



**Department for Communities & Local
Government – Consultation on relaxation of
planning rules for change of use from
commercial to residential**

Views of ADEPT & CEDOS

June 2011

The Chief Economic Development Officers Society (CEDOS) provides a forum for Heads of Economic Development in upper tier local authorities throughout England. Membership includes county, city and unitary Councils in non-metropolitan areas. The Society carries out research, develops and disseminates best practice, and publishes reports on key issues for economic development policy and practice. Through its collective expertise, it seeks to play its full part in helping to inform and shape national and regional policies and initiatives.

The Association of Directors of Environment, Economy, Planning & Transport (ADEPT) represents local authority Strategic Directors who manage some of the most pressing issues facing the UK today. The expertise of ADEPT members and their vision is fundamental in the handling of issues that affect all our lives. Operating at the strategic tier of local government they are responsible for crucial transport, waste management, environment, planning, energy and economic development issues. ADEPT membership is drawn from all four corners of the United Kingdom.

DEPARTMENT FOR COMMUNITIES & LOCAL GOVERNMENT – CONSULTATION ON PROPOSALS TO RELAX PLANNING RULES FOR CHANGE OF USE FROM COMMERCIAL TO RESIDENTIAL

Joint views of the Association of Directors of Environment, Economy, Planning and Transport (ADEPT) and the Chief Economic Development Officers Society (CEDOS)

INTRODUCTION

1. We welcome the Department's decision to consult on its proposals to relax planning rules for change of use from commercial to residential. We are pleased to take this opportunity to put forward our views in response to the consultation questions, for which we have sought the views of our members throughout the country. We agree to our response being made public and we will be pleased to discuss things further with the Department.
2. We support the Government's aim of increasing the supply of housing in this country just as we support the aim of securing sustainable economic growth and employment. However, we are seriously concerned that the proposals to relax the change of use rules, although well intentioned, run a very real risk of damaging businesses and business investment and undermining economic recovery and sustainable growth. At the same time they could lead to housing being developed in unsuitable and unsustainable locations and lead to an increase in public spending to finance consequent transport and infrastructure requirements.
3. Furthermore, we believe the proposals go against the grain of the Government's localism agenda. In our view, a nationally imposed one-size-fits-all approach will fail to meet the distinctive needs of local areas when, as the consultation document itself recognises, there is already the ability to allow permitted development rights tailored to meet local circumstances, something which the Government plans to extend under the provisions of the Localism Bill currently going through Parliament.

THE CONSULTATION QUESTIONS

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.

ADEPT/CEDOS Views:

4. We recognise the need to increase the supply of all types of housing in this country, including affordable housing. Equally, we support the Government's aim of bringing redundant commercial premises into beneficial use and making better use of buildings that are no longer needed and/or unsuitable for their original purpose. We are quite convinced that planning authorities across the country will support this aim.
5. In our view a relaxation in the rules governing change of use from commercial to residential is neither necessary nor required. We do not consider the Government's proposal to grant permitted development rights for change of use from B1 (business)

to C3 (dwelling houses) is the right way forward. Indeed, we believe that in many areas of the country it could have serious adverse consequences:

- threatening local businesses, damaging local economies and putting sustainable economic growth in this country at serious risk;
- sterilising otherwise viable employment sites by raising expectations about higher alternative use values;
- leading to housing development in unsuitable and unsustainable locations;
- putting pressure on infrastructure including highway and other transport networks; and
- risking undermining the Government's localism agenda.

Impact on local economies and sustainable economic growth

6. In the consultation document, the basis for justifying the proposed change is the unsubstantiated claim that "many towns will have parts where there are office blocks or business parks lying empty, and becoming dilapidated". There is no supporting evidence provided of how widespread this is and no consideration of the impact of the proposal in areas where this is not the case. Moreover, it does not follow that relaxing the change of use rules would tackle the issue of dilapidated commercial areas. It is quite possible, likely even, that sites which are the most attractive and not dilapidated would be the first to be converted to residential use, with a damaging impact on viable commercial development.

7. In many areas, and especially those where there is high demand, there could be a very significant loss of business premises and business parks without the scope for provision elsewhere. The proposed permitted development rights will put pressure on *existing* employment land and premises to be converted to residential uses leading to a loss of commercial units, an increase in rent levels of remaining commercial properties and an adverse impact on local jobs. Any significant increase in commercial rents is likely to have a detrimental impact on viable local businesses. Indeed, business tenants could find themselves forced out of their premises as landlords seek to convert sites to more profitable residential use.

