Planning Committee 6 June 2013

CHANGES TO PERMITTED DEVELOPMENT

Report by: Head of Development Management

Summary
This report summarises new legislation affecting planning that has been introduced. It is recommended that
(a) Officers be authorised to consider making Article 4 directions in relation to the change of use from commercial to residential, and the flexible changes of use in shopping areas
(b) Planning Committee note the report

1.0 BACKGROUND

In November 2012 the Government issued a consultation on proposed changes to permitted development for homeowners and businesses. At a meeting of Planning Committee on 6 December members resolved that Hounslow Council respond to the Department of Communities and Local Government, rejecting the proposed changes to extend permitted development rights for homeowners and businesses. At Borough Council on 27 November 2012 members resolved that “This Council, wishing to safeguard the quality of the built environment in Hounslow, opposes the Government’s proposals to significantly extend permitted development rights for a three year period as outlined in its consultation document “Extending permitted development rights for homeowners and businesses.” (Nov 2012). A response outlining the resolutions of Borough Council and Planning Committee was sent to the Department for Communities and Local Government.

1.1 A further consultation was issued concerning proposed changes to permitted development rights for change of use from commercial to residential use. This council again responded by objecting to the proposed changes. On 22nd February 2013 a letter was sent to the Secretary of State seeking exemptions for seven areas from the proposed permitted development changes on the basis that there would be adverse economic consequences in areas within the Borough. These areas were

1. Chiswick Town Centre (part), Chiswick West and Chiswick Business Park.
2. Power Road Industrial estate, Chiswick
3. Great West Road, Industrial Business Park
4. Great West Road – Key Existing Office Locations
5. Hounslow Town Centre West

6. Heathrow Related Industrial Estates

7. Bedfont Lakes Office Park

1.2 The council was notified by the Secretary of State on 10th May 2013 that none of the requested exemptions had been approved. Each of the requested exemptions were scored out of a total of 40, with 36 being the required mark to secure an exemption. The area with the highest score was the Great West Road – Key Existing Office Location at 19, and the lowest Hounslow town centre at 12.

1.3 On 9th May 2013, Statutory Instrument 2013 No 1011 was laid before Parliament to come into force on 30 May 2013. This is titled “The Town and Country Planning (General Permitted Development) (Amendment)(England) Order 2013. This legislation amends the Town and Country Planning (General Permitted Development ) Order 1995 (as amended)
2.0 LEGISLATIVE CHANGES

Amendments to Part 1 Class A House Extensions

2.1 For a period of 3 years, between 30 May 2013 and 30 May 2016 householders will be permitted to build larger single storey rear extensions under permitted development. For extensions built and completed by 30 May 2016, the size limits will double from 3m to 6m for terraced and semi detached houses, and double from 4m to 8m for detached dwellings. This applies to only to houses (not flats or houses in multiple occupation), which are not in Conservation Areas, and other provisions of Class A remain.

2.2 The legislation introduces a new prior approval process that has to be gone through.

1. The homeowner wishing to build a larger extension must, before beginning work, notify the Local Planning Authority. If the LPA are not notified before work commences, then the prior approval procedure for larger household extensions cannot be used. Thus, it does not apply to retaining extensions already built. The applicant must provide

(a) A written description of the proposal which includes the length that the extension extends beyond the rear wall of the original house, the height at the eaves and the height at the highest point of the extension
(b) A plan of the site, showing the proposed development
(c) The addresses of any adjoining properties, including at the rear
(d) A contact address for the developer and an email address if the developer is happy to receive correspondence by email

2. The local authority may ask for further information if it needs to make a decision about the impact of the development on the amenity of adjoining properties.

3. The local authority will serve a notice on adjoining occupiers or owners, giving the information referred to above, the date when the application was received and the start of the 42 day determination period, how long the neighbours have to make objections (which must be a minimum 21 days) and the date by which these must be received. A copy of this will also be sent to the developer.

4. If any adjoining neighbour raises an objection that is received in writing by the Local Planning Authority within the 21 day period, the local authority will take this into account and make a decision about whether the impact on the amenity of all adjoining properties is acceptable. No other issues will be considered.

5. If the local authority does not notify the developer of its decision within the 42 day determination period, the development may go ahead.

6. If approval is refused, the developer may appeal as set out in section 78 of the Town and Country Planning Act 1990 (as amended).

