

## Relaxation of the planning rules for change of use from business to residential: Consultation Questionnaire

The Government welcomes your views on the proposals set out in the consultation document, *Relaxation of planning rules for change of use from commercial to residential*, which is available on our website at: [www.communities.gov.uk/consultations](http://www.communities.gov.uk/consultations).

Our preference is to receive responses electronically and we would be grateful if you could return the completed questionnaire to the following e-mail address:

[C3consultation@communities.gsi.gov.uk](mailto:C3consultation@communities.gsi.gov.uk)

If you wish to post your response, however, please send the completed questionnaire to:

Theresa Donohue  
Consultation Team (Commercial to residential use)  
Planning Development Management Division  
Department for Communities and Local Government  
1/J3, Eland House  
Bressenden Place  
London SW1E 5DU

This consultation will run for 12 weeks from 8 April 2011. **The deadline for submissions is 30 June 2011.**

## Data Protection

This is to inform you that we may, with your consent, quote from your response in a published summary of the response to this consultation. If you are content for your views to be made public in this way, please tick the box.

Otherwise, your views may be set out in the response, but without attribution to you as an individual or organisation.

We shall treat the contact details you provide us with carefully and in accordance with the data protection principles in the Data Protection Act 1998. We shall not make them available to other organisations, apart from any contractor (“data processor”) who may be appointed on our behalf to analyse the results of this questionnaire, or for any other purpose than the present survey without your prior consent. We shall inform you in advance if we need to alter this position for any reason.

## About you

i) Your details

|  |   |
|--|---|
| <b>Name:</b>                                 | <b>Rebecca Fry with Andy Glover</b>                                     |
| <b>Position:</b>                             | <b>Senior Planning Officer with Senior Economic Development Officer</b> |
| <b>Name of organisation (if applicable):</b> | <b>Brighton &amp; Hove City Council</b>                                 |
| <b>Address:</b>                              | <b>Town Hall, Norton Road, Hove, BN3 3BQ</b>                            |
| <b>E-mail:</b>                               | <b>Rebecca.fry@brighton-hove.gov.uk</b>                                 |
| <b>Telephone number:</b>                     | <b>01273 293773</b>   |

ii) Are the views expressed on this consultation an official response from the organisation you represent, or your own personal views?

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Organisational response</b> | <input checked="" type="checkbox"/> |
| <b>Personal views</b>          | <input type="checkbox"/>            |

iii) What category do you consider your organisation falls into?

|  |                                     |
|--|-------------------------------------|
| <b>Local planning authority</b>                    | <input checked="" type="checkbox"/> |
| <b>Housing developer</b>                           | <input type="checkbox"/>            |
| <b>Community group/representative</b>              | <input type="checkbox"/>            |
| <b>Parish council</b>                              | <input type="checkbox"/>            |
| <b>Business</b>                                    | <input type="checkbox"/>            |
| <b>Planning professional</b>                       | <input type="checkbox"/>            |
| <b>Landowner</b>                                   | <input type="checkbox"/>            |
| <b>Voluntary sector or charitable organisation</b> | <input type="checkbox"/>            |
| <b>Other (please state)</b><br>_____               | <input type="checkbox"/>            |

## The consultation questions

Question A:

**Do you support the principle of the Government's proposal to grant permitted development rights to change use from B1 (business) to C3 (dwelling houses) subject to effective measures being put in place to mitigate the risk of homes being built in unsuitable locations?**

Yes  No

**Please give your reasons:**

Brighton & Hove City Council supports the promotion of economic growth and additional homes that are appropriate to meet the needs of an increasing population. However it is considered the proposed amendment is ill conceived. The following is a summary of this council's response which is expanded upon in [Appendix 1](#):

