

**Decision Maker:** Development Control Committee

**Date:** 23<sup>rd</sup> November 2010

**Decision Type:** Urgent Non-Executive Non-Key

**Title:** **CONSULTATION ON PLANNING FOR SCHOOLS DEVELOPMENT**

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**Chief Officer:** Bob McQuillan

**Ward:** All

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1. Reason for report

'Planning for Schools Development' was published for consultation purposes in October 2010. The intention is to make it easier for promoters of new schools to find existing buildings that can be easily adapted for school use – and when they do so, to facilitate that change of use by removing any unnecessary red tape. A response is sought by 10<sup>th</sup> December 2010.

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2. **RECOMMENDATION(S)**

Members are asked to adopt and if appropriate add to the suggested response.

### Corporate Policy

1. Policy Status: N/A.
  2. BBB Priority: Quality Environment.
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### Financial

1. Cost of proposal: No cost to the Council arising out of decisions recommended in this report
  2. Ongoing costs: Non-recurring cost.
  3. Budget head/performance centre: Planning Division Budget
  4. Total current budget for this head: £3.8m
  5. Source of funding: Existing revenue budgets
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### Staff

1. Number of staff (current and additional): 1fte
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory requirement. Changes are proposed to the Town and Country Planning (General Permitted Development) Order 1995 (as Amended)
  2. Call-in: Call-in is not applicable.
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents of the Borough
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 This consultation looks at the changes proposed to the Town and Country Planning (General Permitted Development) Order 1995 (as Amended), which are aimed at freeing-up the planning system in relation to schools development.
- 3.2 The consultation indicates that the intention is to make it easier for promoters of new schools to find existing buildings that can be easily adapted for school use – and when they do so, to facilitate that change of use by removing any unnecessary red tape.
- 3.3 The changes proposed in this document relate to change of use planning permission only and so, they will affect only those developments that involve purely converting non-school buildings for school use. Where a schools development requires any additional work to an existing building or is a new build development, planning permission will be required in the normal way.
- 3.4 The current Use Classes Order places non-residential education and training centres within the D1 class alongside a number of other non residential institutional uses. There is no permitted change either to or from class D1 to another class.
- 3.5 The Use Classes Order is concerned about land use impacts. As such, these proposals relate to all changes of use to a school and not simply those buildings to be used for new free schools.
- 3.6 The consultation document identifies a number of key matters for consideration.
- “Paragraph 16. The Government is keen to free up the planning system. It wants to allow local people to make decisions about where their schools can operate and expects them to choose suitable buildings with appropriate access. It does not believe that it is necessary or desirable to regulate development where there is genuinely no need to do so and where it runs the risk of stifling important progress; in this case in the provision of new schools. Greater freedoms will also encourage the more efficient use of land and buildings within the planning system.
17. The Government recognises that the planning system plays an important role in ensuring that development comes forward, is delivered at suitable locations, in a manner that benefits local communities and that adverse impacts can be successfully mitigated. The system also offers local people the opportunity to participate in the development process through the public consultation that accompanies planning applications.
18. Planning officers are able to consider a variety of matters regarding schools development, such as the suitability of the proposed site to ensure that a school is not established at inappropriate or dangerous locations. They can also use planning controls to alleviate any concerns regarding traffic and road safety issues through the use of planning conditions or obligations. The Government is aware that by granting a permitted development right, a number of issues will not be routinely considered within the planning framework, which could affect a range of matters, as discussed below.
19. However, it is our aim to ensure that all unnecessary regulation is removed from the system and that good quality proposals are not frustrated by the planning system. The free schools programme is intended to set up schools where there is community demand, and it is with this in mind that the Government wishes to ensure that there are no unnecessary or bureaucratic hurdles that could hold back local ambitions and that the planning system cannot be misused as a way of frustrating the creation of new schools.
20. That does not mean that issues surrounding free schools development will not be considered. Before any school can be set up, the Government will consider a range of factors, including evidence of demand and plans for the proposed site and building.”
- 3.7 The consultation paper identifies three areas where there may be real concerns:-

The change of use of a building can have an impact on the amenity of its neighbours a school may have implications for local public transport services or raise issues of access and road

safety if noise is likely to be generated by the schools development, for instance through sports or music lessons, car parking or playground activities, it could affect existing sensitive premises such as nearby housing, particularly where there might be any increase in noise from the previous use.

3.8 The Government is inviting views on the following consultation options.

**“Option 1: Retain the current planning framework and make no changes to the planning system**

30. Under this option, no changes would be made to the current planning system. There is already a good stock of buildings, categorised alongside schools within the D1 use class, that could become schools without the need to apply for planning permission.

