

Dear Councillor

**OVERVIEW AND SCRUTINY PANEL (ENVIRONMENTAL WELL-BEING) -
TUESDAY, 7 DECEMBER 2010**

I am now able to enclose for consideration at the above meeting the following reports that were unavailable when the agenda was printed.

**Agenda Item
No.**

**8. PLANNING FOR SCHOOLS DEVELOPMENT: CONSULTATION
(Pages 1 - 8)**

To consider the draft response to the Planning for Schools Development Consultation. (to follow)

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OVERVIEW AND SCRUTINY PANEL (ENVIRONMENTAL WELL-BEING)

7TH DECEMBER 2010

PLANNING FOR SCHOOLS DEVELOPMENT: CONSULTATION (Report by Councillor P J Downes)

1 INTRODUCTION

- 1.1 This report is to notify members of the Overview and Scrutiny (Environmental Well-being) Panel of the consultation from Communities and Local Government on 'Planning for Schools Development'. The consultation closes on 10 December 2010.
- 1.2 Members of the Panel are invited to comment on the proposed response set out in Section 3 of this report.
- 1.3 The consultation document can be viewed at:

<http://www.communities.gov.uk/publications/planningandbuilding/planningschoolsconsultation>

2 'PLANNING FOR SCHOOLS' CONSULTATION

Background

- 2.1 The consultation examines the scope for making changes to the Town and Country Planning (General Permitted Development) Order 1995 to make it easier for buildings currently in other uses to be converted to schools. This follows the Coalition Government's statement that it is committed to giving parents, teachers, charities and local communities the chance to set up new schools to encourage competition and innovation.
- 2.2 The consultation proposals are intended to make it easier for promoters of new schools to convert existing buildings for school use; where a school development requires changes to the exterior of a building or the construction of new buildings, then planning permission will still be needed through the normal process.
- 2.3 The Town and Country Planning (Use Classes) Order 1987 sets out certain categories of uses for planning purposes. Changes of use of buildings where both the existing and proposed use fall within the same class are excluded from the definition of development and do not require planning permission. In addition, the General Permitted Development Order provides further flexibility by classifying certain changes of use between the classes as permitted development which does not require planning permission.
- 2.4 The Use Classes Order places non-residential education and training centres within the D1 class alongside places of worship, clinics, health centres, museums, public halls, libraries, art galleries, exhibition halls and other uses. There is currently no permitted change without planning permission either to a D1 class from another class or from a D1 class to another class.

Key matters for consideration

2.5 The consultation document outlines several key areas for consideration, including:

- *Deregulation* – The consultation emphasises that the Government is keen to free up the planning system and does not believe that it is desirable to regulate development where there is no genuine need to do so. The free schools programme is intended to enable schools to be set up where there is a community demand, and the Government wishes to ensure that there are no unnecessary barriers that could hold back community aspirations.
- *Impact on neighbours and the surrounding area* – Change of use of a building can have an impact on the amenity of neighbours. The impact of a school is likely to be greater where the existing use is very different to a school, and school use may lead to increases in noise or traffic. Schools have a very particular travel pattern with a morning and afternoon peak period that is unlikely to be replicated by the former building use.
- *Transport* – The development of a school is likely to have impacts on public transport, access and road safety. Currently, as part of the planning application process, schools developers can be required to produce a travel plan to consider issues such as pedestrian and cycle routes, road safety, highways improvements, access and parking. Removing the need to apply for planning permission would remove the obligation to prepare a travel plan. However, the consultation argues, allowing schools to open where communities want them will allow some pupils who have previously had to travel some distance to attend schools nearer their home.
- *Noise* – The consultation highlights that change of use to a school may increase noise for neighbours. There may be other ways of dealing with the problem, such as through environmental health legislation, but the consultation recognises that this may simply transfer the regulatory burden and not reduce it.
- *Infrastructure demands* – The consultation argues that, once a school is established, school representatives will take responsibility for managing impacts on the neighbourhood. However it is recognised that the creation of a new school may generate demands for additional infrastructure, in the form of safer pedestrian and cycle routes and car parking, that the local authority may not have budgeted for.

