

## **STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

### **Report to the Service Delivery Overview and Scrutiny Panel**

**16<sup>th</sup> September 2020**

<b>TITLE:</b>	<b>Recent and proposed changes to the Planning System including the Planning White Paper 2020</b>
<b>PORTFOLIO:</b>	<b>Councillor Wain – Planning, Development and Property</b>
<b>OFFICER:</b>	<b>Ben Haywood – Head of Development Services</b>

### **Appendices Attached**

- APPENDIX 1 Changes to the current planning system implications and comments summary table.
- APPENDIX 2 White Paper Proposals, implications and comments summary table.

#### **1. Reason for the Report:**

1. To appraise Members of:
  - a. recent changes to the planning system enacted in the Business and Planning Act 2020
  - b. proposed changes to the current Planning System as set out in the Government Consultation Document Published 6 August 2020
  - c. proposed changes as set out in the White Paper “Planning for the Future” which was published for consultation by Government on 6th August 2020
2. To consider the Council’s response to the consultations.

#### **2. Recommendation**

- 2.1 That Members note the report and delegate authority to the Executive Director (Place) to prepare a final response to both consultations based on the attached summary tables, incorporating any comments of the Service Delivery Overview and Scrutiny Panel and Cabinet and to submit them to Ministry of Housing, Communities & Local Government before the end of the consultation periods.

### 3. Executive Summary

3.1 The Business and Planning Bill received Royal Assent on 22 July 2020. It introduces a series of changes to planning legislation intended to help businesses, particularly in the hard-hit hospitality and construction sectors, to get back to work safely and quickly. The key changes are:

- An automatic extension to planning permissions and listed building consents which have lapsed or are due to lapse between 23 March and 31 December 2020.
- A temporary, fast track deemed consent route for developers to apply to local planning authorities to vary existing conditions, or the details submitted under a condition, that limit construction site working hours.
- The previous Class A1 (shops), A2 (financial and professional services), A3 (restaurants and cafés) and Class B1 (business), are to be grouped together into a new Use Class – Class E (commercial, business and service) along with uses such as gyms, nurseries and health centres (previously Class D1) and non-residential institutions, such as assembly and leisure (previously Class D2)
- New permitted development rights are being introduced to extend buildings upwards to create new homes and living space subject to the developer applying to the Local Planning Authority for “prior approval” of certain aspects of the development such as design. However, the LPA cannot call into question the “principle” of the development.
- Similar provisions are being introduced to allow vacant and redundant free-standing commercial and light industrial premises, and residential blocks of flats, to be demolished and replaced with new residential units.

3.2 The implications of the changes include:

- Reduction in the number of planning applications but potential increase in the number of prior approval and other applications.
- Possible reduction in planning fee income
- Economic benefits for developers and associated construction industry in the area and those looking to establish new businesses
- Potential to boost housing land supply but may slow delivery
- Less opportunity for consultation with the public, Parishes and Councillors
- Positive and negative impacts on the vitality and viability of town centres
- Limiting the number of factors which can be taking into account when considering applications for redevelopment of buildings for residential or “building-up”. In particular loss of ability to control the “principle” of development

3.3 The consultation “Changes to the Current Planning System” sets out proposals for measures to improve the effectiveness of the current planning system. The 4 main proposals are:

- changes to the standard method for assessing local housing need
- securing of First Homes through developer contributions in the short term until the transition to a new system
- supporting small and medium-sized builders by temporarily lifting the small sites threshold below which developers do not need to contribute to affordable housing
- extending the current Permission in Principle to major development

3.4 The proposed changes to the current planning system will update the standard methodology for assessing housing requirements. Consideration of the size of existing housing stock and the long term affordability over the past ten years will now be considered in determining needs. This has the effect of increasing housing needs in areas with an existing large stock and/or affordability issues. Plans for new “First Homes” are also proposed alongside increasing the threshold for affordable housing contributions. This will result in fewer affordable homes being developed in the district that meet the needs as assessed in our Strategic Housing Market Assessment.