**Option 2: Give a permitted development right for *some* uses to convert to school use**

31. In considering the current classifications within the Use Classes Order, there are a number of other uses that could be seen to have similar impacts upon a local area as a school because they: generate a certain amount of daytime activity (i.e. people travelling to and from the location); run the risk of additional traffic and pressure on local parking; and create associated impacts relating to noise, litter and the need for public transport.

32. The Government therefore proposes that the following uses be given a permitted development right to convert to a school use:

- *A1 Shops* - Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices (but not sorting offices), pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafés.
- *A2 Financial and professional services* - Financial services such as banks and building societies, professional services (other than health and medical services) including estate and employment agencies and betting offices.
- *B1 Business* - Offices (other than those that fall within A2), research and development of products and processes, light industry appropriate in a residential area.
- *B8 Storage or distribution*.
- *C1 Hotels* - Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels).
- *C2 Residential institutions* - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.
- *C2A Secure Residential Institution* - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
- *D2 Assembly and leisure* - Cinemas, music and concert halls, bingo and dance halls (but not nightclubs), swimming baths, skating rinks, gymnasiums or area for indoor or outdoor sports and recreations (except for motor sports, or where firearms are used).

**Option 3: Give a permitted development right for *all* uses to convert to a school use**

33. The Government recognises that the impacts of a school on a neighbourhood may differ from those of other uses but wishes to create the freedom for innovative and creative schools development and to that end, is seeking to broaden the potential stock of available accommodation for schools as far as possible. This option would achieve that objective by extending the permitted development right for school use to all uses.

34. Clearly, there will always be some properties which, for different reasons, may be unsuitable for use as a school and we would expect school promoters to eliminate them from their consideration. We do not believe that we need to prescribe them.

The Government also recognises that there are some uses that would be impracticable to be used as a school - for instance a skating rink - without development that would trigger the need to apply for planning permission.

35. This option offers maximum flexibility for those intending to set up a school, in their search for premises. We wish to make it easier for school promoters to take advantage of existing properties that have much to offer without the need for costly new development. This would mean that, in addition to the uses set out in option 2, the Government is also considering giving a permitted development right to become a school to the following types of development:

- *A3 Restaurants and cafés* - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafés.
- *A4 Drinking establishments* - Public houses, wine bars or other drinking establishments (but not nightclubs).
- *A5 Hot food takeaways* - For the sale of hot food for consumption off the premises.
- *B2 General industrial* - Use for industrial process other than one falling within class B1 (excluding incineration purposes, chemical treatment or landfill or hazardous waste).
- *C3 Dwellinghouses* - this class is formed of 3 parts:
  - C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
  - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
  - C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
- *C4 Houses in multiple occupation* - small shared dwelling houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

36. This option proposes that the permitted development right will cover sui generis uses (sui generis uses are those uses which do not fall within a use class in the Use Classes Order such as casinos and nightclubs). An alternative would be for the permitted development right to apply to all uses falling within a class in the Use Classes Order.

#### **Option 4: Give a permitted development right, with attached conditions, to all uses to convert to a school use**

37. Option 4 seeks to offer the same freedoms to school providers as option 3, by extending the permitted development right to all uses (including sui generis uses), but would in addition provide safeguards within the planning system against any adverse impacts that might result from transport impacts. However, this option could result in an inbuilt delay - while the travel assessment is considered - which could impede school development.

38. The Government is inviting views as to whether conditions should be attached to require the school promoter to assess some of the impacts that could arise from its proposed development, specifically around transport impacts, and to submit that assessment for prior approval by the local planning authority before they can activate the permitted development right. The conditions could require the school promoter to assess important matters such as road safety and car parking, transport accessibility and traffic generation. The use of conditions will however build into the system unavoidable delay as the local planning authority considers the transport assessment.

## Consideration of options

39. The Government is seeking any views on whether the permitted development rights suggested under option 2 could have adverse and unintended consequences. For those further uses included under options 3 and 4, the Government would welcome views on whether other matters need to be considered as part of the permitted development right, and is seeking views on firstly, whether a permitted development right is appropriate for these uses and secondly, whether any such right should have conditions attached to it.

40. The Government would welcome views on which of these four options is most appropriate. The Government is not stating a preference at this stage on how these proposals should be implemented.

41. The Government would also welcome views about the desirability of the school co-existing in a dual use with another use. In some cases, for instance where a school operates in one floor of an office or in one unit of a retail complex, we think a dual use would be favourable. We recognise that in other circumstances, it would be highly undesirable - for example if a school were to occupy the function room of a pub or the upstairs of a fast food restaurant. In planning terms, it would be difficult to make a distinction between favourable and unfavourable dual uses and so the Government is inviting views on how best to address this matter.