7. The extension must be built in accordance with the details approved by the Local Authority (or, if no objections were raised or the local authority has not notified the developer of its decision, the details submitted) unless the local authority agrees any changes in writing.

8. The development must accord with all other relevant limitations and conditions which apply to other rear extensions allowed under permitted development. These
are set out in Class A and include, for example, the requirement that the extension must be constructed using materials of a similar appearance to those used in the construction of the rest of the house, and the extension should not result in more than 50% of the curtilage being built upon.

9. To benefit from these permitted development rights, the prior approval process outlined above must be followed and the extension must be completed on or before 30 May 2016. The developer must notify the local authority in writing of the date of completion, as soon as reasonably practicable after completion.

2.3 Because of the short time periods, and the risk of harm that may be caused to amenity if notice is not given within 42 days, it is recommended that authority to make decisions on prior approval be delegated to officers. If prior approval is refused, there is a right of appeal under s78 of the Town and Country Planning Act 1990 (as amended).

Impacts

2.4 There is no fee in connection with this process. There will be financial implications for the authority. At present, householders wishing to extend their house under existing permitted development pay a fee of £86. From April 2012 to March 2013, the authority received 404 applications for Certificates of Lawfulness. Not all of these are for single storey rear extensions – some are for roof extensions, side extensions, outbuildings. If around half of these are for single storey rear extensions, and in future they decide to opt for building larger extensions under the prior approval process, there would be a loss of around £18,000 in fees. In addition, the authority received 1268 householder planning applications in this period, with a fee of £172 for each. If a third of these were for single storey rear extensions that were in excess of permitted development, then the loss in fees to the authority would be around £73,000. Overall, it is estimated that planning fee income could drop by as much as £100,000 from this proposal. However, the workload would not significantly decrease, as the applications would need to be validated, registered, cases created on databases and published on the internet, letters created and delivered, site visits undertaken, decision notices issued and completion notices recorded. In addition, it is also likely that the planning enforcement workload would increase as neighbours will voice concerns over large extensions being built, and there are likely to be allegations that notifications to neighbours were not received, with a resulting increase in complaints. After 30 May 2016, when the larger household extensions must be completed, there will be a monitoring issue as to whether these extensions have been completed within the set 3 years, and what will happen to those that have not been completed – will they be liable to enforcement action as they will no longer be permitted? There is no penalty mentioned to ensure that a completion notice is given – it is likely that the onus for this will fall upon enforcement inspections and investigations.

Amendments to Part 2 Class A Minor Operations

2.5 Part 2 Class A is amended to allow schools to erect a fence, wall or means of enclosure up to a height of 2m. There is not considered to be any material impact to this change.

Amendments to Part 3 Class B Changes of Use

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2.6 Part 3 Class B for a change of use from B1 (office, research and development and light industrial) to B8 (storage and distribution), a change of use from B2 (general industrial) to B8 or a change of use from B8 to B1, the permitted floorspace limit is increased from 235m² to 500m². There is not considered to be any material impact to this change.

**Part 3 New Class J inserted**

2.7 Part 3 Class J – this new class allows a change of use from B1a (office) to C3 (residential) as long as the property was last in use as B1a office immediately before 30 May 2013, and as long as the use as residential starts on or before 30 May 2016. The developer needs to apply to the Local Authority for prior approval to be assessed with respect to transport and highways impacts, contamination risks and flooding risks. The developer submits an application to the LPA for a determination whether prior approval is required. The application must be accompanied by a written description of the proposed development, a plan indicating the site and showing the proposed development, the developers contact address and email and any fee required to be paid. The LPA then have to consult relevant authorities, such as Transport for London if the proposal affects a trunk road, or the Environment Agency if prior approval is sought because there are flooding risks. The Local Authority also have to post a site notice, consult adjoining owners and occupiers. When determining the application, the LPA may take into account any responses to consultations, and have regard to the National Planning Policy Framework as though the application was a planning application. The development cannot be begun until the LPA has given written notice that prior approval is not required, or the LPA has given prior approval, or 56 days has passed without the developer receiving notice of whether prior approval is given or refused.