- The city council strongly urges the government not to adopt such a national amendment because of the range of unintended consequences on local economies and their resilience to weather the economic downturn and preparedness for longer term economic recovery and stability. This in turn may negatively impact upon the national economy.
- The amendment will not lead to the suggested adjustments in land values or deliver the amount and type of housing that is needed particularly in the areas where supply of land is constrained and housing demand high.
- The amendment will undermine the planning system, which seeks to balance the provision of additional housing with jobs.
- It will undermine the plan led approach and introduces a significant move towards a 'market led' approach which should form part of a comprehensive review of the planning system and consulted upon respectively.
- It will undermine the localism approach and neighbourhood planning put forward by the Decentralisation and Localism Bill. It will remove local authority control and the opportunity for local communities to have their say. There will be nothing to stop employment sites turning to housing of a type and mix contrary to that identified by the community in a Neighbourhood Plan.
- It will undermine the ability to monitor because it will be hard to predict when and how many sites will change from employment to housing.
- It will undermine the management of 'quality of life' issues, meeting high levels of sustainability and maintaining green and healthy communities. This includes issues such as sustainable design, flood risk, highway safety, daylight & sunlight, lifetime communities, designing out crime, open space etc.

- It will remove the ability to obtain affordable housing contributions and developer contributions to mitigate the harmful impacts of development.

For the reasons detailed above and in [Appendix 1, 2 and 3](#) this proposed national amendment is not supported. However if the Government is minded to proceed with a national amendment in advance of its indicated review of the planning system then it is urged not to amend the permitted development rights but to consider the following alternatives which are more in keeping with the Localism approach:

- By the promotion of the existing powers that local planning authorities can use which give permitted development rights for change of use through development orders as appropriate to respective local areas. And/Or;
- The inclusion of guidance within the proposed National Planning Policy Framework that promotes the change of use of genuinely redundant B1 sites to alternative employment uses and then residential. The guidance should advise that redundancy can be proven where a site has been vacant for 2 years and the premises and site has been marketed for at least a year (ie where evidence can be submitted to demonstrate the premises and site has been vacant for 2 years and also marketed for at least a year; including dated adverts, the price which should reflect the condition of premises/site and; confirmation from a reputable commercial agent as to why any interest or offers were not progressed and their professional opinion on the viability of not just the premises but also the site for B1 and other employment uses). – An approach already adopted by Brighton & Hove City Council. (In view of the five year provision suggested in question C the Government may wish to adopt 5 years as the vacancy/marketing period to demonstrate redundancy.)
- In addition to this in order to facilitate an economic recovery the Government should support the temporary use of vacant commercial premises by the voluntary sector or creative industries.
- In respect of the stated aim to ‘create the opportunity to bring vacant and underused properties back into economic use and at the same time to contribute to delivering more homes’ the Government should strengthen and increase funding for existing empty property initiatives which already targets unused existing residential units.

Question B:

**Do you support the principle of granting permitted development rights to change use from B2 (general industrial) and B8 (storage & distribution) to C3 (dwelling houses) subject to effective measures being put in place to mitigate the risk of homes being built in unsuitable locations?**

Yes  No

**Please give your reasons:**

This amendment is not supported for the reasons detailed above and in the supporting appendices and also for the following:

