Walsall Council

Item No.

PLANNING COMMITTEE
18th September 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

Government Technical Consultation on Planning

1.0 PURPOSE OF REPORT

To advise Committee of the implications of the Technical Consultation Paper on Planning, which outlines a number of changes the Government proposes to make to the planning system, in order to agree a Committee response to be forwarded to the Department for Communities and Local Government (DCLG).

2.0 RECOMMENDATIONS

2.1 That Planning Committee instructs officers to forward the comments set out in this report and Appendix to the DCLG as the Council's response to the consultation document.

2.2 That Planning Committee agrees that the Head of Planning and Building Control should share this response with the borough's MPs, the Black Country Local Enterprise Partnership (LEP), other West Midlands Metropolitan Councils, the Local Government Association and others concerned with the regeneration of the borough and areas like it, to help advocate that potentially damaging proposals should be avoided.

3.0 FINANCIAL IMPLICATIONS

3.1 None arising directly from this report.

3.2 The proposals in the consultation will have financial impacts on local planning authorities but these are not addressed in the consultation paper, which is primarily concerned with deregulation for businesses. Without a detailed evaluation it will not be possible to quantify what the financial impacts on the council's planning service might be. However, it is likely that the proposals would lead to a decrease in available resources whilst administrative burdens on the authority would seem likely to be increased or made more complex as a result of a number of the measures.

a) The greatest financial impacts would be likely to result from the expansion of permitted development rights, including via prior notification processes that would have planning fees lower than those at present.
   - At the present time, for example, the fees for the erection of most buildings are £195 for up to no more than 40 sq.m. of additional floorspace, and £385 for more than 40sq.m. but not more than 75 sq.m., and the fee for most change of use applications is £385.

- The proposals include ideas to remove some types of development from the need for an application to be made. Where a prior approval procedure would be introduced for a change of use, or for minor constructions, there would be a fee of £80, and where the procedure would apply to proposals involving a change or use and related physical works there would be a fee of £172.

Reduced fee income would be likely to increase pressure on the ability to maintain the planning service given that the administration would still be required for the prior notification system and that the proposed changes would make the system increasingly complex. At the same time, reductions in planning controls would be likely to place increased burdens on other services, especially on Environmental Health and Pollution Control.

b) Some of the other proposals, notably in respect of neighbourhood planning, planning conditions and Environmental Impact Assessment (EIA) are meant to make the system quicker and easier. However, the changes will be likely to increase the administrative burdens on local authorities and could lead to more appeals and possibly to legal challenges.

4.0 POLICY IMPLICATIONS

4.1 None arising directly from this report, which is seeking to respond to the issues raised by the Government consultation.

4.2 The Council's corporate plan priorities include supporting businesses and helping people into work, improving health and well-being, and creating safe, sustainable and inclusive communities. The council's development plans, including the Black Country Core Strategy (BCCS), support these priorities in a regeneration strategy that seeks to provide and maintain supplies of employment land and premises, a supply of land for housing, and investment in town, district and local centres, all supported by necessary infrastructure and whilst protecting the environment. In the view of officers many of the proposals in the Government consultation conflict with local priorities and policies. Particular examples are set out as follows.

a) The consultation emphasises the creation of new homes with no apparent regard for wider implications, including for the economy. Where housing could be created in industrial areas the result could be to constrain the operations of nearby businesses or even lead to their closure under the Environmental Protection Act 1990. The results of this would be likely to be a the loss of viable businesses, higher costs for businesses, displacement of businesses and an inability to promote the redevelopment of existing industrial areas for modern economic uses. This would be likely to lead to job losses and unemployment locally. The regeneration strategy of the Black Country Core Strategy would be undermined. Decentralisation of economic activity and of population would increase leading to growing pressure on the Green Belt.

b) The creation of housing in industrial and other commercial areas, with only minimal controls, would be likely to lead to poor levels of amenity and conflicts between uses, which would impact negatively on future residents as well as on businesses. There would be a lack of infrastructure to serve many of the new homes or arrangements to mitigate conflicts and adverse impacts. The consequences of such issues as ground contamination or poor air quality could be severe. Even where planning permissions would be required the proposals in

respect of planning conditions could make it difficult for important issues to be addressed.

5.0 LEGAL IMPLICATIONS

5.1 None arising directly from this report,

5.2 The Government's proposals are for legal changes that would affect what would and would not be the subject of planning control and how various legal processes would be managed.

a) In respect of extensions to permitted development rights and changes to planning conditions procedures, the proposals would seem likely to increase conflicts that would generate private cases in respect of nuisance and pressures for Council intervention through the Environmental Protection Act. The situation where people might be exposed to ground contamination or poor air quality is uncertain.

b) Whilst it might be understandable to try to remove the burdens of EIA from some developments, it is important to recognise that the legislation requires cumulative environmental impacts and impacts on various types of sensitive areas to be examined. Also, there is a need to take account of recent modifications to the EU's EIA Directive. Unless these issues are properly addressed, the local authorities that have to apply the system could face increased risks of legal challenges.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

6.1 None arising directly from this report.

6.2 The Government's proposals appear likely to have adverse impacts in terms of the future of industrial activities and the creation of poor living conditions. Besides risking increasing unemployment, they would seem most likely to fall on the less well-off in society. The consultation does not appear to address equalities issues.