8. In the consultation document, much is made of the difference in land values between residential and other uses. It is true that in many areas of the country housing land values are considerably higher than those for employment land. The consultation document suggests that relaxing change of use planning requirements would reduce the value of housing land. It could equally result in raising commercial land values and as a result commercial rents. We consider that the prospect of this happening is seriously underestimated in the consultation document. In many areas there is a high risk that business viability will be threatened and that lower cost employment developments will be squeezed out – developments that are often fundamental to new start and growing small businesses.

9. *Vacancy rates* – In the consultation document, much is also made of the difference in vacancy rates between the housing and commercial sectors, with commercial vacancy rates currently being higher. In our view, this does not

necessarily indicate a mismatch between demand for and supply of commercial property. Indeed, it is likely that vacancy levels of between 5-10% are necessary to enable 'churn' and provide choice and do not signal over supply. Moreover we should not lose sight of the impact the recession has had on the commercial property market. As the economy picks up, businesses will want to invest and should be encouraged to do so. Already, there is evidence that this is starting to happen in some areas. Diminishing the already tight commercial stock will make this more difficult.

10. To achieve sustainable economic recovery, it is essential to have sufficient employment land and premises to facilitate and enable economic growth. We must also ensure there is an adequate range of premises and land suitable for different types of business activity and to provide businesses with choice in the nature and location of employment premises.

11. *Impact on town centres* - We are concerned that the proposals could lead to a reduction in the number of business premises within town centres and force some businesses to relocate to out-of-town or edge-of-centre sites. This could threaten the viability of town centres, which because they are normally the most accessible by public transport, could lead to increased car use adding to problems of congestion and carbon emissions. In many parts of the country important mixed-use regeneration schemes are taking place, which will provide vital opportunities for economic growth. A move to relax permitted use rights could undermine the progress achieved in the face of greater pressure to maximise the proportion of housing at the expense of commercial floorspace.

12. *Impact on peripheral and rural areas* - Commercial premises in rural areas are important to supporting the rural economy. Indeed, in many areas, rural businesses are a significant part of the local economies. In Northamptonshire, for example, 20% of small and medium sized enterprises are located in rural areas. There, as elsewhere, relaxation of change of use rules could have a major impact on the strength of the rural economy. Businesses activity could be driven from many rural areas and their ability to contribute to economic growth compromised if more lucrative residential developments are pursued by developers. In more peripheral areas like Cornwall, there is a real danger that the already limited commercial capacity could be lost to residential development. As a result economic viability could be undermined particularly in areas where rental levels are too low for the market to deliver without intervention.

Housing development in unsuitable and unsustainable locations

13. The consultation document makes the sweeping statement that "B1 uses are most likely to be located in suitable locations for housing and that in many cases existing premises will lend themselves to conversion to housing without the need for extensive external works". There is no guarantee that this is the case and no evidence has been provided to explain how this conclusion has been arrived at. Indeed, there is real concern that the permitted development proposal, if implemented, could result in housing being introduced into unsuitable and unsustainable locations including some rural locations that lack employment, shops and other key facilities and are poorly served by public transport.

14. The consultation document over-optimistically suggests that housing growth would stimulate local services, but our experience is that this is unlikely to be the case in large parts of rural England. It is very likely that these locations would be entirely car-dependent and as a consequence unsustainable. Any significant growth in the number of people living in unsustainable locations could add to the cost of providing public sector services.

15. The question of unsuitable location is by no means just an issue for rural areas. More generally, permitted development rights for the conversion of offices, factories, warehouses to housing will not ensure the quality of living and amenity that we have sought over the years to ensure for new housing development across the country, for example in relation to access to public open space and playing areas, access to community facilities, shops, schools and public transport and an absence of high levels of noise, air pollution and flood risk.

Impact on transport and infrastructure

16. Inevitably, housing development requires the provision of supporting infrastructure such as schools, local services, public utilities, waste disposal and transport. This is not adequately addressed in the proposals. As regards transport, housing development generates very different patterns of vehicular movement and parking requirements compared to commercial development. The impact on the highway network needs to be managed through the planning process and the permitted development rights being proposed would reduce the ability to achieve this.

17. Unplanned increases in the number of residential properties would undermine efforts to forward plan and finance supporting infrastructure. Furthermore a permissive regime would give no opportunity to address infrastructure or highway issues through the use of section 106 agreements that might otherwise have ensured the provision of infrastructure necessary to support housing development.

