

## **Relaxation of planning rules for change of use from commercial to residential – Joint consultation response from the National Housing Federation and Shelter**

### **Introduction**

The National Housing Federation represents 1200 independent, not for profit affordable housing providers in England. The Federation's members include housing associations, co-ops, trusts and stock transfer organisations. They own and/or manage more than 2.5 million homes provided for affordable rent, supported housing and low cost home ownership, and offer an increasingly diverse range of community and regeneration services. Our members currently develop approximately 40,000 new affordable homes per annum.

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Shelter is a charity that works to alleviate the distress caused by homelessness and bad housing. It does this by giving advice, information and advocacy to people in housing need, and by campaigning for lasting political change to end the housing crisis for good. Shelter tackles the root causes of bad housing by lobbying government and local authorities for new laws and policies, and more investment, to improve the lives of homeless and badly housed people.

### **Change of use proposals**

This paper sets out our views on the proposal to make permitted development a change of use from commercial use to residential use. In the Annex we answer the specific consultation questions.

We welcome the Government's ambition to increase housing supply. Providing more homes should help affordability and, with sensible planning policies, should increase the supply of new affordable homes. Together with the recent CLG "issues paper" looking at how changes of use are handled by the planning system there appears to be a real willingness to challenge some of the fundamental constraints in the planning system.

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We support the view that there is potential to increase housing supply by making the planning system more encouraging of commercial to residential conversions. However, we argue in this response for some changes to the Government's proposals which we believe will bring about this objective more successfully, and with less risk of unintended consequences.

We have two main suggestions.

### **Securing Affordable Housing**

We know the Government wishes to maximise affordable housing supply as part of wider housing supply. There is a commitment to deliver 150,000 new affordable homes by 2016. It is important that, if there is an increase in conversions, as the Government intends, extra affordable housing supply should form part of that. The consultation paper suggests that an additional 7,000 homes could be provided, a large proportion of which will be in the South East where there is a significant need for new affordable housing stock. Even if only 15% of the new homes were affordable a failure to secure a proportion of affordable housing would represent an annual loss of over 1,000 potential affordable homes. Using the same 15% figure mentioned above, if the 7,000 homes already provided by changes of use from commercial become permitted development then that would represent an actual loss of 1,000 affordable homes that would otherwise be provided. Ideally both of these losses of affordable accommodation should be avoided.

We believe that there are a number of ways, not explored in the consultation paper, that might deliver both new housing and a proportion of affordable housing:

#### *A positive planning framework*

Although it would still require planning permissions we think that a less restrictive planning system could deliver an increase in housing supply. This would start with a stronger presumption in national policy that changes of use will be encouraged in local policies and individual applications not refused unless there are very strong contrary considerations. Within a national policy framework that creates a strong expectation that market development should contribute to affordable supply, we believe that it should then be for individual planning authorities to develop the specifics of local policies on an appropriate affordable element in conversion schemes. This could perhaps be coupled with a waiver of planning application fees

for commercial/residential changes of use. This approach would be consistent with the welcome tone of the informal draft NPPF on housing generally.

### *Standard Conditions*

It might be possible to have, for example, a standard condition on all permitted development requiring development above a size threshold to provide on-site affordable housing. We doubt that this would have an adverse effect on the proposed levels of housing supply from conversions. A standard condition could be applied as follows, perhaps leaving it to local planning authorities to develop local alternatives if necessary or for developers to make an application if they think that an alternative approach is justified.

*"If the development is of more than [1,000] sq m gross floorspace then:*

- (a) at least 30% of the floorspace shall be used only for the purposes of Affordable Rented accommodation managed by a Regulated Provider unless otherwise agreed by the Local Planning Authority;*
- (b) no unit of accommodation shall be occupied until the floorspace for Affordable Rent has been made available for management by the Regulated Provider or as otherwise agreed by the Local Planning Authority"*

### *Opt-In to Permitted Development rights*

It is important to continue to support existing development plan policy which might, for example, already protect employment locations and/or require conversions to provide affordable housing. It might be sensible to allow local planning authorities to decide, on the basis of clear local evidence and analysis, whether or not the proposed permitted development right would have an adverse effect in their area. As part of the adoption process for the local plan they could decide (or not) to adopt the proposed permitted development rights. An alternative would be to allow them to "opt in" and add local standard conditions that provided protection/contribution where that is justified by development plan policies.

Our view is that it is likely that each these approaches would deliver both an increase in new homes and secure additional affordable housing, delivering the desired increase in homes without prejudicing affordable housing supply.

