

## **Committee: Planning Applications Committee**

**Date: 20<sup>th</sup> August 2020**

Wards: All

**Subject: Reviews of recent changes to Town Planning legislation, and current consultation by the MHCLG**

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Councillor Linda Kirby

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### **Recommendations:**

- A. That the recent changes to Town Planning legislation, including those pertaining to permitted development rights and the Use Classes Order, are noted for the purposes of decision making.
  - B. That officers review the current Scheme of Management so as to ensure the current delegation arrangements are aligned to reflect the extension of permitted development rights through new “prior approval” planning submissions.
  - C. That suitable Council protocols are adopted and publicised so as to ensure new prior approval assessment criteria are applied fairly and consistently in decision making.
  - D. That the recent White Paper and associated interim measures consultation paper along with the proposals contained in both documents are noted.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. To provide an update to members of recent changes to planning legislation along with their implications for decision making and to alert members to on-going consultations to initiate further interim changes along with more wholesale changes to plan preparation and decision making.
- 1.2. The report is structured into 4 parts:
  - Part A - changes to primary legislation;
  - Part A - changes to secondary legislation.
  - Part B Consultation - The Future of Planning. (MHCLG August 2020).
  - Part B Consultation - Changes to the current planning system: (MHCLG August 2020).

### **Part A – Changes to primary legislation.**

## **2 DETAILS**

- 2.1. On 22<sup>nd</sup> July 2020 the Planning and Business Bill received Royal Assent. The Bill is now an Act of Parliament. In planning terms, the Act (which only applies to England) does three main things:

- Introduces a fast track application procedure for varying construction hours;
  - Extends the life of planning permissions which are due to expire this year; and
  - Changes the rules for planning appeals, to allow them to mix and match their appeal procedures.
- 2.2 Officers note that the provision of the Act will ensure the planning system in England can continue to operate effectively and proactively support the planning and safe construction of new development following the impact of Covid-19. The Act introduces a new route for developers to seek to amend planning restrictions on construction site working hours to temporarily allow extended working hours, for example work during the evening and at weekends. This is to ensure that, where appropriate, planning conditions are not a barrier to allowing developers the flexibility necessary to facilitate the safe operation of construction sites during the response to the Covid19 pandemic and to proceed at pace with work otherwise delayed as a result of Covid-19.
- 2.3 The Act extends the expiration of certain planning permissions and listed building consents, providing certainty to the development industry where developments are delayed due to Covid-19. Government notes on the Act explain; “There is a strong consensus across the industry and local planning authorities that unimplemented planning permissions should be extended to enable planned developments to be commenced over the next year. The MHCLG’s construction market analysts, show that at the end of March there were 1,178 major residential planning permissions with capacity to deliver over 60,000 homes due to lapse this calendar year.
- 2.4 The changes provide for an extension to planning permissions and listed building consents which have lapsed or are due to lapse between 23 March and 31 December 2020. This extension will be to 1 May 2021.
- 2.5 The extension will apply automatically for permissions and consents which are extant in between the measures coming into force on 19 August 2020 and 31 December 2020. Any planning permissions which have lapsed since 23 March 2020 can be reinstated.
- 2.6 The Act also provides the Planning Inspectorate with the flexibility to use more than one procedure type when dealing with a planning appeal (local inquiry, hearing, and/or written representations), enabling appeals to progress at a faster pace.

**Part A – Changes to secondary legislation – The Use Classes Order.**

- 2.7 *The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020* (SI 2020 No.757), were made on 20 July and take effect on 1 September 2020. The legislation makes important changes to the 1987 Use Classes Order. The changes are complex, because of the need to take account of various knock-on effects and the consequent requirement to include various transitional provisions to ensure a reasonably smooth move to the new and revised Use Classes.

- 2.8 The changes puts an end to Use Classes A1, A2, A3, A4 and A5, and Classes D1 and D2. These may routinely be viewed as town centre and associated community uses. A change of use between a retail shop and a restaurant, a bank or building society (or any other kind of office, whether it was formerly in Use Classes A2 or B1(a)), a doctor's or dentist's surgery, a light industrial use or a crèche, day nursery or day centre, which are all now with Use Class E, will not constitute development and will not therefore require planning permission.
- 2.9 The changes to the Classes are diverse and wide ranging but appear focused on facilitating changes in the uses of buildings to assist the economy.
- 2.10 Officers note that notwithstanding the transitional arrangements that the regulations puts in place, the new Use Class arrangements will impact on the manner in which adopted planning policies that seek to exercise control over changes of use in town centre may reasonably be applied and their relevance.