3.5 The White Paper, titled “Planning for the Future”, sets out a series of high-level reforms to streamline and modernise the planning process. Key changes include:

- A significant emphasis on design and sustainability,
- Changes to the system of developer contributions to infrastructure,
- Change to a zonal planning system setting out whether planning permission for certain developments will be granted on a given site. Under the proposals, land will be designated into three categories: Growth areas, Renewal areas and Protected areas
- National development management policies with local plans focusing on site or area specific issues.
- Simplified local plan process with single statutory sustainability test.
- Penalties for LPAs that fail to adopt plans within 30 months.
- Standard methodology for assessing local housing need that is binding, with the intention of creating greater certainty. Need to be assessed over minimum period of 10 years, rather than the current 5 years for housing.
- Local Plans should be visual and based on the latest digital technology,
- Raising affordable housing thresholds
- Strengthening planning enforcement powers

3.5 Key issues and concerns include:

- Increased certainty but potentially less flexibility
- Loss of protection for some areas
- More streamlined processes but risks around community engagement and ability to influence at a local level.
- Positive move towards use of technology but risk of moving towards automated decision making and loss of democratic control and flexibility.
- Significant concerns around binding standard housing methodology due to inability to factor in local constraints
- Scrapping the 5 year supply requirement is welcomed.

- Removal of time extensions risks more refusals, appeals and resubmissions and may lengthen process.
- 30 month deadline for local plans raises significant resource issues particularly for the Alliance which is responsible for 2 local plans. This again also raises local engagement issues.
- Emphasis on design is to be welcomed but how is “beautiful” defined and how this fits with creating “certainty”.
- Emphasis on climate change and sustainability to be welcomed but concerns about how this would work in practice, impact on protected assets and whether targets are ambitious enough.
- Concerns about national levy and local viability issues as well as raising of threshold for contributions. Issues around flexibility and setting spending priorities
- Unclear whether “in-kind” delivery of affordable housing on site would be mandatory

#### **4. How this report links to Corporate Priorities**

- 4.1 The Council’s Corporate Plan identifies that our key priorities include “ High quality development and building control with an “open for business approach””

#### **5. Analysis and Summary of Changes**

##### **Business and Planning Act 2020**

- 5.1 The Business and Planning Bill received Royal Assent on 22 July 2020. It introduces a series of changes to planning legislation intended to help businesses, particularly in the hard-hit hospitality and construction sectors, to get back to work safely and quickly.

##### **5.2 Extending Planning Permissions**

- The Act provides for an automatic extension to planning permissions and listed building consents which have lapsed or are due to lapse between 23 March and 31 December 2020.
- This extension will be to 1 May 2021.
- The extension will apply automatically for permissions and consents which are extant in between the measures coming into force on 19 August 2020 and 31 December 2020.
- Any planning permissions which have lapsed since 23 March 2020 can be reinstated and extended subject to an Additional Environmental Approval.

##### **5.3 Construction Site Hours**

- A temporary, fast track deemed consent route for developers to apply to local planning authorities to vary existing conditions, or the details submitted under a condition, that limit construction site working hours.
- Came into force on 28 July 2020.

- Local authorities have 14 calendar days excluding public and bank holidays to consider such applications. If they are not determined in this period they will be given a deemed consent.
- If an application is approved, this will temporarily amend planning restrictions on construction working hours until 1 April 2021, unless another earlier date has been requested by the applicant or decided upon by the local planning authority, with the agreement of the applicant.
- There is no requirement for publicity or consultation although we have decided to notify
  - Parish/Town Council
  - Ward Members
  - Environmental Health
 And give them 10 days to respond.
- The guidance says local planning authorities should not refuse applications to extend working hours until 9pm, Monday to Saturday without very compelling reasons. In some cases, such as in areas without residential properties, extending working hours beyond this, including allowing 24-hour working where appropriate, may be justified.
- If the authority wish to propose minor changes to the proposed hours these will need to have been agreed in writing by the applicant
- In considering the application the LPA can take into account:
  - need for proposed extended working hours as a result of social distancing;
  - any mitigating measures to be put in place to avoid significant impacts on businesses and the health and quality of life of those people in the near vicinity;
  - the original reasons for any existing limits on construction working hours,
  - the extent of additional working, compared to current permitted hours, and degree to which this variation is expected to result in local impacts that cannot be mitigated.
- The LPA will need to give careful consideration to applications which are
  - in proximity to businesses or community uses which are particularly sensitive to noise, dust and vibration e.g. hospitals, or places of worship,
  - made in relation to sites in close proximity to residential areas where the request for changing hours is likely to have a significant impact on health,
  - made in relation to EIA development
  - made in relation to development which was subject to a Habitats Regulations Assessment
  - for development adjacent to Sites of Special Scientific Interest,
 Where an adverse impact can be demonstrated with regard to the above a refusal of the application could be justified

#### 5.4 Use Classes & Changes Of Use

- The changes come into effect from 1 September 2020.
- In simple terms, the previous Class A1 (shops), A2 (financial and professional services), A3 (restaurants and cafés) and Class B1 (business), are to be grouped together into a new Use Class – Class E (commercial, business and service).