Consultation options

2.6 The consultation puts forward four options:

- *Option 1: Retain the current framework and make no changes* – There may already be sufficient buildings within the D1 use class that could be converted to schools without planning permission.
- *Option 2: Give a permitted development right for some uses to convert to a school use* – This option would allow changes of use to a school for certain uses which could be considered to have similar or greater impacts to a school use. The Government suggests that these uses would be: shops (A1); financial and professional services (A2); business offices (B1); storage or distribution (B8); hotels (C1); residential institutions (C2); secure residential institutions (C2A); and assembly

and leisure (D2).

- *Option 3: Give a permitted development right for all uses to convert to a school use* – The consultation recognises that there will always be some properties which may be unsuitable for use as a school, but expects that school promoters would eliminate them from consideration.
- *Option 4: Give a permitted development right, with attached conditions, for all uses to convert to a school use* – This would seek to provide the same freedoms as Option 3, but would require promoters to assess the transport impacts that could arise from the development and have any mitigation measures approved by the local planning authority before they can activate the permitted development right. However, the consultation highlights that this could introduce delay into the process.

2.7 In addition to these options, the consultation also raises three other issues:

- *Right to revert to the previous use* – In order to encourage owners to lease properties to schools on a temporary basis (for example, while other premises are being developed) the consultation proposes that provision be made to revert to the previous use within five years. (See Question 3 below.)
- *Compensation for removal of Article 4 powers* – Local planning authorities can restrict or remove permitted development rights through Article 4 powers (through the Town and Country Planning (General Permitted Development) Order 1995) where it is justified that development should not be carried out unless planning permission is granted. These directions can be used for listed buildings, houses in conservation areas and other buildings and land. If permission is refused then the applicant may be able to claim compensation if the application was made within 12 months of the direction coming into force. However, if the local planning authority gives at least 12 months' notice in advance of the withdrawal of the permitted development right, no compensation will be payable. The consultation asks whether these powers should also apply to permitted development for school uses. (See Question 7 below.)
- *Co-location of schools with other uses* – The consultation asks for views on the desirability of schools co-existing with other uses. It suggests that it may be acceptable to operate a school from a floor of an office building or within a retail complex, but undesirable to share premises with other uses (such as pubs or fast food restaurants). (See Question 8 below.)

3 PROPOSED CONSULTATION RESPONSE

3.1 The consultation asks 11 questions which are set out below. Proposed responses are given in italics after each question.

Question 1: Do you think that the uses listed under Option 2 should be given a permitted development right to convert to a school?

<i>A1</i>	<i>Shops</i>
<i>A2</i>	<i>Financial and professional services</i>
<i>B1</i>	<i>Business</i>

B8	Storage or distribution
C1	Hotels
C2	Residential institutions
C2A	Secure residential institutions
D2	Assembly and leisure

- (1) *Huntingdonshire District Council considers that the transport impacts of the proposals need full consideration. The proposals, as currently put forward in Options 2 and 3, would remove the opportunity for the transport impacts of any development to be identified and mitigated by the developer; impacts would have to be addressed afterwards by the Local Highway Authority.*
- (2) *Paragraph 24 of the consultation suggests that the creation of a free school has the potential to reduce the distances that pupils travel (currently an average of 2.9 miles). However, in practice, parents and pupils may be willing to travel considerable distances to attend a specialist school or high performing school, which makes cycling and walking less feasible as transport options. This highlights the need for Travel Plans to be prepared as part of new school developments.*
- (3) *It is acknowledged that where schools are developed within existing buildings, previous uses will have generated their own levels and patterns of traffic. However, very few of the uses listed generate traffic levels and patterns similar to education establishments, with two specific peaks in the morning and afternoon when all of the users of the premises wish to have access at the same time. (This is very different from a shop, for example, which would generally have a steady demand for street space and parking throughout the day.) For education establishments even the two peaks differ, with the morning peak usually being of shorter duration (parents delivering children to school and moving on relatively quickly) and the afternoon peak usually being longer with greater traffic impact (as parents arrive and have to wait for a period until the school day finishes).*
- (4) *The proposal that the school's promoters will take responsibility for managing traffic impacts is not considered realistic; for example, mitigation measures could be beyond the scope of the promoters to enforce or require intervention on land not within their ownership. The Council is concerned at the implication raised in paragraph 26 of the consultation that, "if any infrastructure is required, the local authority will need to deliver it and will not necessarily have set aside the budget to do so". Although this is directly a concern for a County Council as Highways Authority, there may be local implications which could impact on a District Council. Any traffic problems will become apparent only after the change of use has occurred and it will fall to the Local Highway Authority to fund mitigation measures, including any necessary infrastructure. Under the current planning system any infrastructure or mitigation measures required as a result of any development are required to be funded by the applicant – it is considered that the consistency of this approach needs to be maintained with the current proposals.*
- (5) *Given the above, the District Council supports the County Council in not wishing to*