**Part A – Changes to secondary legislation – Changes to the General Permitted development Order.**

- 2.11 The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) Regulations 2020 was made on 23 June 2020 and is now in force.
- 2.12 The changes to planning controls introduce further “light touch” planning submissions - routinely referred to as prior approvals - enabling building up to 2 extra floors over mid-rise blocks of flats. The changes also introduce additional criteria for the assessment of prior approval submissions to dwellings enabling consideration of natural light.
- 2.13 Two further sets of changes to the GPDO will come into effect at the end of August. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 and (Amendment No. 3) Order 2020.
- 2.14 The changes provide for the demolition of redundant office and business buildings and blocks of flats and their replacement with flats on the same footprint with an additional two floors, the provision of two extra floors of dwellings over certain blocks of flats, erecting additional storeys to dwellings and over certain commercial buildings including shops.
- 2.15 The new permitted development provisions would be to allow extra floors to be added to bungalows to turn them into houses.
- 2.16 The new arrangements do not give carte blanche to developers as the “prior approval” regime still requires Council's to assess key planning criteria including traffic, visual impact, flood risk and contamination.
- 2.17 Daylighting to new dwellings is introduced into the assessment criteria however, floorspace standards are not an assessment criteria nor is the provision of affordable housing or criteria on reducing carbon emissions.
- 2.18 The Government (MHCLG) is at the same time looking to make amendments to the Building Regulations including Part L which covers energy efficiency. Changes are anticipated before the end of the year.

- 2.19 It remains to be seen whether the Government intends to push the emphasis on energy matters and reducing CO2 emissions over to the Building Regulations and away from Town Planning control.
- 2.20 Officers note the Regulations governing fees are also to be amended so fees for the schemes delivering new units will be similar to comparable planning applications.

**Part B - Consultation "Planning for the future" - MHCLG (August 2020)**

- 2.21 Officers are bringing to the attention of members of the Planning Applications Committee the Government's white paper published on 6th August which initiates a 12 week consultation on the reform of the Planning system in England. The White paper is being brought to members attention given its significance as it advocates a major reworking on the current planning system in England
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907647/MHCLG-Planning-Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907647/MHCLG-Planning-Consultation.pdf)
- 2.22 The paper seeks views on each part of a package of proposals for reform of the planning system in England to streamline and modernise the planning process, improve outcomes on design and sustainability, reform developer contributions and ensure more land is available for development where it is needed
- 2.23 The consultation sets out proposals for reform of the planning system in England, covering plan-making, development management, development contributions, and other related policy proposals.
- 2.24 The paper poses a number of questions which, in the event of primary legislation coming forward, would have significant implications for not only the way decisions pertaining to development are made at a local level in Merton and elsewhere in England, but how local infrastructure is secured and funded, how affordable housing is provided, how the resourcing of local authority planning services are configured including ensuring there are the right skills and training and also the manner in which modern modes of communication are harnessed in its delivery.
- 2.25 This report provides a summary of the key points in the White Paper for information purposes, and as a stimulus for informed discussion.
- 2.26 The foreword to the White Paper sets, what might be considered, the radical tone of the document.
- 2.27 The foreword by the Prime Minister states:  
*Thanks to our planning system, we have nowhere near enough homes in the right places. People cannot afford to move to where their talents can be matched with opportunity. Businesses cannot afford to grow and create jobs. The whole thing is beginning to crumble and the time has come to do what too many have for too long lacked the courage to do – tear it down and start again. That is what this paper proposes. Radical reform unlike anything we have seen since the Second World War.*
- 2.28 The Secretary of State adds:  
*Our proposals seek a significantly simpler, faster and more predictable system. These proposals will help us to build the homes our country needs,*

*Our reformed system places a higher regard on quality, design and local vernacular than ever before, and draws inspiration from the idea of design codes" and asserts that "We will build environmentally friendly homes that will not need to be expensively retrofitted in the future, homes with green spaces and new parks at close hand".*

2.29 The Secretary of State seeks to reconfigure the planning system so that it is fit for the 21st Century embracing the use of new technology and introducing simplified process so as to garner greater community involvement.