7.0 ENVIRONMENTAL IMPACT

7.1 None arising directly from this report, but there could be adverse impacts if the Government's proposals were to be implemented.

a) The proposals to permit more changes of use and the proposals in respect of the ability to impose and uphold planning conditions would limit the ability to control environmental impacts. They could have impacts on the amenity of future residents and on neighbours on nearby businesses and on the existing environment and quality of changed environments in general. Where they would result in exposure to pollution the impacts could be significant.

b) Increasing the thresholds for EIA requirements could result in some impacts not being addressed or being assessed less rigorously.

8.0 **WARD(S) AFFECTED**

8.1 All wards.

9.0 **CONSULTEES**

9.1 Officers from Legal Services, Environmental Health, Pollution Control, Economic Development and Asset Management have been consulted in the preparation of this report.

10.0 **CONTACT OFFICERS**

Norman Hickson Development Management Manager x 2601

Mike Smith Planning Policy Manager x 8024

11.0 **BACKGROUND PAPER**

Technical Consultation on Planning DCLG July 2014
https://www.gov.uk/government/consultations/technical-consultation-on-planning.

David Elsworthy
Head of Planning and Building Control

12.0 BACKGROUND AND REPORT DETAIL

12.1 This very detailed 'Technical consultation on planning' outlines a number of changes the Government proposes to make to the planning system including the following.

1. Changes to the Neighbourhood Planning system with the aim of making it *"even easier for residents and business to come together to produce a neighbourhood plan"*.

2. Significantly extending permitted development rights to reduce the number of proposals requiring planning permission from the Local Planning Authority, with the aim of *"supporting housing and growth"*.

3. Improvements to the use of planning conditions and *"enable development to start more quickly on site after planning permission is granted"*.

4. 'Improved' engagement with statutory consultees

5. Raising the screening threshold for when an Environmental Impact Assessment (EIA) is required for industrial estate and urban development projects, which are located outside of defined sensitive areas.

6. 'Improvements' to the nationally significant infrastructure planning regime amending regulations for making changes to Development Consent Orders, and expanding the number of non-planning consents which can be included within Development Consent Orders.

12.2 The 98-page consultation document poses a large number of questions (76 in total) to which responses are invited. The Government has asked for comments by Friday 26 September 2014. A copy of the consultation document can be viewed at: https://www.gov.uk/government/consultations/technical-consultation-on-planning.

12.3 **The advice for Planning Committee in this report focuses on the implications for Walsall and highlights areas of particular concern**. Responses to key relevant questions raised by the Government are set out in the attached Appendix, and these reiterate and reinforce the main points of concern.

Section 1: Neighbourhood Planning

We currently have no Neighbourhood Plans in the Borough. The proposals aim to make it easier for residents and business to come together to produce a neighbourhood plan.

The proposed statutory 10 week period for local planning authority to make a decision on whether or not to designate a neighbourhood area would be very tight, even maximising Delegation procedures. It could lead to 'premature' rejection pressures as there would be insufficient time to resolve any problems or objections. Funding could be reduced under the proposals if LPAs are not taking timely decisions.

The proposed removal of the 6 week statutory publicity requirement might impact on the 'soundness' of plans which proceed without full engagement, as well as on their standing in the community

Section 2: Reducing planning regulations

It is proposed to, in effect, expand the allowances in the General Permitted Development Order (GPDO) to enable a move from one property use class to another without the need to apply for planning permission. The aim is to enable businesses to increase their flexibility in adapting existing premises to meet changing demand. Allowing a wider range of permitted changes from industrial commercial and retail uses to residential use is intended to increase housing supply and support growth and re-invigorate the High Street.

There is a variety of proposals. These are discussed individually below, but raise general concerns:

- The proposed changes would reduce the numbers of planning applications received, replacing them in many cases with 'prior notification' arrangements. This could lead to a significant decrease in planning fee income, but would still place serious burdens on the authority – both on the planning service and on other services, notably Environmental Health.
- The proposals (coming on top of earlier changes) will lead to a confusing variety of exemptions and requirements that are different for different types and sizes of development in differing circumstances. For example, in some case the premises have to have existed at the time of the Budget, in other cases it is not clear whether there is such a requirement. This will be difficult to administer and to explain to the public.