3.9 The consultation questions and suggested responses are set out below:-

**Q1.** Do you think that the uses listed under option 2 should be given a permitted development right to convert to a school?

- A1 – shops
- A2 – financial and professional services
- B1 – business
- B8 – storage or distribution
- C1 – hotels
- C2 – residential institutions
- C2A – secure residential institutions
- D2 – assembly and leisure

### *Response*

*The Use Classes Order has grouped uses together which are similar in their impact in planning terms. Schools are not included in any of these use classes and therefore there should not be a permitted development right to convert. Members will recall the concerns which need to be considered when nursery and pre-school uses have been proposed in unsuitable premises.*

**Q2.** Do you think that the further uses listed under options 3 and 4 should be given a permitted development right to convert to a school?

- A3- restaurants and cafés
- A4 – drinking establishments
- A5 – hot food takeaways
- B2 – general industrial
- C3 – dwellinghouses
- C4 – houses in multiple occupation
- Sui generis uses

### *Response*

*The response to Q1 is equally appropriate with these uses.*

**Q3.** Should a use converting to a school for a temporary period retain the right to revert to the previous use if it does so within five years?

*Response*

*It is not considered that there is any merit in this proposal as it is difficult to foresee circumstances in which the commitment to convert to a school would be 5 years or less.*

**Q4.** Would allowing the following uses to convert to a school use without the need to apply for planning permission have any unintended consequences?

- A1 – shops
- A2 – financial and professional services
- B1 – business
- B8 – storage or distribution
- C1 – hotels
- C2 – residential institutions
- C2A – secure residential institutions
- D2 – assembly and leisure
- A3 – restaurants and cafés
- A4 – drinking establishments
- A5 – hot food takeaways
- B2 – general industrial
- C3 – dwellinghouses
- C4 – houses in multiple occupation
- Sui generis uses

*Response*

*The consultation paper identifies some of the planning concerns which come with school uses are introduced. All of these concerns could be relevant. The concerns identified in the consultation paper relate to the impact of such a change of use on local residents (amenity, parking problems & noise) and the transport system. However, in addition to these concerns the change of use to a school should require full consideration through the planning system to take account of the implications of the loss of the replaced uses and the appropriateness of the location for education.*

*Whilst the consultation talks about “building cohesive, functional neighbourhoods” in the context of meeting demand locally for school places (para 27), it fails to acknowledge the implications for those neighbourhoods relating to the loss of the replaced uses which it would be appropriate for planning applications to consider – Eg the impact on the vitality & viability of a town centre / loss of local shopping facility (A uses), Business Areas (B1, B2, B8), the availability of leisure & community uses D2 A4 leisure uses.*

*It also fails to consider whether some locations would be inappropriate locations for such a sensitive use as a school eg noise from adjacent activities in a Business Area.*

**Q5.** Should the local planning authority have to approve a transport assessment before the permitted development right can be activated for changes from some or all non D1 uses?

*Response*

*A transport assessment should be required but transport is only one of the material considerations and it would not be appropriate to consider it in isolation.*

**Q6.** Do you think that there are any other matters that the conditions should address?

*Response*

*The considerations which need to be addressed will be different in each case and could not be adequately dealt with in standard conditions attached to the Order.*

**Q7.** Should the compensation provisions contained in section 189 of the Planning Act 2008 be applied to change of use to a school, if a permitted development right is given?

*Response*

*If such a right is given it would be difficult not to apply the compensation provisions.*

**Q8.** The Government would like to permit schools to co-exist with certain dual uses, but not with others. Do you have views about whether and how this could be achieved?

*Response*

*No information is given on which uses the Government has in mind so it is not possible to comment.*

**Q9.** Which is your preferred option and why?

- Option 1
- Option 2
- Option 3
- Option 4

*Response*

*Option 1*

**Q10.** Do you think these proposals should be applied solely to new free schools or to all schools? Why?

*Response*

*There is no planning reason for the proposals to only one type of school.*

**Q11.** Are there any further comments or suggestions you wish to make?

*The consultation makes no mention of Green Belt - is the intention that permission would not be required for the change of use of a large house in the Green Belt?*

*The changes aim to assist in meeting a "local demand" for places. This refers to "demand" for a particular of type of school place rather than a shortage of places overall - is it appropriate to undermine policies designed to protect certain uses in certain locations for what is a demand/desire rather than a need?*

*This approach to free school would be inconsistent with the approach taken to other community "demands/desires" - eg Places of Worship?*

<b>Non-Applicable Sections:</b>	Policy, Financial, Legal and Personnel
Background Documents: (Access via Contact Officer)	Consultation on Planning for Schools Development October 2010