### **Challenges.**

2.30 The White Paper examines the perceived challenges presented by the planning system as presently configured which are summarized below:

- It is too complex ;
- Planning decisions are discretionary rather than rules-base;
- It takes too long to adopt a Local Plan;
- Assessments of housing need, viability and environmental impacts are too complex and opaque;
- It has lost public trust with, for example, a recent poll finding that only seven per cent trusted their local council to make decisions about large scale development that will be good for their locality are;
- Consultation is dominated by the few willing and able to navigate the process;
- It is based on 20th-century technology;
- The process for negotiating developer contributions to affordable housing and infrastructure is complex, protracted and unclear;
- There is not enough focus on design, and little incentive for high quality new homes and places;
- It simply does not lead to enough homes being built, especially in those places where the need for new homes is the highest.

The White Paper asserts that "decades of complexity and political argument have resulted in a system which is providing neither sufficient homes nor good enough new places. Nor is it fairly using the talents and passions of public sector planners".

### **Objectives.**

2.31 The White Paper's five key objectives set the scene for a more detailed examination of the planning process from plan making to decisions making, infrastructure funding, resources and training. They are:

- To streamline the planning process with more democracy taking place more effectively at the plan-making stage, and ...replace the entire corpus of plan-making law in England to achieve this - simplifying the role of Local Plans, to be a more rules based document focusing on sites and design codes;

- A radical, digital-first approach to modernise the planning process - moving from a process based on documents to a process driven by data;
- To bring a new focus on design and sustainability; to be supported by a greater focus on 'placemaking' in the NPPF and by ensuring it targets those areas where a reformed planning system can most effectively address climate change mitigation and adaptation and facilitate environmental improvements.
- To improve infrastructure delivery in all parts of the country and ensure developers play their part, through reform of developer contributions; The Community Infrastructure Levy and the current system of planning obligations will be reformed as a nationally set, value-based flat rate charge (the 'Infrastructure Levy'). A single rate or varied rates could be set. Ideas include ensuring that the new Infrastructure Levy allows local planning authorities to secure more on-site affordable housing provision.
- To ensure more land is available for the homes and development people and communities need, and to support renewal of our town and city centres. To deliver on this objective there would be a new nationally determined, binding housing requirement that local planning authorities would have to deliver through their Local Plans. This would be focused on areas where affordability pressure is highest to stop land supply being a barrier to enough homes being built.

2.32 The format of the paper then examines what it describes as the pillars of planning setting out key topics for reform along with its proposals which form the basis of the Government's consultation and a summary is set out below.

### **Pillar One – Planning for development**

#### **A NEW APPROACH TO PLAN-MAKING**

2.33 Plan making is seen as slow cumbersome, and the White Paper promotes a more rules based approach with local plans focused more on zoning and design codes rather than a site by site application of planning policies leading to shortcomings in the present system i.e less certainty rather than greater certainty to both local communities and those seeking to develop. Under this topic heading the White paper sets out the following proposals:

Proposal 1: The role of land use plans should be simplified. We propose that Local Plans should identify three types of land – Growth areas suitable for substantial development, Renewal areas suitable for development, and areas that are Protected.

Proposal 2: Development management policies established at national scale and an altered role for Local Plans.

Proposal 3: Local Plans should be subject to a single statutory "sustainable development" test, replacing the existing tests of soundness

Proposal 4: A standard method for establishing housing requirement figures which ensures enough land is released in the areas where affordability is worst, to stop land supply being a barrier to enough homes being built. The housing requirement would factor in land constraints and opportunities to

more effectively use land, including through densification where appropriate, to ensure that the land is identified in the most appropriate areas and housing targets are met.

#### A STREAMLINED DEVELOPMENT MANAGEMENT PROCESS WITH AUTOMATIC PLANNING PERMISSION FOR SCHEMES IN LINE WITH PLANS

- 2.34 In tandem with the proposed wholesale reform of plan making is a similar reform of decision making of proposals for individual sites. The new plan process would shift the emphasis more towards determining what is acceptable, akin to the already available planning in principle, at the planning making stage. The implementation of development proposals would be dependent upon securing a new form of “reserved matters” submission which would need to follow locally prepared design codes rather than the current wholesale assessment of proposals against the gamut of local planning policies. Under this topic heading the White paper sets out the following proposals:

Proposal 5: Areas identified as Growth areas (suitable for substantial development) would automatically be granted outline planning permission for the principle of development, while automatic approvals would also be available for pre-established development types in other areas suitable for building.

Proposal 6: Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology.

#### A NEW INTERACTIVE, WEB-BASED MAP STANDARD FOR PLANNING DOCUMENTS.

- 2.35 The White paper advocates a more standardised web based approach for planning documents:

Proposal 7: Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.