Light industry and warehousing premises (a class B1c use) & warehousing storage and distribution properties (class B8), could be converted to residential uses (Class C3) *subject to certain assessment criteria being met,*

This proposed relaxation on change of use controls raises the greatest concern of any of the proposals. In Walsall (and in many other industrial areas, the greatest need is to protect and provide land and premises for employment. However, property values for industry in the area are only perhaps one-third (or even one fifth) of those for housing. In these circumstances, the proposed change would be likely to lead to the property owners pursuing residential uses or seeking higher prices / rents from would-be industrial occupiers potentially pricing out new business. Where housing is created in industrial areas, the result could be to constrain the operations of nearby businesses or even their closure under the Environmental Protection Act. The results of this would

be likely to be a the loss of viable businesses, higher costs for businesses, displacement of businesses and an inability to promote the redevelopment of existing industrial areas for modern economic uses. This would be likely to lead to job losses and unemployment locally. The regeneration strategy of the Black Country Core Strategy would be undermined and decentralisation of population would increase leading to growing pressure on the Green Belt. At the same time, the proposal is unnecessary as there is no local shortage of housing land within Walsall.

The requirement for certain assessment criteria to be met does not mention air quality considerations. Nor is there any reference, to external space requirements for parking and private amenity/ quality of the living environment. It is likely that the residential accommodation provided would be of poor quality in unsuitable environments and it would not be supported by obligations to help provide infrastructure nor include affordable housing.

Class C3 residential uses are not defined in this context and whilst the class has not generally been taken to include apartments the DCLG has in the past intimated that it does: the types of residential accommodation that would be permitted would need to be confirmed in the amended GPDO.

Certain 'sui generis' uses falling outside the defined classes, e.g. launderettes casinos & nightclubs would be allowed to change to C3 residential. But the list of defined uses does not appear exhaustive (further clarification is required) and the proposal could possibly lead to the undesirable loss of mixed use employment provision. As such uses are in commercial areas the change would also seem likely to lead to more enforcement / environmental health issues.

The temporary allowance for office uses (B1a) to covert to residential (currently in place up to 2016) is proposed to become a permanent provision beyond 2016. There seems no evidence to justify this, indeed it has been reported (incl by the RICS) as having led to a decrease in commercial activity. In Walsall, it would seem contrary to the need to diversify the economy. It is proposed to widen the assessment criteria available to the Council under the 'prior approval 'regime to allow for consideration of "strategically important" office accommodation. However, unless this can be established on a policy basis through the Local Plan, it would seem very difficult to make such a measure effective.

House extensions allowed under the temporary provisions available up 2016 are proposed to become permanent. Such large house extensions, up to 8m in length, have been very sensitive in parts of the borough where planning applications have been required, but to date none of these allowances has led to limited problems as so few have currently been built. The Council is receiving more of these and more residents are starting to object to the proposals. The allowances are still considered excessive with the potential to impact on the quality of residential environments over time, even though neighbours may not object, and permanent provisions are not welcomed.

It is proposed to merge the retail use class A1 with the financial and professional services class A2 "to increase flexibility in the high street". In the circumstances of Walsall with one very strong prime pitch but otherwise high levels of vacancies in the town and district centres this wider proposal should not be a problem. It is proposed to exclude betting and loan shops from this measure, but this is difficult to justify in planning terms as their land use impacts are not dissimilar from other retail/commercial

uses. The sensitivity surrounding the wider (non-planning) issues that these uses raise is recognised, but would be better addressed through gambling and consumer credit legislation.

It is proposed that A1/ A2 uses should be allowed to change to A3 restaurant uses. This could cause problems for those living above what are e.g. currently shops from noise, malodour and general disturbance. This could lead to complaints and enforcement issues for Environmental Health Officers. It could raise issues associated with the visual of impact of flues.
The 'prior approval' regime is proposed, similar to that in place for house extensions, where the planning authority only has intervention controls if the neighbours object to the proposed change of use. This opportunity could be constrained for tenants by the need to maintain landlord relationships.

It is proposed to allow changes from A1, A2 and some defined *sui generis* uses to Class D2 leisure and assembly uses, such as gyms and swimming pools. This could also introduce less desirable and often locally contentious uses without the need to apply for planning permission. A clear definition of which sui-generis uses would attract this allowance would be necessary.

Expansion of facilities for retailers, to enable them to adapt to on line shopping preferences, could take place through erection of small ancillary buildings, but there is no advice on how many buildings or controls on e.g. possible displacement of servicing areas, loading bays or parking provision. It is also likely that the proposals would benefit retailers outside of town centres rather than on the 'high street'.

Mezzanine floor allowances of 200m2 are proposed to be increased to allow larger amounts of floorspace, and advice on suitable limits is sought. Such opportunities are likely to occur in larger out of centre properties that can accommodate large mezzanines. This approach could, in such circumstances, undermine the vitality and viability of town centres and any increase is not welcomed in Walsall.

Maximum parking standards are questioned in the consultation document, and in a recent Ministerial statement. The Government is asking whether Councils are preventing developers from providing parking spaces they want by setting maximum levels that can be provided. Limiting parking to encourage use of other modes of transport is considered to help address the concerns about on street parking problems as part of a wider considered approach, and it will be vital to ensure that increased parking would not lead to traffic problems. If the proposals would lead to decreased densities then pressure on the Green Belt would be increased.

Solar panels allowances are proposed to increase from 50kw on non domestic property to 1MW, subject to the assessment criteria under the 'prior notification' procedures. Advice would be welcomed on how to assess the impacts of glare. Panels would be restricted on roofs fronting a highway in identified sensitive areas eg conservation areas, but consideration must also be given to cases where the roof fronts a square or park rather than a highway.