see the extension of permitted development rights to convert to a school use without some form of assessment of transport, and environmental and other impacts where relevant. It is important that assessments are not seen in isolation: they must be accompanied by appropriate mechanisms to secure mitigation measures (see also answer to Question 9).

Question 2: Do you think that the **further** uses listed under Options 3 and 4 should be given a permitted development right to convert to a school?

A3	Restaurants and cafes
A4	Drinking establishments
A5	Hot food takeaways
B2	General industrial
C3	Dwelling houses
C4	Houses in multiple occupation
Sui generis uses	

See response to Questions 1 and 6.

Question 3: Should a use converting to a school for a temporary period retain the right to revert to the previous use if it does so within five years?

- (6) It is agreed that there may be circumstances when it is desirable to provide temporary additional accommodation for education provision, to provide for a peak in demand while a new school is being built. After a period of time the building could return to its original use without any long-term impacts. This proposal is therefore supported in providing flexibility for education planning, subject to the comments made elsewhere in this response.

Question 4: Would allowing the following uses to convert to a school use without the need to apply for planning permission have any unintended consequences?

A1	Shops	B8	Storage or distribution
A2	Financial and professional services	C1	Hotels
A3	Restaurants and cafes	C2	Residential institutions
A4	Drinking establishments	C2A	Secure residential institutions
A5	Hot food takeaways	C3	Dwelling houses
B1	Business	C4	Houses in multiple occupation
B2	General industrial	D2	Assembly and leisure
Sui generis uses			

See response to Questions 1 and 6.

Question 5: Should the local planning authority have to approve a transport assessment before the permitted development right can be activated for changes from some or all non D1 uses?

- (7) *The District and County Council should jointly approve a transport assessment (together with a School Travel Plan) in order to activate the permitted development rights. This will provide the safeguard that, should the school be developed, there will be no unanticipated transport impacts. In addition a fee that reflects the costs to the authority of processing the application for prior approval should be payable.*

Question 6: Do you think that there are any other matters that the consultation should address?

- (8) *The proposals set out in the consultation raise a number of important issues in addition to the comments raised elsewhere in this response:*
- (a) Local Authority duty to plan for schools – *Local Authorities are required to plan education provision for a number of years ahead and have a statutory duty to provide school places. This involves extensive consultation with local communities, schools and others on plans for future education provision, in addition to the consultation that takes place before and during the planning application process. The current proposals will mean that new schools can be set up without planning permission and without the same requirement to consult local communities on the issue of need and how it should be provided for. If the take-up of changes of use to schools is high, then this could potentially undermine the plans that local authorities have already made and consulted on to address future need, investment that has already been allocated and school building programmes that are currently underway. The unpredictable nature of school place provision through this mechanism will make it more difficult for Local Authorities to plan to meet their statutory requirements.*
 - (b) Suitability of buildings – *Currently the safety and security of schools is assessed through the planning process (for example, through the inputs of Police Architectural Liaison Officers in drawing up proposals for new school buildings) and through Ofsted requirements for the safeguarding of children. It is not clear how this issue will be addressed through the mechanisms outlined in the consultation. This is likely to be particularly important given the suggestion that schools are established in office buildings, retail complexes or other buildings. In these settings buildings and sites will be shared with other users.*
 - (c) Space standards – *It is not clear through the consultation how the space standards (for example Building Bulletin 98/99) in force in other areas of the education sector will apply to these proposals. Through the planning process, local authorities seek section 106 developer contributions to expand the number of school places in response to housing growth. The contributions sought support the expansion of accommodation and school sites in accordance with these space standards. There will be clear implications for future negotiations with developers, and for maintaining these standards*