### **Quality Homes**

In areas of high housing demand there is a real risk that unsuitable premises in inappropriate location will be converted, and will provide inadequate accommodation. If the approach is pursued then there will be a need to review building regulations to ensure that proper sanitary, amenity, day-lighting, heating, size conditions are applied. It is all too easy to imagine the conversion of old warehouses, for example, to provide wholly unsatisfactory housing. Such an outcome would be at odds with the very clear emphasis in Government statements and the Practitioner Group draft NPPF on sustainable development -- particularly if the location and character of the premises actually mean uses creating employment, which is of course a vital element of sustainability, are more suitable.

## **Annex**

### **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? Please give your reasons.**

We welcome the implied principle that it should be easier to change use. Too often changes are resisted when they would have few adverse effects. As the paper notes there is, in some areas, an abundance of commercial floorspace that could be better used for homes. We are not, however, convinced that the simple consideration of market value price signals or vacancy rates is sufficient indication that there should automatically be further freedoms. A more balanced, and more local, evaluation needs to take place. Importantly, a more local approach would allow affordable housing to be secured.

Our view is that changes of use could be better encouraged, with less adverse effects, by encouraging local planning authorities to adopt more flexible planning policies and to stop "protecting" unused or underused commercial space. Making it clear that there is a presumption in favour of change of use unless there are adverse amenity effects might be a better approach. As we note above such an approach would ensure that changes of use also made an appropriate affordable housing contribution.

### **Question B**

**Do you support the principle of granting permitted development rights to change 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? Please give your reasons.**

See above.

### **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?**

There is a danger that this approach will encourage short term provision of residential accommodation, with the risk that it will be fitted out to an inadequate standard.

### **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?**

We believe that there should be an upper limit of, say, 5 units and, perhaps, a minimum space limit for the flats. In the absence of planning control there is a risk that inadequate accommodation will be provided.

### **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 may need to be taken into account? Please give details.**

As indicated in our cover note we do not think that the analysis of the effects of the proposal on affordable housing supply have been fully considered. The only reference in the paper to affordable housing notes that it will no longer be secured and then suggests that developers might make voluntary contributions towards amenity shortfalls. This is not a sensible level of analysis.

The paper notes that in some cases there will be a need for external works to facilitate the permitted change of use. The paper then implies that this will allow local planning authorities some control over the amenity impacts and possibly an ability to require the provision of affordable housing. In practice most local planning authorities will not (and do not feel able to) impose such requirements when applications are made for façade treatments. Again, the analysis in this area needs to be developed further.

#### **Question F**

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

There will doubtless be amenity and infrastructure impacts arising from the new homes that the proposal seeks to secure. There is an argument, at least, that those taking advantage of any new permitted development should make a CIL contribution towards the additional infrastructure costs and, for developments below a size threshold where affordable homes cannot be provided on site, potentially a commuted contribution towards affordable housing. We recognise that this would change the structure of CIL but, given the apparent willingness to review fundamental issue may be this is an approach that could be explored.

#### **Question G**

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

Local planning authorities should be allowed to develop their own standard conditions to reflect local circumstances.

Local planning authorities should either be allowed to exclude the application of the permitted development rights or, alternatively, be given the power to opt in to the permitted development arrangements. This power could be applied across the whole or part of a local planning authority area.

#### **Question H**

**How, if at all, do you think any of the mitigation options could best be deployed?**

Our view is that local planning authorities are best able to decide how best to introduce and to mitigate the potential effects.

### **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.**

We do not think that there is any merit or justification in requiring local planning authorities to be required to pay compensation. In the present economic climate for local authorities the potential risk and scale of compensation will deter them from using article 4 directions.

### **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.**

As the "Issues" paper indicates there are some real implications arising from a change to the planning system to allow greater freedom to change use. In principle we support the review but the potential consequences need to be very carefully considered, and we will express our views as part of that overall review exercise.

### **Question K**

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

There is a need to ensure that the proposal does not encourage developers to build employment facilities with the intention of converting them shortly after construction into residential premises. This would have the potential to undermine local plan and neighbourhood plan allocations. It may be worth encouraging local planning authorities to consider imposing a condition that would prevent this.

The consultation paper would have benefitted if it had been more objective and more analytical. There is real merit in the suggested liberalisation of changes of use from commercial to residential but the paper did not fully explore or explain the potential consequences, and that has raised scepticism about the underlying proposal.



The National Housing Federation and Shelter are grateful to Stephen Ashworth of SNR Denton for his assistance with this consultation response.

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