**Impact**
2.8 It is considered that there will be serious impacts of this new provision, resulting in the significant loss of secondary office stock in key locations, as identified by the seven proposed areas for exemption listed above in paragraph 1.1. If offices were to change to residential under permitted development, this could have a detrimental impact on the provision of commercial floorspace in the borough, and the ability to attract employment opportunities. In addition, it could result in the reduced provision of affordable housing, and the creation of sub standard residential accommodation in inappropriate locations. There would also be a financial impact to the borough, in terms of the loss of planning application fees and in terms of the delivery of the pledge for additional affordable homes. At present, if planning permission is required to change the use from offices to residential, there is a fee of £385 for creation of each dwelling up to 50 units, thereafter a fee of £19,045 is required, plus £115 per dwelling above 50. The removal of the requirement to seek planning permission for such conversions will also mean that the council will be unable to apply its planning policies in relation to the provision of additional affordable housing, or in terms of securing a basic standard of accommodation e.g. room sizes and amenity space. As the council’s has an overwhelming need for the provision of additional affordable housing (over 4,000 units per annum) which it cannot currently meet, the loss of potential units from these conversions could have a significant adverse affect on meeting affordable housing needs. There is also a substantial resourcing issue, as consultations have to be carried out, site notices posted, and an assessment made and decision notice issued within 56 days (8 weeks). Currently, a fee would be received for these applications, and the time frame (if more than 10 units are being created) would be 13 weeks.

2.9 There is provision to make a direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove permitted development rights. Given the potential social and economic impacts identified, it is recommended that officers consider whether an Article 4 direction would be appropriate and on what basis the Direction should be made. The implementation of such a Direction would not recoup the lost planning application fees (as there is no fee for a proposal for development where a local development order has removed permitted development rights) but it would regain control over applications for change of use from offices to residential.

Part 3 New Class K inserted

2.10 Part 3 Class K – this new class allows a change of use from any of B1 (business), C1 hotel, C2 residential institution, C2A or D2 leisure and assembly to a state funded school (and no other purpose within Class D1). As with the new Class J in para 2.7 above, The developer needs to apply to the local authority with respect to transport and highways issues, noise impacts and contamination risks. There is a risk to the local authority of loss of planning application fees and loss of infrastructure contributions under s106.

Impact

2.11 The economic impacts will be similar to those mentioned above, for the permitted change from office to residential. It is considered that there will be serious impacts of this new provision, resulting in the significant loss of secondary office stock in key locations, as identified by the seven proposed areas for exemption listed above in paragraph 1.1. If offices were to change to schools under permitted development, this could have a detrimental impact on the provision of commercial floorspace in the borough, and the ability to attract employment opportunities. There is also a substantial resourcing issue, as consultations have to be carried out, site notices posted, and an
assessment made and decision notice issued within 56 days (8 weeks). Currently, a fee would be received for these applications, and the time frame (if more than 1000m² floorspace is being created) would be 13 weeks.

**Part 3 New Class L inserted**

2.12 Part 3 Class L allows a change back from a state funded school permitted by Class K to its previous use. There is not considered to be any material impact to this change.

**Part 3 New Class M inserted**

2.13 Part 3 Class M allows a change of use from an agricultural use to a flexible use (either class A1 retail, A2 financial and professional services, A3 restaurant, B1, B8, C1 hotel or D2 subject to a cumulative floor space limit of 500m². This does not apply if the building is a listed building or scheduled ancient monument. A prior approval process must be carried out by the LPA. There is not considered to be any material impact to this change, as there are limited agricultural uses within the borough..

**Amendments to Part 4 (temporary buildings and uses)**

**Part 4 New Class C inserted**

2.14 Part 4 Class C This new class allows a change of use from any other use to a state funded school (which includes an Academy School) for a period of one academic year only. This is subject to a condition preventing a subsequent change of use to other D1 uses. At the end of the one year period the site must revert to its lawful use, and it cannot be used as a school again. The site has to be approved by the relevant minister who must notify the LPA of the approval and date of opening of the school.

**Impact**

2.15 Although this a temporary use as a school for one year, the school can open just by notifying the LPA. There is no requirement for any notification of neighbours, or any assessments, like transport to school assessments.