- In addition, uses such as gyms, nurseries and health centres (previously Class D1) and non-residential institutions, such as assembly and leisure (previously Class D2) are also now included within the new Class E.
- This means that with effect from 1 September, building or land currently within Classes A1-A3, B1, D1 and D2 use will no longer require planning permission to be changed for another use within the new Class E.
- However, there are some exceptions.
  - Former Class D1 and D2 uses that are not included within the new Class E (and will therefore continue to require a change of use permission) include:
    - Small-scale shops (up to 280sqm, located 1000 metres or more from another retail unit), schools, libraries and art galleries, swimming pools, skating rinks and areas for outdoor sports. These are now included within two new Use Classes (F1 and F2).
    - Drinking establishments (formerly Class A4) and hot food takeaways (formerly Class A5), together with cinemas, concert, dance and bingo halls (formerly within Class D2) are removed from the defined use classes, and will therefore require permission for any material change of use.
    - Where relevant, any Article 4 Directions imposed by an LPA and controlling changes of use within specific areas will remain in force.
    - Restrictive conditions already in place through relevant permissions (and S106 agreements) will remain in force.
    - Where relevant, planning permission will still be required for external alteration

#### 5.5 Building Up (Flats)

- New permitted development rights are being introduced to extend buildings upwards to create new homes and living space.
- From 1 August 2020 purpose-built freestanding blocks of flats of three storeys or more can be extended upwards by up to 2 additional storeys to create new homes, up to a height of 30m.
- However the applicant must apply for prior approval of the authority as to—
  - (a) transport and highways impacts of the development;
  - (b) air traffic and defence asset impacts of the development;
  - (c) contamination risks in relation to the building;
  - (d) flooding risks in relation to the building;
  - (e) the external appearance of the building;
  - (f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;
  - (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light; and
- Applications must be publicised by site notice, & neighbour letter for 21 days
- The development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval.

#### 5.6 Building Up (Other Buildings inc. Houses)

- A second phase of new permitted development rights to build upwards allow up to 2 additional storeys on free standing blocks, up to a height of 30 metres,

and on buildings in a terrace (of 2 or more buildings) in certain commercial uses come into force on 31 August 2020.

- They also allow up to 2 additional storeys on existing houses, detached or in a terrace, to create new self-contained homes or additional living space up to a height of 18 metres (7m over existing).
- Single storey homes will be able to add 1 additional storey (up to 3.5m in height over existing).
- Semi-detached and terraces will not be able to exceed 3.5m above the height of the attached dwelling.
- There are a number of other limitations on materials and roof pitch (which must match existing), no side windows etc.
- Prior approvals of the Authority will be required as to—
  - (i) impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light;
  - (ii) the external appearance of the dwellinghouse, including the design and architectural features of— (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway;
  - (iii) air traffic and defence asset impacts of the development; and
- Applications must be publicised by site notice, & neighbour letter for 21 days
- The development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval

#### 5.7 Demolition and Rebuilding as Residential

- From 31 August 2020 new PD Right allows vacant and redundant free-standing commercial and light industrial premises, and residential blocks of flats, to be demolished and replaced with new residential units.
- At the same time the right will allow up to 2 storeys to be added to the height of the original building, up to a max of 18 metres.
- The regulations in respect of this don't appear to have been published yet but it will be subject again to prior approval and it is anticipated that the process and matters which the LPA can consider will be similar to those above.

#### 5.8 Extended opening of holiday parks, caravan parks and campsites

- Government has issued a Written Ministerial Statement to emphasise that planning enforcement is a discretionary activity, and local planning authorities should not seek to undertake enforcement action which would unnecessarily restrict the ability of holiday parks, caravan parks and campsites to extend their open season.
- Local planning authorities should also prioritise decision making for applications to vary relevant planning conditions, and take account of the economic benefits resulting from extended opening.