Localism

18. In our view, the proposal for this change to be made at the national level will introduce a blanket 'one-size-fits-all' approach that is not only seriously flawed but which also goes against the grain of the Government's localism agenda, the overall thrust of which we strongly support. There may well be local areas where granting permitted development rights to change use from B1 to C3 is appropriate but there will be many areas where it is not. In our view, it is essential that the decision is made locally in the light of local circumstances.

19. Fortunately, the ability to do this already exists with local authorities being able to grant permitted development rights in their areas through local development orders. The Localism Bill currently before Parliament will add to this through the provision for neighbourhood development orders. As the Government itself says in the consultation document, these will enable permitted development rights to be tailored to local circumstances and allow freedoms to be used sensibly to encourage local growth. In our view, the local approach is the best way forward.

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.

ADEPT/CEDOS Views:

20. We do not support the principle of granting permitted development rights to change use from B2 (general industrial) and B8 (storage and distribution) to C3 (dwelling houses). We do not believe it will be possible to put in place measures that will be effective in mitigating the risk of homes being built in unsuitable locations. The suggestion that "in general, the market will make sensible decisions about where land classified as B2 and B8 is and is not suitable for residential development" is not supported by evidence and does not provide a satisfactory basis for making a change at the national level.

21. The arguments set out above in relation to granting permitted development rights to change use from B1 to C3 apply with equal force here but with the even greater likelihood that housing development in unsuitable locations would result. B2/B8 uses and C3 uses are fundamentally different. Where a non-conforming B2/B8 use exists within a largely residential area, it would almost certainly get planning permission for a change to housing use. However, allowing permitted development rights for change to housing in a general industrial environment could have very serious implications given the powers associated with statutory nuisance. It would be likely to produce conflict between new residents and neighbouring businesses around issues such as noise, pollution and traffic. These issues would not only be detrimental to the living environment of residents, but could also place limitations on business activities on adjoining sites. This would be harmful to existing business interests in the locality and also make these locations less attractive to potential investors and undermine efforts to achieve sustainable economic growth.

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?

ADEPT/CEDOS Views:

22. We do not agree. Quite apart from the fact that no justification is given in the consultation document for the proposed 5 year period, provision for a reversion to a business use could have detrimental impacts on remaining adjacent residential occupiers and would introduce even greater uncertainty when seeking to plan ahead for future infrastructure provision in an area. Changes need to be fully and properly considered through the local planning process.

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?

ADEPT/CEDOS Views:

23. Whilst we generally support the development of new flats above commercial premises in town centres, given that the scale of retail premises and the

circumstances of individual localities vary, we do not think it would be appropriate to extend the current permitted development rights in a blanket fashion nationally.

24. It would be unwise to allow unrestricted conversions. There should be an upper limit but the level will need to vary according to local circumstances. We consider it inappropriate to apply a nationally defined one-size-fits-all approach. Some sites will be suitable for larger developments and others not. Each site should be considered on its merits and we believe a local approach is the right way forward.

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.

ADEPT/CEDOS Views:

25. The consultation document refers to a range of possible issues that might result from implementation of the Government's proposals but it does so in a very general and often superficial way with no attempt to assess how impacts might differ from area to area. For example, the conclusion that "some shift of use from commercial to housing can be accommodated with only a very limited impact in terms of increasing commercial rents" might be true in some locations but may be completely untrue in others. Moreover, it begs the question of how, in a permissive regime 'some shift' could be prevented from becoming 'total shift', potentially denuding an area of *all* local employment opportunities?

26. Nor is it just about the impact on commercial rents. It is also about the potential loss of employment space; and about areas having a choice of good quality sites and premises to provide for business investment and growth and the provision of jobs. We have already dealt with the limitations of the consultation document's analysis and its over-reliance on current vacancy rate information, which as we have said does not necessarily point to an over supply of employment space, particularly given the recession and its impact on the commercial property market.

27. Paragraph 42 of the consultation document refers to the fact that in some areas the higher value of residential use could act as an incentive to owners to consider change of use from successful and economically viable commercial uses to residential use. The statement that "to the extent that this results in a more efficient use of land, with price signals indicating relative scarcity, this represents an efficient outcome" is quite breathtaking in its acceptance of the negative implications for promoting and encouraging economic growth.

28. The recognition that "the loss of commercial uses in villages and the conversion of commercial buildings on farms to residential may cause some concerns for local residents" underplays the seriousness of the situation that could face some rural areas. In many areas it underestimates the risk to rural employment and the knock-on effects on sustainability and balanced community life.

