation Areas, but would still be substantial (500m²). Officers consider it likely that extensions of this size and type could detrimentally affect the historic importance of such areas. It is suggested that there should still be a threshold for some minor extensions to require planning permission, so in effect a new lower threshold should be inserted. Whereas, currently, all extensions require permission and those over a certain size are considered to be major (for the purposes of performance indicators at least), a lower threshold could be inserted between not needing consent, and needing consent but falling within the minor category.

Air-conditioning units (Q6-8)

- 5.8 Officers raise concerns in principle to accepting air conditioning units as permitted development. Such units are not considered to be sustainable in the long term, and therefore efforts need to be focussed on finding alternative ways of regulating temperature within buildings. This can be done in a variety of ways, including through new building design and through other methods that are less energy inefficient or energy hungry. Therefore, it is suggested that if air-conditioning units became permitted development, these would proliferate in preference to more sustainable alternatives, and this could also reduce demand for research and production of such alternatives.
- 5.9 Further, it is considered that in terms of the detail of the proposal, there could be concerns relating to the size of the units allowed, and also enforcement of this, given that measuring units mounted high up could be difficult.
- 5.10 In terms of measuring noise emissions, this would require training and equipment that already exists within the Environmental Health team, and is more appropriately located there. It is therefore suggested that the planning system may not be the best place to make such legislative changes, and that such changes could be achieved more effectively elsewhere.

Prior-approval for shopfronts and ATMs (Q9-11)

- 5.11 It is proposed that, with some exceptions, the prior approval system (see para 4.6) be extended to include applications for shopfronts and Automated Teller Machines (ATMs – cash machines).

- 5.12 In terms of shopfronts, given the situations in which exceptions are made and full planning applications would be required, which are those perceived to be sensitive or controversial, it is suggested that there is no need for a confusing prior approval system, and so these installations could just be permitted development. This is due to the exceptions proposed in the draft legislation.
- 5.13 However, in terms of ATMs, it is suggested that these cannot always be acceptable in principle, and that matters such as crime risk should always be taken into account when determining the appropriateness of their installations. Such consultation should not be hampered by the pressure brought by the threat of deemed consent or the restricted matters for consideration, as exists under the prior approval procedure. Under these proposals, this would not be possible. ATMs are considered to be such sensitive uses that the permitted development regime should not be extended to include them. There are also some inconsistencies in the proposals, in that in some types of buildings the prior approval process would apply, whereas in others a full planning application would be required. So where a bank and a hotel are adjacent, the bank would need prior approval, but the hotel would require full permission for an ATM to be installed.

Hard-surfacing at shops, offices, institutions, industrial and warehousing premises (Q12&13)

- 5.14 With the issue of hard-surfacing, there are several areas of concern. The principle of ensuring that all hard-surfacing is permeable, in line with sustainability objectives, is recognised and supported. However, it is acknowledged that there are occasions when this is inappropriate, such as on a petrol filling station forecourt, where a permeable surface could result in a risk of contamination from any spills that may occur seeping down into the soil and groundwater. The difficulty is therefore distinguishing between where a surface needs to be impermeable and suitably drained and filtered, and where the risks are minimal and it is desirable to have a permeable surface for sustainability reasons. It is because of this difficulty in distinguishing the most appropriate surfacing that Officers suggest that this should remain within the control of the Local Planning Authority, who can then call upon appropriate experts and in consultation with them arrive at a considered decision. Whilst this is also not an ideal situation, it does allow for appropriate protection where necessary and local policies could be developed requiring permeable surfaces unless circumstances indicate otherwise. The onus could then be on the applicant to demonstrate the appropriateness of their proposed surfacing method, its sustainability and acceptability.

Article 4 directions (Q14 -18)

- 5.15 Whilst it is unlikely to be a procedure that LPAs choose to use often, its simplification is welcomed by officers, as well as the granting of the responsibility to LPAs without the need to refer to the Secretary of State, as the complex nature of the process has often been a deterrent in all but the worst cases. The reduction in the period during which compensation can be sought is also welcomed, as it reduces any financial risks associated with the procedure and thus in combination these factors would be likely to result in more protection where it is considered appropriate by removing some of the existing deterrents.

6. Other Implications

Asset Management - None known

Community Safety - None known

Human Resources - None known

Social Exclusion - None known

7. Lessons Learnt

This is a change to a current procedure, which is considered to be in need of review, but which is very difficult to measure in order to provide certainties. At this stage, it is difficult to draw any conclusions from the proposed changes.

8. Background Papers

CLG consultation document 'Improving Permitted Development'

<http://www.communities.gov.uk/publications/planningandbuilding/impovingdevelopmentconsultation>

9. Consultation

There has been no consultation other than with relevant Borough Council Officers.

10. Author of Report

The author of this report is Ailith Rutt (Development Control Manager), who can be contacted on extension 3374 (e-mail: ailith.rutt@redditchbc.gov.uk) for more information.

11. Appendices

Appendix 1 – Proposed additional Permitted Development Rights

Appendix 2 – Proposed response to CLG consultation

Glossary (also applies to appendices)

Article 1(5) land = Conservation Areas and other similar designations including National Parks, etc

ATM = Automatic Teller Machine (cash machine)

CA = Conservation Area

CLG = Communities & Local Government (Department of)

CLEUD = Certificate of Lawfulness of Existing Use or Development

CLOPUD = Certificate of Lawfulness of Proposed Use or Development

LB = Listed Building

LBC = Listed Building Consent

LPA = Local Planning Authority

PD = Permitted Development

PDRs = Permitted Development Rights

WHS = World Heritage Site

The Use Classes Order sets out particular classes of use, with sub-categories, into which most types of development fall. Other uses are considered to be *sui generis*.

A class uses are town centre and retail uses.

B class uses are commercial and industrial uses

C class uses are residential uses

D class uses are recreational uses and community facilities