### ***Consultation: Changes to the Current Planning System***

- 5.9 This consultation sets out proposals for measures to improve the effectiveness of the current planning system. The 4 main proposals are:

- changes to the standard method for assessing local housing need
- securing of First Homes through developer contributions in the short term until the transition to a new system
- supporting small and medium-sized builders by temporarily lifting the small sites threshold below which developers do not need to contribute to affordable housing
- extending the current Permission in Principle to major development

### ***White Paper “Planning for the Future”***

- 5.10 The White Paper, titled “Planning for the Future”, sets out a series of high-level reforms to streamline and modernise the planning process. It has a significant emphasis on design and sustainability, and seeks to improve the system of developer contributions to infrastructure, and ensure more land is available for development.
- 5.11 The White Paper contains 24 proposals set out under 3 “pillars” as follows:  
 Pillar 1: planning for development  
 Pillar 2: planning for beautiful and sustainable places  
 Pillar 3: planning for infrastructure and connected places
- 5.12 The main changes include:
- A fundamental change to a zonal planning system setting out whether planning permission for certain developments will be granted on a given site. Under the proposals, land will be designated into three categories:
    - **Growth areas:** Proposals for new homes, hospitals, schools, shops and offices will be automatically allowed.
    - **Renewal areas:** Proposals for development, largely on urban and brownfield sites, will be permitted through a prior approval system.
    - **Protected areas:** Development on Areas of Outstanding Natural Beauty and National Parks will continue to be restricted.
  - Development management policies established at national scale and Local Plans to focus on identifying areas for development and protection. Development management policy contained in the plan would be restricted to site or area-specific requirements,. The National Planning Policy Framework would become the primary source of policies for development management.
  - The Local Plan process would be streamlined and subject to a single statutory “Sustainable Development” test, replacing the existing test of soundness, updating requirements for assessments and abolishing the Duty to Cooperate.
  - Changes to the standard methodology for assessing local housing need. At present, the system allows housing requirements to be constantly challenged through the Local Plan process and at Appeal by developers, leading to delays in plan preparation and determining applications. The new methodology would create a standard requirement that is binding, with the intention of creating greater certainty. The new standard method would set out development needs such as homes, businesses and community facilities for a minimum period of 10 years, rather than the current 5 years for housing.

- Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.
- A pledge to create a system that will ensure local housing plans are developed and agreed within 30 months. This deadline would be driven by legislation with sanctions for local authorities that fail to meet this timescale.
- Increased emphasis on design and delivering “beautiful places”, including more design guidance and design codes to be prepared locally with community involvement with emphasis on local character.
- Promotion of all new homes to achieve a zero carbon ready status with without the need for costly retrofitting.
- A simpler national levy to replace the current system of CIL and S106 providing more certainty around financial obligations.
- A review of affordable housing thresholds increasing the threshold above which affordable housing is required. The reasoning being that this would potentially make more sites viable and would speed up the pace of delivery by removing the need for negotiation.
- A rules-based system that makes it clearer to understand development requirements for a scheme and allocation, to reduce the number of planning cases that go to appeal instead of generalised policies
- Securing of First Homes for local people, key workers and first-time buyers at a 30% discount through developer contributions in the short-term until transition to a new system.
- Investing in people and skills to deliver the planning system
- Strengthening planning enforcement powers and sanctions available to local planning authorities to ensure they support the new planning system. Introduction of more powers to address intentional unauthorised development, consider higher fines, and look to ways of supporting more enforcement activity.
- Extending the current Permission in Principle to major developments.

5.13 Each of the proposals are detailed in full in the table at Appendix 2 of this report. The White Paper is inviting views on the proposed changes and poses a series of 26 questions. It is recommended that a response to these questions is drafted based on the comments, implications and observations within the table along with any further views which the Scrutiny Panel and Cabinet / ALT have following their discussion and consideration of this report.

## 6. Implications

### **Business and Planning Act 2020**

#### Workload and Financial

6.1 Removal of the need for planning applications to renew lapsed consents, and for certain changes of use, will reduce workloads slightly and along with them some reduction in Fee Income. No fee is changeable for the fast track applications to vary construction site hours. However, arguably, such applications do not represent lost income as such requests would probably not

have been made prior to COVID-19. Nevertheless they represent an additional workload burden.

- 6.2 Although planning applications will not be required for “building up” or demolition and rebuilding as residential, “prior approval” applications will be needed and therefore no change is envisaged in terms of workload. Furthermore fees will be payable for the new prior approval applications. For example, the fee for a prior approval application under Part 20 (construction of new dwellings) where the number of new dwellings proposed is 50 or fewer is £334 for each new dwelling; but where the number of new dwellings proposed by the development exceeds 50, the fee is £16,525, plus an additional £100 for each new dwelling in excess of 50, subject to a maximum in total of £300,000. By comparison standard planning application fees for dwellings are £462 per dwelling up to 50 dwellings. Where the development exceeds 50 dwellings £22,859 and an additional £138 per dwelling in excess of 50, subject to a maximum total of £300,000. Therefore some loss of revenue could be expected on this basis, but this is on the assumption that the same proposal would have been forthcoming under the previous regime and that the changes have not incentivised the development to come forward in the first instance which case it could be regarded as additional income.