#### A STREAMLINED, MORE ENGAGING PLAN-MAKING PROCESS

- 2.36 The White paper is critical of the time taken to prepare plans, with evidence sometimes out of date once a plan is adopted and what it sees as a lot of duplication across authorities in terms of detailed planning policies.
- Proposal 8: Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable for key stages of the process, and we will consider what sanctions there would be for those who fail to do so.
- Proposal 9: Neighbourhood Plans should be retained as an important means of community input, and we will support communities to make better use of digital tools

## SPEEDING UP THE DELIVERY OF DEVELOPMENT.

- 2.37 The reforms proposed the paper suggests would give greater certainty to delivering development.  
Proposal 10: A stronger emphasis on build out through planning.

## **Pillar Two – Planning for beautiful and sustainable places.**

### CREATING FRAMEWORKS FOR QUALITY

- 2.38 The paper notes that “This autumn (The Government) will publish a National Model Design Code to supplement the guide, setting out more detailed parameters for development in different types of location: issues such as the arrangement and proportions of streets and urban blocks, positioning and hierarchy of public spaces, successful parking arrangements, placement of street trees, and high quality cycling and walking provision, in line with our wider vision for cycling and walking in England. It will be accompanied by worked examples, and complement a revised and consolidated Manual for Streets”.

- 2.39 Integral to the overall reform of plan making and decision making is the increased emphasis on the use of design codes to guide development. Alongside this is a recognition of the need for increased and enhanced skills capacity within planning sections and the designation of a relevant “Chief Officer”. The White paper notes “The vision which we have set out will require a step-change in the design skills available to many local planning authorities, as well as the right prioritisation and leadership across the sector”.

Proposal 11: To make design expectations more visual and predictable, we will expect design guidance and codes to be prepared locally with community involvement, and ensure that codes are more binding on decisions about development.

Proposal 12: To support the transition to a planning system which is more visual and rooted in local preferences and character, we will set up a body to support the delivery of provably locally-popular design codes, and propose that each authority should have a chief officer for design and place-making

Proposal 13: To further embed national leadership on delivering better places, we will consider how Homes England’s strategic objectives can give greater emphasis to delivering beautiful places

### A FAST-TRACK FOR BEAUTY

- 2.40 While containing noble and worthy aspirations this section of the white paper offers less clarity on the mechanism for delivery.

Proposal 14: We intend to introduce a fast-track for beauty through changes to national policy and legislation, to incentivise and accelerate high quality development which reflects local character and preferences.



## EFFECTIVE STEWARDSHIP AND ENHANCEMENT OF OUR NATURAL AND HISTORIC ENVIRONMENT

- 2.41 The paper displays a continued commitment to climate change mitigation. Members should be aware that in tandem with the review of planning controls the Government is also engaged in consultation on a review of the Building Regulations and in particular Part L (Conservation of Fuel and Power). Reference is made to changes that will complement planning reforms - whether this will precipitate a shift away from town planning and towards Building Control for the delivery of improved performance standards for new buildings remains to be seen.
- 2.42 With regards to environmental impacts the EIA Regs have EU directives as their underpinning with potential for change in the coming year.

Proposal 15: We intend to amend the National Planning Policy Framework to ensure that it targets those areas where a reformed planning system can most effectively play a role in mitigating and adapting to climate change and maximising environmental benefits.

Proposal 16: We intend to design a quicker, simpler framework for assessing environmental impacts and enhancement opportunities that speeds up the process while protecting and enhancing the most valuable and important habitats and species in England.

Proposal 17: Conserving and enhancing our historic buildings and areas in the 21st century.

Proposal 18: To complement our planning reforms, we will facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitment to net-zero by 2050.

### **Pillar Three – Planning for infrastructure and connected places.**

- 2.42 Both S106 agreements and the benefits derived from them along with local CIL regimes come in for scrutiny and recommendations to reform.

#### A CONSOLIDATED INFRASTRUCTURE LEVY

Proposal 19: The Community Infrastructure Levy should be reformed to be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.

Proposal 20: The scope of the Infrastructure Levy could be extended to capture changes of use through permitted development rights.

Proposal 21: The reformed Infrastructure Levy should deliver affordable housing provision.

Proposal 22: More freedom could be given to local authorities over how they spend the Infrastructure Levy.

## **Delivering change.**

- 2.43 Under this topic the paper asserts the need to ensure planning departments have the correct skills and that planners are engaged in proactive planning, rather than reactive development management.

Proposal 23: As we develop our final proposals for this new planning system, we will develop a comprehensive resources and skills strategy for the planning sector to support the implementation of our reforms. In doing so, we propose this strategy will be developed including the following key elements: The cost of operating the new planning system should be principally funded by the beneficiaries of planning gain – landowners and developers – rather than the national or local taxpayer.