Extensions to business premises allowed under provisions introduced in May 2013 are to be extended indefinitely. Set criteria are in place for assessment under the 'prior approval' regime. It is considered that out-of-centre proposals for shops and other town centre uses should not be allowed without planning permission and compliance with the

planning policy tests. Also, the proposed stand offs for new buildings to the boundary should be increased from 2m (as proposed) to 5m to protect neighbours amenity and a height restriction should be imposed on the proposed 200m2 floorspace allowance for new buildings. Consideration should also be given to possible displacement of servicing and loading provision which could overspill onto the highway creating highway safety concerns.

Any risk of a possible 'ratcheting effect' resulting from capitalisation of one set of allowances being implemented prior to a change to another use class which offers further development allowance, should be explored.

Waste management facilities (classed as sui generis) are to be allowed permitted development rights enabling plant and machinery installations of up to 100m^2 or a 50% increase in the existing facilities. Provision needs to be made for this to be subject to assessments of noise, dust, malodour & visual impacts including installation height and stand off to boundaries. The proposals could have significant impacts in Walsall where 'cheek and jowl' housing and industry relationships remain common place.

The consultation also asks for any other suggestions for extending permitted development rights. It does not refer to any proposals to extend widen requirements for planning permission. Thus the proposals fail to address the issues by the loss of public houses facilitated by existing permitted development rights. The Government argues that Article 4 directions might be used, but these are bureaucratic and potentially costly for local authorities and are inadequate to address situations where pub operators put tens or even hundreds of premises on the market (as Marstons did last year). The change of use of existing public houses should be made to be subject to planning permission.

Section 3 Planning Conditions

The proposals call for a reduction in unnecessary conditions, sharing of draft conditions with developers on major applications, providing justification for pre-commencement conditions and a 'deemed discharge' when LPA's fail to act in a timely manner. Much of this is already good practice in Walsall. It can sometimes be the case that additional conditions have to be imposed to deliver permission on a planning application that is lacking in information. Further advice on any additional specific wording expected on reasons for pre-commencement would be helpful. It should be recognised that in cases where conditions are justified development should not be allowed without them. In particular development should not be allowed unless safety and avoidance of pollution can be ensured.

Section 4 Improved engagement with statutory consultees

Walsall has good relationships with statutory consultees and would aim to support any further steps to ensure proportionate involvement.

Section 5 Raising the screening threshold for when an Environmental Impact Assessment (EIA) is required

The Council is required by law to ensure that all development proposals likely to have "significant effects" on the environment are subject to EIA before it grants planning permission for them. The requirement for this comes from the European EIA Directive.

Thresholds have been set in the national EIA regulations for the “screening” of large-scale developments, to check whether EIA is required. The current requirement to screen urban development projects and industrial development proposals on sites of 0.5ha or more is onerous, and the EIA process is sometimes used as a basis for legal challenges to development proposals (usually by commercial rivals).

However, the proposed 5 ha threshold for housing, industrial and other urban development projects could be too large, and could mean that some developments likely to have “significant effects” on the environment would not be subject to EIA. If the Council were to grant permission for such a development, the decision would be vulnerable to legal challenge. This situation could occur in areas affected by existing environmental problems, where development in combination with the existing conditions could have “significant effects” on the environment, such as areas where there are significant flood risks and / or ground contamination. It is unclear how the proposals would address the requirements of the Directive for EIA to cover the cumulative impacts where development is proposed on different sites in the same area. A figure of 2ha would therefore be preferable for brownfield sites (no change to greenfield sites), and it may also be advisable to add to the list of “sensitive areas” identified in the regulations, where screening is required regardless of the size of the site.

The Government’s current proposals also do not take into account modifications to the EIA Directive which came into effect in May 2014, so it is unclear how the proposed thresholds would fit in with revisions to the national regulations, which will be needed to implement them. As it is local authorities’ whose decisions would be challenged if the national legislation is inconsistent with the EU legislation, we would ask that the ways in which the reformed system would be expected to work should be clearly spelt out and supported by an authoritative legal opinion that confirms the revised arrangements would meet the requirements of the modifications to the Directive.

Section 6 Improvements to the nationally significant infrastructure planning regime

This section focuses on simplification of the existing system for delivering significant infrastructure. There have been no such projects in Walsall and those authorities involved in the process would be best placed to comment.

APPENDIX

Response to key questions that are of concern for Walsall.

Section 1: Neighbourhood Planning

This section seeks to make it *"even easier"* to produce neighbourhood plans. However, as the council has no direct experience of neighbourhood planning, it is not proposed to comment.

Section 2: Reducing Planning Regulations

A. Change of use of light industrial (B1c) and warehousing (B8) to residential (C3)

Question 2.1: Do you agree that there should be permitted development rights for (i) light industrial (B1(c)) buildings and (ii) storage and distribution (B8) buildings to change to residential (C3) use?