- The consultation document (Introduction, paragraph 3, first bullet) suggests that housing is likely to have fewer wider land-use impacts than commercial uses thus implying it is normally harder to find new sites for commercial uses which is particularly true in respect of B2 and B8 uses. Without an ability to protect established commercial sites (essential for local jobs) the future for enhancing/increasing commercial provision becomes uncertain and is likely to have a long term negative impact on the economy.
- There is no evidence to support the documents assumption (paragraph 28) that the market will make sensible decisions about where land classified as B2 and B8 is and is not suitable for residential development. Indeed the majority of B2 premises lie within industrial estates containing other B2 units. B2 use applies to industrial uses that are not appropriate within residential areas (by virtue of noise, vibration, pollution etc). This is not therefore something that can effectively be controlled by environmental health because it is inappropriate/unreasonable to apply respective restrictions on an occupier that in effect requires/forces them to change to a B1 use. The introduction of residential to such areas would not be appropriate due to the impact on resident amenities and would put pressure on the remaining B2 occupiers to leave. Due to the nature of B2 uses these are harder to locate than housing so B2 sites will reduce in number thus reducing the variety of employment.
- The vast majority of B2 and B8 buildings are 'industrial' in form and will not lend themselves easily to a change of use. The conversion of such premises should therefore be considered through the planning application process to avoid the promotion of inappropriate conversions.
- There will not be many instances within Brighton & Hove where this would apply with the caveat of '*effective measures being put in place .....*' as both B2 and B8 uses are not uses, and therefore locations, that accord with residential use.
- Local evidence provided in the Brighton & Hove Employment Land Study indicates the provision of new B2 and B8 is unrealistic in this area due to land values. This highlights that in this area these types of uses are unable to compete with housing and will be driven out. Even if land values between these uses were to equalise the site requirements, social and environmental factors make it unlikely that B2 and B8 uses will be able to return to the area.
- No information has been provided on what 'effective measures' are available to 'put in place to mitigate the risk of homes being built in unsuitable locations'.

- Unplanned residential uses within industrial estates could be without safe, overlooked frontages onto pedestrian routes. This could result in the new residents taking unsafe walking routes or having to rely on private car use outside of working hours.

For the reasons detailed above such a national amendment is not supported. However if the Government is minded to proceed with a national amendment in advance of its indicated review of the planning system then it is urged not to amend the permitted development rights but to consider the following alternatives which are more in keeping with the Localism approach:

- By the promotion of the existing powers that local planning authorities can use which give permitted development rights for change of use through development orders as appropriate to respective local areas. And/Or;
- The inclusion of guidance within the proposed National Planning Policy Framework that promotes the change of use of genuinely redundant B use class sites to alternative employment uses and then residential. The guidance should advise that redundancy can be proven where a site has been vacant for 2 years and the premises and site has been marketed for at least a year (ie where evidence can be submitted to demonstrate the premises and site has been vacant for 2 years and also marketed for at least a year; including dated adverts, the price which should reflect the condition of premises/site and; confirmation from a reputable commercial agent as to why any interest or offers were not progressed and their professional opinion on the viability of not just the premises but also the site for B uses and other employment uses). – An approach already adopted by Brighton & Hove City Council. (In view of the five year provision suggested in question C the Government may wish to adopt 5 years as the marketing period to demonstrate redundancy.)
- In addition to this in order to facilitate an economic recovery the Government should support the temporary use of vacant commercial premises by the voluntary sector or creative industries.
- In respect of the stated aim to ‘create the opportunity to bring vacant and underused properties back into economic use and at the same time to contribute to delivering more homes’ the Government should strengthen and increase funding for existing empty property initiatives which already targets unused existing residential units.

Question C:

**Do you agree that these proposals should also include a provision which allows land to revert to its previous use within five years of a change?**

Yes       No

**Comments:**

Should these proposals be implemented then this subsequent provision raises a response of neutrality.

The ability to plan, monitor and manage would have already been undermined, it is unlikely changes of use to residential would be unsuccessful in this area but if they were this provision would be pointless if the employment use had originally been redundant. However where an active employment use was lost, at least employment could be re-established but this is of little consolation for any previous leasehold commercial occupier who either had to relocate or dissolve. In addition to this such a provision is likely to be unviable where residential land values continue to be higher than commercial land values because significant hope value would be added to commercial sites making it hard for such uses to viably return.

Question D:

**Do you think it would be appropriate to extend the current permitted development rights outlined here to allow for more than one flat?**

Yes  No

**If so, should there be an upper limit?**

Yes  No

**Comments:**

As raised in other sections of this response the assumptions in respect of amenity, services and housing mix etc are too simplistic. Such an amendment would be at odds with the current requirement to apply for planning permission for the conversion of one dwelling into two or more units. To date this is because it has been recognised that the impact on amenities etc could be significant especially in high density areas and from cumulative increases in housing units in this way. This highlights the need for a more holistic approach should such significant amendments to the planning system be felt appropriate.