**Part 4 New Class D inserted**

Part 4 Class D This new class allows a change of use from any of Class A1, A2, A3, A4 (public houses), A5 (hot food takeaways), B1, D1 or D2 (assembly and leisure) to a flexible use (either A1, A2, A3 or B1) for a period of up to 2 years, subject to a condition that the class is not used more than once for a particular use, and that the floorspace does not exceed 150m². The property may subsequently change from one flexible use to another within the 2 year period. The developer does not need to apply to the local authority, but must instead notify the local authority before the change of use. This does not apply to listed buildings. At the end of the two year period, the site must revert to its lawful use.

**Impact**

2.16 The intention behind this change is to facilitate regeneration of town centres, and encourage re-use of vacant units. Uses as A1 shops, A2 banks and estate agents, A3 restaurants, A4 public houses . A5 hot food takeaways, B1 business, D1 non–residential institutions and D2 assembly and leisure can change to, A1 shops, A2 banks and estate agents, A3 restaurants, and B1 business without permission. At present, planning permission is required for changes of use between uses, and the Unitary Development Plan, and proposed Local Plan, have policies in them to protect retail uses to retain viability of town centres. There are also polies to protect retail uses
in local shopping parades, and to protect the amenity of residents living above shops and similar units in town centres and local parades. The change in legislation to permit change of use without the need for planning permission will result in the loss of consideration of retail viability and residential amenity. It will also have impacts on the loss of planning fee to change the use of properties. There is also an administrative impact as the developers will have to notify the LPA of proposed changes, and these will need to be recorded, and the two year limit timed and monitored.

Amendments to Part 8 (Industrial and Warehouse development) Class A

2.17 Part 8 Class A – During the 3 year period from May 2013 to May 2016, the permitted floor space increase for any new building not in a Conservation Area is increased from 100m2 to 200m2. The overall floor space limit for all extensions to industrial and warehousing buildings is increased to 50% subject to a maximum of 1000m2. In Conservation Areas, this will be a maximum of 10% or 500m2, whichever is the lesser.

Impact

2.18 The new legislation allows for substantial increases in size of industrial and warehousing buildings without requiring planning permission. Neighbours will not have the opportunity to comment, and planning merits of the principle of the proposal, or its appearance, will not be assessed, even in Conservation Areas. As with other changes to the legislation there is also an administrative impact. The development has to be completed by 30 May 2016 and the developer then has to notify the LPA in writing, and this shall include the developers name, address of development, description of development, measurements and the date of completion.

Amendments to Part 24 (Developments by electronic communications code operators)

2.19 Part 24 Class A – during the 5 year period May 2013 to May 2018 for works on land within Conservation Areas, the installation of equipment for fixed line broadband will no longer require an application from the local planning authority for a determination as to whether planning permission is required. The impact of this change is to allow broadband equipment to be installed in Conservation Areas, which currently requires planning consent.

Amendments to Part 32 schools, colleges, universities, hospitals

2.20 A new interpretation confirms that Part 32 (extensions permitted up to 250m2 provided that the development is greater than 20m from the property boundary) applies to properties that are temporarily used as a state funded school for a single academic year by virtue of the new Part 4 Class C. There is not considered to be any material impact to this change.

Amendments to Part 41 (office buildings)

2.21 Part 41 Office buildings – during the 3 year period from 30 May 2013 to 30 May 2016 the overall floor space limit for all extensions is increased from 25% to 50% and from 50m2 to 100m2 (whichever is lesser). As with other changes to the legislation there is also an administrative impact. The development has to be completed by 30 May 2016 and the developer then has to notify the LPA in writing, and this shall include the developers name, address of development, description of development, measurements and the date of completion.
Amendments to Part 42 (Shops or catering, financial or professional services establishments)

2.22 During the 3 year period of 30 May 2013 to 30 May 2016 the overall floorspace limit for all extensions is increased from 25% to 50%, and from 50m2 to 100m2 (whichever is the lesser). During the 3 year period the restriction against extensions being within 2m of a boundary will no longer apply, except when the adjoining property is in Class C use. This does not apply in Conservation Areas. Part 42 Class A only applies to A1(shops) and A2 (financial and professional services) properties. The development has to be completed by 30 May 2016 and the developer then has to notify the LPA in writing, and this shall include the developers name, address of development, description of development, measurements and the date of completion.