Comment: This is not supported. The proposal is a cause for great concern.

In Walsall there is currently no shortage of land for housing. The council estimates there is a supply of about 9 year's worth of land for housing, and work on a Site Allocation Document is aiming to provide sufficient housing land for at least the period covered by the Black Country Core Strategy (to 2016).

On the other hand in Walsall (and in many other industrial areas), the greatest need is to protect and provide land and premises for employment. Whilst efforts are underway to diversify the economy, much of the future for the area must be founded on investment in industry and this is the major focus of the Strategic Economic Plan by the Black Country LEP. The Black Country represents a significant concentration of manufacturing industry and is attracting new investment (partly linked to the development of the new Jaguar Land Rover engine plant nearby in Wolverhampton / South Staffordshire), and Economic Development officers advise that there is a need for land and premises to provide for relocations, for expansions and to accommodate inward investment.

However, Asset Management officers (including expertise seconded recently from the private sector) advise that property values for industry in the area are only perhaps one-third (or even one fifth) of those for housing. In this context the immediate effects of the proposed change would be that property owners would seek to maximise values by pursuing housing use of their premises and/or arguing that the potential for housing values would justify higher rents. Where housing is created in industrial areas, the result could be to constrain the operations of nearby businesses or even force their closure under the Environmental Protection Act. The results of this would be likely to be a the loss of viable businesses, higher costs for businesses, displacement of businesses and an inability to promote the redevelopment of existing industrial areas for modern economic uses.

These kinds of effect have been seen, as a result of the Government's recent removal of requirements for planning permission for the change of use of offices to housing, in areas where housing values exceed those of commercial activities. A variety of

sources, including the RICS and the Financial Times have reported that this has led to a decrease in economic activity, which is surely contrary to professed efforts to promote growth. In the Black Country, where inner-urban residents have traditionally been employed in industry, the effects of job losses would be likely to lead to unemployment problems. Economic Development officers describe the likely consequences as *"disastrous"*.

In addition, the housing that might be created in industrial areas would seem likely to be poor quality, with a lack of amenity space, suffering conflicts with nearby businesses and potentially exposed to air pollution and ground contamination (areas along the M6 suffer exceedences of EU limits for air quality, whilst many industrial areas suffer a legacy of tipping an d contamination, including with poisonous heavy metals). This is likely to place considerable burdens on Environmental Health and Pollution Control functions, with on-going cases that would cause uncertainty for residents and businesses alike, but under the proposals it appears unlikely it could be guaranteed that people would be safe from potential health risks.

In addition, the housing that would be created would not be required to provide resources (via S106 obligations or the Community Infrastructure Levy) for necessary infrastructure or for measures that might mitigate local conflicts. This would mean that the quality of environment to be provided would be poor and the quality of areas in which such housing was located would seem likely to decline.

As far as the Black Country is concerned the overall implications of the proposals would seem likely to be an undermining of the urban economy and a worsening of the environment. This would be likely to fuel efforts to find land for economic development elsewhere and to encourage those who can to leave the area. The regeneration strategy of the Core Strategy would be undermined and decentralisation would increase pressures on the Green Belt.

Question 2.2: Should the new permitted development right (i) include a limit on the amount of floor space that can change use to residential (ii) apply in Article 1(5) land i.e. land within a National Park, the Broads, an Area of Outstanding Natural Beauty, an area designated as **a conservation area**, and land within World Heritage Sites and (iii) should other issues be considered as part of the prior approval, for example the impact of the proposed residential use on neighbouring employment uses?

Comment:
(i) <u>If</u> these proposal are implemented a floorspace limit should be introduced.
(iii) The impact of the proposed residential use on neighbouring employment uses should be considered as part of the prior approval process should certainly be able to be considered, but local authorities should be given the ability to identify and protect areas that are important for future employment. Also, it will be important to be able to prevent / control residential uses where occupiers would be exposed to poor air quality and / or ground contamination or other pollution. .

B. Change of use of *sui generis* uses such as laundrettes, amusement arcades /centres, casinos and night clubs, to residential use (C3 use)

Question 2.3: Do you agree that there should be permitted development rights, as proposed, for laundrettes, amusement arcades/centres, casinos and nightclubs to change use to residential (C3) use and to carry out building work directly related to the change of use?

Comment: This is not supported. The list of defined uses does not appear exhaustive (further clarification is required) and the proposal could possibly lead to the undesirable loss of mixed use employment provision. As such uses are in commercial areas the change would also seem likely to lead to more enforcement / environmental health issues.

Question 2.4: Should the new permitted development right include (i) a limit on the amount of floor space that can change use to residential and (ii) a prior approval in respect of design and external appearance?

Comment: Yes. There should also be measures to protect residents from pollution and from noise.

C. Change of use of offices to residential

Question 2.5: Do you agree that there should be a permitted development right from May 2016 to allow change of use from offices (B1 (a)) to residential (C3)?

Comment: There seems no evidence to justify this, indeed it has been reported (including by the RICS) as having led to a decrease in commercial activity. In Walsall, it would seem contrary to the need to diversify the economy. Efforts to develop an office market are likely to be frustrated where values do not match those that could be achieved for residential uses.