An upper limit would need to be consistent with any limitations imposed on the above proposals (should they be introduced and other amendments that may be proposed in respect of the planning system). However a significant increase in the upper limit should be subject to a planning application or considered through the plan making process so that they can be included as 'identified' housing sites.

Question E:

**Do you agree that we have identified the full range of possible issues which might emerge as a result of these proposals?**

Yes  No



**Are you aware of any further impacts that may need to be taken into account?**

Yes  No

**Please give details:**

Comments:

The omissions are numerous. The assumptions made are too simplistic. The resolution of the impacts are not fully addressed. This consultation is too generalist for any subsequent findings to be introduced without additional focused consultation.

For example, it is suggested the impact on amenity, services and housing mix could be addressed through other action by the local authority or the developer on a voluntary basis following discussion with the neighborhood. However no details are provided on what other action could realistically be taken and it is made clear that there would be no obligation on a developer to provide for these additional outcomes. This overlooks that these schemes will be exempt from s106 contributions and that the public sector cuts could result in a failure to effectively mitigate any harmful impacts that may result. For example, the provision of infrastructure improvements to address school capacity issues, traffic implications, private garden space and open space requirements such as playgrounds, sports facilities, growing space etc. Indeed there is no statutory duty on local authorities to provide outdoor space except cemeteries and allotments, with public sector cuts any amendments that hinder measures to bring forward private provision are likely to result in significant shortfalls.

The housing market is complex and within Britain there is pressure to purchase in favour of renting. Many people are unable to afford the type of accommodation appropriate to their needs however if there is no other choice it does not stop them purchasing what they can afford or rent. Overtime, if unmanaged, this can increase problems and result in town cramming. Within some of the most wealthy cities throughout the world the residential accommodation of many of the less fortunate residents are not to be promoted (Hong Kong, Singapore etc). It is therefore hard to predict what choices people will take. Should residential accommodation be created within heavy industrial premises without appropriate regard to human health etc the future costs to society becomes an issue (costs to NHS, spread of contamination etc). As highlighted in the detailed comments from Environmental Health the past history of a site may not be readily known and the retrofitting of appropriate remediation measures would be legally difficult if not impossible where the need for express planning permission has been removed.

The section addressing loss of commercial land and property is far too simplistic. As raised above the assumptions in respect of the equalization of land values is over simplistic. There is a lack of justification for assuming the loss of viable and prosperous commercial uses to residential is a more efficient use of land or what is to become of the people who were employed if

the commercial uses dissolve or relocate outside of the area. These markets are very complex. There is no recognition that additional employment land is also required. The impact on farm diversification and rural job opportunities could be significant.

The assumptions in respect of amenity, services and housing mix are too simplistic. Indeed this amendment and assumptions in respect of impact on amenity is totally at odds with the current requirement to apply for planning permission for the conversion of one dwelling into two or more units. To date this is because it has been recognised that the impact on amenities etc could be significant especially the affect of cumulative increases in housing units in this way. This amendment and assumptions also appears at odds with the previous amendment made by this Government removing residential gardens from the definition of previously developed land. This highlights the need for a more holistic approach should significant amendments to the planning system be felt appropriate.

Residential schemes less than 50 units may also be required to assess traffic implications including air quality issues.

No regard is given to construction industry waste, climate change, air quality, daylight and sunlight, biodiversity, refuse and recycling storage space, lifetime homes and lifetime neighborhoods and other factors that can be relevant depending on site location and constraints.