elsewhere in the state sector, if it is considered that these standards either do not apply or are unnecessary in certain state-funded schools.

- (d) Other issues - There may be other impacts from new schools that potentially affect the surrounding environment (for example, noise impacts from sports fields located next to sensitive uses or light spillage from floodlighting onto neighbouring properties). It is assumed that where a school is located in a converted building and requires the development of playing fields and sports facilities on adjoining or nearby land, then the accompanying development would still require planning permission through the usual process.

Question 7: Should the compensation provisions contained in Section 189 of the Planning Act 2008 [relating to Article 4 Directions] be applied to change of use to a school, if a permitted development right is given?

- (9) It is considered that compensation provisions should be consistent across different types of development for Article 4 Directions.

Question 8: The Government would like to permit schools to co-exist with certain dual uses, but not with others. Do you have any views about whether and how this could be achieved?

- (10) Co-location typically occurs where, for example, a special school and a mainstream school or infant and junior schools share the same building(s) in whole or in part, but have separate head teachers and management systems. Schools may also co-exist or share facilities with community facilities (such as sports facilities, community premises or libraries), provided that the needs of the school, as the primary user, are safeguarded.
- (11) There would be concerns if incompatible uses were to be permitted to co-exist with schools: under Options 2, 3 and 4 schools could be established in buildings housing a range of uses (such as pubs, restaurants, fast food establishments, bingo halls, casinos and nightclubs) without the need for planning permission. It is not known how this could be controlled within the mechanisms put forward in the consultation, as these changes could be made without planning permission. See also comments relating to school safety under paragraph (8b) above.

Question 9: What is your preferred option and why?

- (12) Option 1 (no change) is the preferred option as it safeguards local democratic involvement in the process, is likely to offer greater protection to pupils in the future school and protects the rights and participation of neighbours in the process.
- (13) If Option 1 is rejected, a further option should be developed. This should be to permit certain changes of use to schools provided that prior approval is given of a transport assessment and school travel plan. This should be for those uses that generate similar amounts of traffic to school uses. This would offer greater flexibility for school planning while retaining some safeguards to ensure that adverse impacts are mitigated as much as possible. The costs of mitigating the development should not be passed on to the local authorities but should be borne

by the developers.

- (14) *Following the comments on planning for school provision under paragraph (8a), it is recommended that Local Authorities should be fully involved in proposals to set up new schools from the beginning, so that they can properly plan school provision and continue to fulfil their statutory duties.*

Question 10: Do you think these proposals should be applied solely to new free schools or to all schools?

- (15) *The proposals should be applied to all schools: the principle is as applicable to LA schools as it is to new free schools. It is not considered appropriate in planning terms for proposals relating to the same use to be subject to different approval processes.*

Question 11: Are there any further comments or suggestions you wish to make?

- (16) *Planning permission for LA schools is usually sought and granted under Regulation 3 of the Town and Country Planning General Regulations 1992. If the proposed changes are implemented and applied to all schools, planning permission will not be needed for changes of use to accommodate LA facilities. Clarification is needed on whether an LA in a two-tier area would make an application for prior approval to the local planning authority or its own planning department.*
- (17) *The District Council does not have any information available to assess whether or not there is a sufficient supply of readily available and deliverable buildings of existing D1 use to meet the potential demand for free school developments.*

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