Question 2.6: Do you have suggestions for the definition of the prior approval required to allow local planning authorities to consider the impact of the significant loss of the most strategically important office accommodation within the local area?

Comment: Unless the principle of this proposal can be established on a policy basis through the Local Plan, it would seem very difficult to make such a measure effective, however defined.

D. Extensions to dwellings

Question 2.7: Do you agree that the permitted development rights allowing larger extensions for dwelling houses should be made permanent?

Comment: The allowances are still considered excessive with the potential to impact on the quality of residential environments over time, even though neighbours may not object, and permanent provisions are not welcomed.

E. Increasing flexibilities for High Street Uses

Question 2.8: Do you agree that the shops (A1) use class should be broadened to incorporate the majority of uses currently within the financial and professional services (A2) use class?

Comment: No objections in principle.

Question 2.9: Do you agree that a planning application should be required for any change of use to a betting shop or a pay day loan shop?

Comment: This proposal is understandable, but it could be difficult to justify in planning terms as their land use impacts are not dissimilar from other retail/commercial uses. The sensitivity surrounding the wider (non-planning) issues that these uses raise is recognised, but would be better addressed through gambling and consumer credit legislation.

Question 2.10: Do you have suggestions for the definition of pay day loan shops, or on the type of activities undertaken, that the regulations should capture?

Comment: No comment – see response to Q2.9

F. Supporting a broader range of uses on the High street

Question 2.11: Do you agree that there should be permitted development rights for (i) A1 and A2 premises and (ii) laundrettes, amusement arcades/ centres, casinos and nightclubs to change use to restaurants and cafés (A3)?

Comment: This could cause problems for those living above what are e.g. currently shops from noise, malodour and general disturbance. This could lead to complaints and enforcement issues for Environmental Health Officers. It could raise issues associated with the visual of impact of flues.
Under the proposed 'prior approval' regime the planning authority only has intervention controls if the neighbours object to the proposed change of use. This opportunity could be constrained for tenants by the need to maintain landlord relationships.

G. Supporting the diversification of leisure use on the High Street

Question 2.12: Do you agree that there should be permitted development rights for A1 and A2 uses, laundrettes, amusement arcades/centres and nightclubs to change use to assembly and leisure (D2)?

Comment: This could also introduce less desirable and often locally contentious uses without the need to apply for planning permission. A clear definition of which *sui-generis* uses would attract this allowance would be necessary.

H. Expanded facilities for Existing Retailers

Question 2.13: Do you agree that there should be a permitted development right for an ancillary building within the curtilage of an existing shop?

Comment: No objection in principle, but there is no advice on how many buildings or controls on e.g. possible displacement of servicing areas, loading bays or parking provision. It is also likely that the proposals would benefit retailers outside of town centres rather than on the 'high street', unless it was restricted to shops within town centres.

Question 2.14: Do you agree that there should be a permitted development right to extend loading bays for existing shops?

Comment: No objection in principle, but there is no advice on size limits or controls on e.g. possible displacement of servicing areas, or parking provision. It is also likely that the proposals would benefit retailers outside of town centres rather than on the 'high street', unless it was restricted to shops within town centres.

Mezzanine Floors

Question 2.15: Do you agree that the permitted development right allowing shops to build internal mezzanine floors should be increased from 200 square metres?

Comment: No**.** Such opportunities are likely to occur in larger out of centre properties that can accommodate large mezzanines*.* This approach could, in such circumstances, undermine the vitality and viability of town centres and any increase is not welcomed in Walsall.

Maximum Parking Standards

Question 2.16: Do you agree that parking policy should be strengthened to tackle on-street parking problems by restricting powers to set maximum parking standards?

Comment: Limiting parking to encourage use of other modes of transport is considered to help address the concerns about on street parking problems as part of a wider considered approach, and it will be vital to ensure that increased parking would not lead to traffic problems. If the proposals would lead to decreased development densities then pressure on the Green Belt would be increased.

....

J. Solar Panels

Question 2.18: Do you agree that there should be a permitted development right for the installation of solar PV up to 1MW on the roof of non-domestic buildings?

Comment: Advice would be welcomed on how to assess the impacts of glare. Panels would be restricted on roofs fronting a highway in identified sensitive areas e.g. conservation areas, but consideration must also be given to cases where the roof fronts a square or park rather than a highway.

K. Extensions to Business Premises

Question 2.19: Do you agree that the permitted development rights allowing larger extensions for shops, financial and professional services, offices, industrial and warehouse buildings should be made permanent?

Comment: Extensions for shops and other town centre uses outside of existing centres should remain the subject of planning controls including the sequential and impact tests. It is considered that the proposed stand-offs for new buildings to the boundary should be increased from 2m (as proposed) to 5m to protect neighbours amenity and a height restriction should be imposed on the proposed 200m^2 floorspace allowance for new buildings. Consideration should also be given to possible displacement of servicing and loading provision which could overspill onto the highway creating highway safety concerns.