The full extent of the cumulative impact of this amendment has not been considered. Nor the impact on the planning system, the current plan led approach and the emerging localism approach

Question F:

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

Yes  No

**Comments:**

It is not felt this amendment could be appropriately mitigated for. However if it is to be introduced then mitigation would be appropriate. Given the wide spread nature of this consultation it is considered further consultation should be undertaken on any subsequent details:

Suggest including the following conditions/caveats in respect of question A and B (in addition to those listed in paragraph 55):

- It is only permitted where the premises is not within an identified or allocated employment site where 50% of units are in active use/occupied.

- It is only permitted where the premises has been vacant for 5 years and actively marketed for at least one year (or two years whichever is deemed most appropriate on a national basis). (Reason : to avoid significant losses in viable employment floorspace – five years was suggested in Question C of this consultation in respect of testing viability)
- It is only permitted for changes of use to one residential unit. (If the permitted developments rights relating to retail is amended then this should be consistent with the respective upper limit.)
- It is only permitted where the unit to be created is affordable housing. (Reason : to take into account variations in land values and the most pressing housing needs)
- It is only permitted where residential space standards are met (potentially the latter will need to be set nationally and would need to address internal room sizes and outdoor private amenity space. Consideration to local standards will need to be addressed).
- It is only permitted development if it is designed to life time homes standards.
- Commercial premises operating as part of farm diversification are excluded.
- Premises within a Conservation Area are excluded.
- Premises within high flood risk areas are excluded.
- Premises adjacent existing premises in B2 use are excluded.
- Partial change of use of a premises is excluded.

A prior approval mechanism would be preferable to a developer self certification scheme as this would enable a register to be kept of qualifying proposals which will assist with monitoring. However this will be subject to the Government ensuring there are additional sufficient resources passed to local planning authorities to handle such a system.

Question G:

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

It is not felt this amendment could be appropriately mitigated for. However if it is to be introduced then mitigation would be appropriate. Given the wide spread nature of this consultation it is considered further consultation should be undertaken on any subsequent details. These amendments are not supported however if they are to be introduced then suggest consideration of the following:

Amendments to the building regulations to incorporate planning functions. For example to apply space standards and layout to protect amenity and minimise disturbance (eg bedroom to bedroom, living rooms to living room and also vertical relationships between rooms); improved regard to daylight and sunlight, lifetime homes, sustainability, historic and design issues etc. A mechanism to co-ordinate expert and specialist advice in respect of such

proposals and a requirement for the developer to address all necessary mitigation requirements.

Question H:

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

No system will be flawless or without those who raise criticism. These amendments are not supported as they will not improve upon the current system. Until the full review of the planning system has been consulted upon it is considered the planning application process is the appropriate mechanism.

Question I:

**What is your view on whether the reduced compensation provisions associated with the use of article 4 directions contained within section 189 of the Planning Act 2008 should or should not be applied? Please give your reasons:**

Any reduction is welcome. Indeed, it is felt compensation provisions should be removed in their entirety if this amendment is to be introduced. The threat for a local authority to have to pay compensation can hinder appropriate planning considerations and decisions. Measures that reduce public sector funding at this time of austerity and cuts are not considered to be in the interest of the wider public. The payment of compensation to an individual land owner/developer will reduce funds which will have implications on the services a local authority is able to provide to the public.

Question J:

**Do you consider there is any justification for considering a national policy to allow change of use from C to certain B use classes?**

Yes  No

**Please give your reasons:**

In view of the statement in paragraph 34 in the consultation document 'that the urgent need for greater housing supply nationally is sufficiently important to justify the extension of permitted development rights in England' in respect of the proposal to allow change of use from B to C3 uses then it is unclear why this is being suggested. If there is an intention to reinvent the planning system with greater reliance on a market led approach then yes there is justification for considering this. However such a review of the planning system should be subject to a comprehensive review of the planning acts, guidance etc, rather than via these amendments to the permitted development rights. Care should be taken because it is considered that in general the planning system in England is effective in what it is able to do and its main professional body is internationally recognised. One of the main problems has been a lack of time for amendments to the planning system to be put in place before further amendments are made therefore changing the

requirements. [The British planning system is generally well regarded internationally. The RTPi is an international organisation. RTPi input is sought for benchmarking exercises; and there is some interest in how it might support or accredit 'international' qualifications.]