Impact

2.23 As well as the impact in the reduction of planning fees received for this type of development, there will be an impact to residents. There are a large number of people who live above shops. The impact of this change to legislation is that without a planning application being submitted, they will no longer be notified of proposed extensions to the ground floor properties. The developer will have to notify the LPA when development is completed. The LPA will then have a resource issue to consider – do they then visit to check the measurements and date of completion, or would this just be if a complaint is received?

IMPACT OF NEW LEGISLATION

3.1 The new legislation has number of impacts to the economic and social impacts to businesses and residents of the borough, as well as to the Development Management Service of the council, and to the income received by the council.

3.2 Permitting development that may have impacts on the wider area, such as change of use from office to residential, and from shops to other uses, will have impacts on infrastructure, and the ability of the council to regenerate areas, including town centres. National Policies in the National Planning Policy Framework, regional policies in the London Plan, local policies in the Unitary Development Plan and upcoming Local Plan all seek to encourage economic development and regeneration, creation of new homes and schools, but also to balance this against impacts on the environment, appearance of areas and the local residents. The new legislation will take away the ability of the authority to assess the impact of developments. The intention of government is to cut through red tape, and allow, for example, new schools to move into disused office blocks, or temporarily move into vacant buildings for a year whilst new premises are being prepared. It is also intended that the legislation will facilitate the creation of new homes from office buildings.

3.3 For house extensions, the intention of the legislation is to make it easier for homeowners to extend, and to stimulate local building trades. However, there are likely to be detrimental impacts to this as outlined above, and members should be aware of this.

3.3 It is possible to restrict permitted development by the installation of an Article 4 direction. Currently, there are 2 areas covered by Article 4 direction in this borough – Bedford park and Gunnersbury Garden Estate. The purpose of these restrictions on permitted development is to maintain the original features of these residential garden estates. It is proposed to investigate the impacts of proposing Article 4 directions to
restrict permitted development rights for change of use from office to residential in some areas, and also to restrict permitted development rights for flexible uses of shops if it is considered that this may be of detriment to the viability of these areas.

3.4 Substantial administrative changes need to be made to address the changes imposed. Proposed authority to allow amendments to the Scheme of Delegation is sought in a separate report to Planning Committee.

3.5 Amendments to working practices in development management have had to occur to address new working practices introduced by this legislation. Information on the new legislation has been posted on the councils’ website, and local agents met with council officers to have the new changes outlined to them.

3.6 There will be financial implications to the council as outlined above. Developments which previously attracted fees from both householders and commercial enterprises will now not be subject to fees. This will substantially reduce the income recovered from planning fees to allow the service of determination of planning applications. The procedures outlined by government to “speed up the planning system” will still require substantial officer time and the fees received will be substantially reduced. Whilst the intention of the new legislation is to speed up planning and allow resources to be concentrated on major applications, this will not necessarily happen, as there is the potential for resources to be concentrated on the householder prior approval process. There is also the potential for an increased number of complaints from householders affected by the new legislation. There are increased administrative procedures associated with the new prior approval process, as well as the requirements for developers to notify the local authority on completion of development.

4.0 COMMENTS OF THE ASSISTANT DIRECTOR CORPORATE GOVERNANCE

4.1 In the circumstances described in paragraph 1.3 above, it is reasonable for officers to investigate and consider whether perceived impacts of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 can tenably be ameliorated; and this report may be supported.

5.0 RECOMMENDATION

5.1 That members note the report, including the consideration that there will be a considerable loss of income from loss of planning fees.

5.2 Officers be authorised to investigate and consider the possibility of making Article 4 directions in relation to the change of use from commercial to residential, and the flexible changes of use in shopping areas.

6.0 EQUALITIES DUTIES IMPLICATIONS.

6.1 The Council has to give due regard to its Equalities Duties and in particular with respect to its duties arising pursuant to the Equality Act 2010, section 149. Following a relevance test, which is available at:

http://www.hounslow.gov.uk/index/council_and_democracy/equality/eias/environment_eias.htm
It is considered that there will be no specific implications with regard to the council’s duty in respect of equalities duties and that if approving or refusing this proposal the Council will be acting in compliance with its duties.

| Relevant Section of Relevance Test | Planning applications and enforcement cases |

**Background Papers:**

The contents of planning application and enforcement files save for exempt or confidential information as defined in the Local Government Act 1972, Sch. 12A Parts 1 and 2

This report has been or is due to be considered by all Area Forums

This report is relevant to all wards