Any risk of a possible 'ratcheting effect' resulting from capitalisation of one set of allowances being implemented prior to a change to another use class which offers further development allowance, should be explored.

L. Waste Management Facilities

Question 2.20: Do you agree that there should be a new permitted development right for waste management facilities to replace buildings, equipment and machinery?

Comment: Provision needs to be made for this to be subject to assessments of noise, dust, malodour & visual impacts including installation height and stand off to boundaries. The proposals could have significant impacts in Walsall where 'cheek and jowl' housing and industry relationships remain commonplace.

M. Equipment Housings for Sewerage Undertakers

Question 2.21: Do you agree that permitted development rights for sewerage undertakers should be extended to include equipment housings?

Comment: In principle this proposal is supported.

Other Comments

Question 2.22: Do you have any other comments or suggestions for extending permitted development rights?

Comment: The focus on extending permitted development rights avoids consideration of where improved controls would be needed. Thus the proposals fail to address the issues raised by the loss of public houses facilitated by existing permitted development rights. The Government argues that Article 4 directions might be used, but these are bureaucratic and potentially costly for local authorities and are inadequate to address situations where pub operators put tens or even hundreds of premises on the market (as Marstons did last year). The change of use of existing public houses should be made to be subject to planning permission.

Question 2.23: Do you have any evidence regarding the costs or benefits of the proposed changes or new permitted development rights, including any evidence regarding the impact of the proposal on the number of new betting shops and pay day loan shops, and the costs and benefits, in particular new openings in premises that were formerly A2, A3, A4 or A5?

Comment: No comment.

Question 2.24: Do you agree (i) that where prior approval for permitted development has been given, but not yet implemented, it should not be removed by subsequent Article 4 direction and (ii) should the compensation regulations also cover the permitted development rights set out in the consultation?

Comment: The proposals remove local controls and Article 4 directions should be able to restore such controls. The compensation requirements, however, make article 4 directions impractical in most cases.

Section 3: Planning Conditions

The consultation paper states that *"too many overly restrictive and unnecessary conditions are attached routinely to planning permissions, with no regard given to the additional costs and delays on sites which have already secured planning permission."*

Question 3.1: Do you have any general comments on our intention to introduce a deemed discharge for planning conditions?

Comment: Much of what's proposed in this is already good practice in Walsall. It can sometimes be the case that additional conditions have to be imposed to deliver permission on a planning application that is lacking in information. Further advice on any additional specific wording expected on reasons for pre-commencement would be helpful. It should be recognised that in cases where conditions are justified and/ or necessary to control harmful effects, development should not be allowed without them.

Question 3.2: Do you agree with our proposal to exclude some types of conditions from the deemed discharge (e.g. conditions in areas of high flood risk)? Where we exclude a type of condition should we apply the exemption to all the conditions in the planning permission requiring discharge or only those relating to the reason for the exemption (e.g. those relating to flooding)?
Are there other types of conditions that you think should also be excluded?

Comment: Conditions concerned to ensure safety should be excluded. It would be dangerous not to be able to ensure that sites are properly remediated and that instability problems, and/or exposure to ground, air or water pollution can be avoided.

Question 3.3: Do you agree with our proposal that a deemed discharge should be an applicant option activated by the serving of a notice, rather than applying automatically? If not, why?

Comment: Yes, if the proposal is introduced.

Question 3.4: Do you agree with our proposed timings for when a deemed discharge would be available to an applicant? If not, why? What alternative timing would you suggest?

Comment: No comment

Question 3.5: We propose that (unless the type of condition is excluded) deemed discharge would be available for conditions in full or outline (not reserved matters) planning permissions under S.70, 73, and 73A of the Town and Country Planning Act 1990 (as amended).
Do you think that deemed discharge should be available for other types of consents such as advertisement consent, or planning permission granted by a local development order?

Comment: It would appear logical to take a consistent approach. It should be noted, however, that most of the sites included in the Walsall part of the Black Country Enterprise Zone suffer stability, contamination and air quality issue..

Section 4: Planning Applications

The Government believes that the existing duty for statutory consultees to issue a 'substantive response' to an LPA even when they have no comment they wish to make results in 'unnecessary bureaucracy for consultees and reduces the efficiency and effectiveness of the planning application process'.

The overall aim is to ensure that statutory consultees are 'consulted in a proportionate way on those developments where their input is most valuable'.

The Government is also asking for views about how to measure the planning process from 'end to end'.

Comment: Walsall has good relationships with statutory consultees and would aim to support any further steps to ensure proportionate involvement. If such agencies are not required to comment, it would be useful to ensure that it is recognised that an agency does not intend to do when any particular application is being considered.

Section 5: Environmental Impact Assessment

The Government proposes raising the "screening" thresholds for the following types of "Schedule 2" development:

- Industrial estate development (including manufacturing, trading, distribution, and transport projects): raising the existing threshold of 0.5 hectares to 5 hectares; and

- Urban development projects (including retail, leisure and housing): also to 5 hectares, with an option of increasing the threshold for housing development further in due course – the Government has calculated that for housing schemes, based on an average housing density of 30 dwellings per hectare, the new higher threshold will equate to around 150 units.