Question K:

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

The following is a link to the latest Annual Monitoring Report (AMR) for Brighton & Hove which helps to provide further information on the current situation within the area:

[http://www.brighton-hove.gov.uk/downloads/bhcc/ldf/AMR\\_2009-10.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/ldf/AMR_2009-10.pdf)

It should be noted that if these proposed amendments are introduced then the data within future AMR's or similar monitoring mechanisms are likely to become less reliable.

Local businesses have also expressed concern over the proposed amendment. Please see [Appendix 6](#) which is an extract from a local newspaper, The Argus, detailing the views from the local business sector.

There is great variance within each Local Authority of the primary businesses within each area. The impact will therefore vary between different Local Authorities. However it is considered B uses form one of the primary business sectors within the vast majority of Authorities. Such an amendment could therefore cause significant harm to economic growth. [Appendix 8](#) provides ONS business data and links.

Please note this response comprises this questionnaire and 8 Appendices which are as follows:

- Appendix 1 : Expanded response to the consultation on the relaxation of the planning rules for the change of use from business to residential
- Appendix 2 : Economic Development Detailed Response to Consultation Paper
- Appendix 3 : Environmental Health Detailed Response to Consultation Paper
- Appendix 4 : Comparison figures for Change of Use Applications
- Appendix 5 : Number of Permitted and Completed Residential Developments within Existing Residential and Employment Sites
- Appendix 6 : Extract from Argus relating to local business view
- Appendix 7 : The area of South Downs National Park within Brighton & Hove
- Appendix 8 : ONS business data and links

## The impact assessment questions

Question 1:

**Do you think that the impact assessment broadly captures the types and levels of costs and benefits associated with the policy options?**

Yes  No

**If not why?**

**This matter is much more complex than detailed.**

Question 2:

**Are there any significant costs and benefits that we've omitted?**

Yes  No

**If so, please describe including the groups in society affected and your view on the extent of the impact:**

The response to the main document detailed above indicates the majority of these. The impact on the plan led approach, lack of and loss in variety of employment opportunities has significant consequences in terms of costs and benefits not just to the developer and local authority but also the general public and the national economy. Many are hard to quantify. In addition to this other options have not been included and no comprehensive consultation has taken place in respect of all the options that could be adopted to increase housing numbers.

Question 3:

**Are the key assumptions used in the analysis in the impact assessment realistic?**

Yes  No

**If not, what do you think would be more appropriate and do you have any evidence to support your view?**

See main response and appendices

Question 4:

**Are there any significant risks or unintended consequences we have not identified?**

Yes  No

**If so please describe:**

See comments above and appendices.

Question 5:

**Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options?**

Yes No

**If not, why not?**

Many of these are hard to fully indentify or quantify.

Question 6:

**Do you think there are any groups disproportionately affected?**

Yes  No

**If so please give details:**

Leasehold businesses/industries. Start up commercial enterprises. Low paid and working carers and other groups who are less able to move or travel greater distances to find work.

Question 7:

**Do you think this proposal will have any impacts, either positive or negative, in relation to any of the following characteristics– Disability, Gender Reassignment, Pregnancy and Maternity, Race, Religion or belief, Sex, Sexual Orientation and Age?**

Yes  No

**Please explain what the impact is and provide details of any evidence of the impact:**

Disabled, pregnant and maternity because these groups are more likely to have restrictions on ability to move or travel long distances should the organisation they work for relocate or to find new work if business dissolves.

Question 8:

**Do you have any information on the current level of planning applications for change of use from B use classes to C3 in your local authority area which might be helpful in establishing a baseline against which to measure the impact of this policy?**

**Please see Appendix 5**