- 2.44 The paper notes that Planning fees should continue to be set on a national basis and cover at least the full cost of processing the application type based on clear national benchmarking. This should involve the greater regulation of discretionary pre-application charging to ensure it is fair and proportionate. Proposals for Local Plan reform, changes to developer contributions and development management would require primary legislation followed by secondary legislation.

## **Part B - Changes to the current planning system: Consultation on changes to planning policy and regulations (MHCLG August 2020).**

- 2.45 Officers are bringing to the attention of members of the Planning Applications Committee the Government's consultation paper published on 6th August which initiates an 8 week consultation in connection with shorter term measures to amend current controls.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907215/200805\\_Changes\\_to\\_the\\_current\\_planning\\_system\\_FINAL\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907215/200805_Changes_to_the_current_planning_system_FINAL_version.pdf)

- 2.46 The consultation document explains the changes as follows:

Planning for the Future sets out plans to undertake a fundamental reform of the planning system and explains that this would be accompanied by shorter-term measures. This consultation sets out proposals for measures to improve the effectiveness of the current system.

The four main proposals are:

- changes to the standard method for assessing local housing need, which as well as being a proposal to change guidance in the short term has relevance to proposals for land supply reforms set out in Planning for the Future;
- securing of First Homes, sold at a discount to market price for first time buyers, including key workers, through developer contributions in the short term until the transition to a new system;
- temporarily lifting the small sites threshold below which developers do not need to contribute to affordable housing, to up to 40 or 50 units to support SME builders as the economy recovers from the impact of Covid-19;

- extending the current Permission in Principle to major development so landowners and developers now have a fast route to secure the principle of development for housing on sites without having to work up detailed plans first.

2.47 Permission in Principle is designed to separate decision making on 'in principle' issues addressing land use, location, and scale of development from matters of technical detail, such as the design of buildings, tenure mix, transport and environmental matters. The aim is to give up-front certainty that the fundamental principles of development are acceptable before developers need to work up detailed plans and commission technical studies. It also ensures that the principle of development only needs to be established once.

2.48 The consultation paper sets out in more detail various scenarios that may be explored and may form the basis of changes that will impact on the interlinked aspects of planning policy and decision making

### **3. Financial, resource and property implications.**

3.1 Officers note that there will be some unimplemented permissions that will benefit from the extension to implement and for which a further fee in connection with a planning application will not be received. Lost income from such applications to the Planning budget should however be viewed more widely in terms of the income to the Council derived from facilitating new dwellings and other development coming forward.

3.2 Changes to the use classes order may also result in some marginal loss of fee income from changes of use no longer requiring permission.

3.3 Subject to the introduction of amendments to the fees regulations the creation of new dwellings over and in place of existing buildings may have a neutral impact.

3.4 The introduction of various new "prior approval" submissions will require decision letter template amendments although this would be a one off exercise.

3.5 With regards to the two consultation papers it would be inappropriate at this stage to speculate on the format of changes that may eventually come forward. Officers do however consider it prudent to maintain close scrutiny in order to react and plan effectively as proposals take shape.

### **4. Legal and statutory implications**

4.1 Decision making on submissions made under Town and Country Planning legislation is regulated at Merton by its Scheme of Management. The proposals while making provision for the extension of time to implement planning permissions do not alter the application of the Scheme to the assessment of planning applications.

4.2 Officers note the Government's objective to assist contractors to implement development. This will require a speedy and often pragmatic approach to applications to vary construction hours conditions and would recommend that this is factored into assessment of applications by PAC where construction hours conditions may be absent or increasingly flexible.

4.3 The Scheme of management makes specific reference to types of planning applications. The new prior approval provisions may result in submissions generating sufficient local interest as to warrant consideration by PAC and it would be appropriate to revisit the wording of the scheme of management to align it with the expanded prior approval provisions.

**5. Human rights, equalities and community cohesion implication.**

5.1 Not applicable.

**6. Crime and Disorder implications**

6.1 Not applicable.

**7. Risk management and health and safety implications**

7.1 Not applicable.

**8. Appendices.**

8.1 None

**9. Background DOCUMENTS REFERRED TO:**

Planning and Business Act 2020

Statutory Instruments pertaining to the General Permitted Development order

MHCLG letter to Chief Planning Officers (July 2020)

MHCLG Consultations Paper - The Future of Planning. (MHCLG August 2020).

MHCLG Consultation Paper - Changes to the current planning system: (MHCLG August 2020).