29. On the issue of housing mix and the provision of amenities and local services, the consultation document acknowledges the role of the planning process as a means of using planning obligations to deliver affordable housing and other planning gain outcomes. However, in the Government's proposals, there appears to be an

acceptance that there would be no obligation on developers to provide for additional outcomes and a reliance on voluntary action. In our view this is a very risky approach that could lead to a failure to deliver sufficient affordable housing and have significant implications for public spending in providing supporting infrastructure. We have already dealt in some detail with the issues of nuisance such as noise, safety, and service transport and parking provision earlier.

30. An issue that has not been identified in the consultation document is the cumulative impact that residential development can have on internationally protected habitats. In some parts of the country this has resulted in a requirement to put in place complex mitigation strategies to avoid or mitigate harm to such sites. An example is South East Dorset, where any residential development within 5km of Heathland Special Protection Areas (a zone which encompasses the entire Bournemouth/Poole conurbation, with a population in excess of 400,000) has to provide sufficient mitigation. Furthermore, new residential development is not permitted within 400 metres of heathland sites other than in exceptional circumstances.

31. If there is a prospect that commercial premises could be used for residential purposes as a result of relaxing the change of use rules, it is likely that new business activities will have to be treated in a similar way to residential development. This could sterilize important employment areas near to heathlands and impose a financial burden upon other commercial developments which are beyond 400 metres but within the 5km area.

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?

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

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

ADEPT/CEDOS Views:

32. If despite the many and fundamental reasons for not doing so, the Government decides to go ahead with its permitted development proposals, strong mitigation will be crucial. However, it seems to us that the mitigation options identified are unduly complex and their use would place an undue burden on local authorities. Moreover, mitigating adverse impacts often requires site specific solutions and these cannot be adequately provided by nationally defined standard conditions or limitations. The reality is that a requirement to submit a planning application is the only effective means by which all issues and potential impacts can be properly considered and meaningful mitigation achieved.

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.

ADEPT/CEDOS Views:

33. If the Government's proposals are implemented, reduced compensation would be an essential pre-requisite if article 4 directions need to be used to control their impacts. Without reduced compensation provisions, the cost of serving an article 4 direction would be likely to be prohibitive, given the potentially significant difference in value between residential and commercial use.

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.

ADEPT/CEDOS Views:

34. No - the impacts of residential uses and commercial B class uses are very different and uncontrolled changes from residential to commercial uses are highly likely to have detrimental impacts on adjacent residential areas. Again, in line with the localism agenda, a blanket national policy is undesirable. Site-specific decisions need to be made locally in relation to the nature of surrounding uses and the needs of the local community.

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

ADEPT/CEDOS Views:

35. Whilst we share the Government's commitment to achieving an increase in the rates of house building in this country, we believe we have demonstrated conclusively that it would be very unwise to proceed with the proposals to relax the planning rules for change of use from commercial to residential. To do so could risk: housing being built in unsuitable and unsustainable locations; increased public spending on transport systems and other supporting infrastructure; and sustainable economic growth being undermined in many areas.

IMPACT ASSESSMENT QUESTIONS

1. Do you think that the impact assessment broadly captures the types and levels of costs and benefits associated with the policy options? If not, why?

2. Are there any significant costs and benefits that we've omitted? If so, please describe including the groups in society affected and your view on the extent of the impact.

ADEPT/CEDOS Views:

36. The impact assessment is too limited in scope focusing as it does primarily on costs and benefits to developers, local authorities and the planning inspectorate.

There is scant reference to the impact on businesses and householders and to the wider societal impacts that could result from a potential loss of employment land in terms of reduced business investment and employment opportunities. The potential for loss of local employment opportunities could particularly disadvantage the disabled, working mothers or others who are unable to access public transport or to commute greater distances to work. This issue may be especially significant in rural areas where public transport is limited.

37. For local authorities, there may be more significant costs than have been accounted for in investigating statutory noise complaints, implementing Article 4 directions and local development orders. To safeguard sufficient employment land for business growth councils will have to invest significant time and resources into administration and legal advice to cover these matters.

38. The cost/benefit assumptions do not account for:

- the potential for the creation of dwellings in unsustainable locations to increase the cost of providing transport and public services;
- the loss of local authority income to fund infrastructure that might otherwise have been raised through section 106 agreements;
- the cost of the lost opportunity to seek affordable housing, which will have to be funded from other sources.