Question 5.1: Do you agree that the existing thresholds for urban development and industrial estate development which are outside of sensitive areas are unnecessarily low?

Comment: While we have no objection to the raising of the screening thresholds for these types of "Schedule 2" development in principle, we consider that the thresholds proposed are too high. We are concerned that as a result some developments that could have "significant effects" on the environment will be excluded from the screening process. This would allow such developments to be approved without EIA being carried out, which would be contrary to the requirement in Article 2 (1) of the Directive.

Rather than showing that local planning authorities are *"over-implementing*" the Directive, the evidence presented in paragraph 5 of the consultation paper indicates that they are in fact effectively implementing the requirements of the current EIA regulations. The purpose of "screening" is to exclude developments which are not likely to have "significant effects" on the environment from the far more onerous requirement for EIA. As local planning authorities have been given the responsibility to ensure that the Directive has been complied with, it is unfortunately necessary for them to screen any

development that could have “significant effects” on the environment – a principle that has been established through the Courts.

We also note that there is no mention in the consultation paper about the amendments to the EIA Directive which were adopted by the EU on 15 May 2014, and the proposal does not appear to take these changes into account. We consider that any proposals to amend the criteria and thresholds for screening of Schedule 2 (Annex II) development should be brought forward in a comprehensive manner, alongside proposals to implement the other changes that need to be made to the EIA regulations. There should also be a further public consultation on new draft regulations required to transpose the 2014 amendments to the Directive into UK legislation, followed by updating and revision of the relevant NPPG sections to reflect the changes.
We would also ask that the ways in which the proposed revised EIA screening thresholds would be expected to work should be clearly spelt out and supported by an authoritative legal opinion, which confirms the revised thresholds would meet the requirements of the Directive, as modified.

Question 5.2: Do you have any comments on where we propose to set the new thresholds?

Comment: We agree that there appears to be no case at the present time for raising the screening thresholds for categories of development other than “urban development projects” and “industrial estate development” (Paragraphs 10 (a) and 10 (b) of Schedule 2). It would have been helpful if more justification had been provided for this, for example, a summary of the evaluation of thresholds and criteria for the other “infrastructure development” categories in Paragraph 10 and the other paragraphs of Schedule 2. We suggest that such evidence will be required to support the revision of the 2011 EIA Regulations, which will be required to transpose the 2014 amendments of the Directive in due course.

However, we do not agree that the threshold should be raised from the current 0.5 hectares for any category of development on a greenfield site, as this would allow some developments likely to have “significant effects” on the environment to avoid EIA, contrary to the Directive. Few would disagree that the development of a large greenfield site for housing or industry could have “significant effects” on the environment. Although in many cases such effects may be mainly visual effects and effects on the landscape, there is also potential for other “significant” environmental effects, such as effects on mineral resources, below-ground archaeology and biodiversity.

While we agree there is a good case for raising the threshold for screening of both “urban development projects” and “industrial estate development” on brownfield sites, 5 hectares seems to us too high in both cases. Arguably, any development of this scale could have “significant effects” on the landscape/ townscape, as well as other aspects of the environment. For example, industrial development falling within Use Class B2 includes a wide range of processes which could have environmental effects. Development falling within Use Classes B1, B8, A1-A5 and D2 can also generate a major net increase in road traffic movements, which could also have “significant effects” on the environment, particularly where there is a change from a less intensive land use.

Furthermore, there is a general obligation in Annex III of the Directive (as amended) (Schedule 3) for screening to take into account the effects of “cumulation” of a proposed development project with existing and/ or approved development. This is because there

is potential for the combined effects of many small developments in the same area on the environment to be “significant,” even though the effects of individual developments on their own might not be. If the threshold for screening is set too high, development that would cause or contribute to such effects may not always be subjected to EIA, which would be contrary to the Directive. We would therefore recommend raising the threshold for screening of brownfield sites only, to 2 hectares, as this should ensure that “cumulation” effects are given due consideration.

If the site area threshold for “urban development projects” and “industrial estate development” is raised, we would also recommend expanding the list of “sensitive areas” in Regulation 2, to ensure that smaller sites are still subject to screening where there is potential for the combined effects of the development and existing environmental factors (for example, areas at risk of flooding, or areas with ground condition problems) to have “significant effects” on the environment.

Question 5.3: If you consider there is scope to raise the screening threshold for residential dwellings above our current proposal, or to raise thresholds for other Schedule 2 categories, what would you suggest and why?

Comment: No, we do not consider there is scope for this without risking non-compliance with the Directive, particularly for development on greenfield sites. To ensure compliance, it is necessary to have a system in place to screen any development that could have “significant effects” on the environment. See responses to 5.1 and 5.2 above.

Section 6: Nationally Significant Infrastructure Projects

This section focuses on simplification of the existing system for delivering significant infrastructure.

Comment: There have been no such projects in Walsall and those authorities and agencies involved in the process would be best placed to comment.