#### Workforce

- 6.3 Overall it is considered that any reduction in planning applications numbers and associated fees are likely to be cancelled out by an increase prior approval applications and fees therefore no significant workforce implications are identified at this time. However, as always staffing levels within the team will need to be kept under review to ensure that we are responding to the needs and demands of the service and budgets.

#### Legal

- 6.4 The Council must ensure that it complies with and operates in accordance with the new legislation and regulations to ensure that it remains free from legal challenge and makes planning decisions in a lawful manner. Work has already been put in hand to amend processes and procedures such as planning validation and staff training to ensure that we are able to accept and process correctly new types of application.
- 6.5 The National Planning Policy Framework (NPPF) states that there are 3 aspects to sustainable development (social, economic and environmental). The automatic extension to planning consents is positive from a housing land supply perspective in that consents will remain extant and therefore in the Council’s 5 year supply for longer. However, it may encourage developers to delay commencement and therefore slow delivery. It will also mean that the Council does not have the opportunity to reassess any changes in circumstances or policy prior to renewing lapsed consents.
- 6.6 The fast-track applications to vary working hours are positive from an economic development point of view and restarting the construction industry.

However, there are potential implications for the amenity of neighbouring occupiers and less opportunity for potentially affected residents, Parishes and members to comment on changes.

- 6.7 The changes to the use classes are positive from an economic development point of view in that it will allow new businesses to establish or existing ones to expand without going over the hurdle of planning applications with associated cost and time implications. It takes into account the changing shape of town centres and the movement away from retail. For example, it would allow a vacant shop in a high street to be converted to a café or gym without planning permission. However, it would also allow an office building or light industrial unit on an out of town business park to become a shop, for example, which could be detrimental to the vitality and viability of the town centre and could result in the loss of valuable employment space.
- 6.8 The new permitted development rights to allow buildings to be extended upwards and rebuilt as to create additional dwellings would be beneficial from a housing land supply point of view. It would also help to bring back into use derelict and redundant brownfield sites. The Local Planning Authority would still retain control over some aspects of the scheme such as design and amenity considerations. However, they would not be able to call into question the principle of the development. For example, there would be no opportunity to challenge the sustainability of redeveloping a redundant building in the open countryside, remote from shops and services, as large residential development. Similarly, for example, under the policies in the NPPF, extensions to properties in the Green Belt are only currently granted planning permission if they are not disproportionate to the original dwelling and maintains the openness of the Green Belt. Adding 2 floors to a property under permitted development rights could result in a disproportionate extension and may be harmful to openness but if it were constructed under permitted development rights, the Council could not refuse it on these grounds. This has a significant implication for this Council's area, as substantial amount of which lies within Green Belt.

### **Changes to the Current Planning System**

- 6.9 The proposed changes to the current planning system will update the standard methodology for assessing housing requirements. Consideration of the size of existing housing stock and the long term affordability over the past ten years will now be considered in determining needs. This has the effect of increasing housing needs in areas with an existing large stock and/or affordability issues. Plans for new "First Homes" are also proposed alongside increasing the threshold for affordable housing contributions. This will result in fewer affordable homes being developed in the district that meet the needs as assessed in our Strategic Housing Market Assessment. A full analysis of the implications of the changes is provided in the Table at Appendix 1.

### **Planning White Paper**

6.10 A full analysis of the implications of the changes is provided in the Table at Appendix 2. However, key issues and concerns include:

- Increased certainty but potentially less flexibility
- Loss of protection for some areas
- More streamlined processes but risks around community engagement and ability to influence at a local level.
- Positive move towards use of technology but risk of moving towards automated decision making and loss of democratic control and flexibility.
- Significant concerns around binding standard housing methodology due to inability to factor in local constraints
- Scrapping the 5 year supply requirement is welcomed.
- Removal of time extensions risks more refusals, appeals and resubmissions and may lengthen process.
- 30 month deadline for local plans raises significant resource issues particularly for the Alliance which is responsible for 2 local plans. This again also raises local engagement issues.
- Emphasis on design is to be welcomed but how is “beautiful” defined and how this fits with creating “certainty”.

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