ICBA RESPONSE TO 'RELAXATION OF PLANNING RULES FOR CHANGE OF USE FROM COMMERCIAL TO RESIDENTIAL' CONSULTATION

Question A

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

Whilst greater certainty may encourage developers to explore options were the permitted development rights enacted in law, ICBA cannot fully support the proposal as it believes the desired outcomes will not be achieved unless other fundamental issues connected to the economy, taxation and planning are addressed simultaneously. The impact of the sustainability agenda and how taxation reliefs are considered forms an integral part of the development process and the relaxation of a single provision under the General Permitted Development Order (GPDO) will have negligible impact and introduce a new set of issues.

Further, there is a real risk of allowing homes through the permitted change rights evolving in unsuitable locations. In such instances, the motivation for the developer would be pure profit whereas otherwise the community would pick up the sometimes poor avoidable consequences of allowing the change. There are already major concerns that poor spatial planning leads to a poor quality of life and this would become evident as older buildings are converted in unsuitable locations.

Anecdotally, it is suggested that the loss of the regional planning tier and reliance on local and neighbourhood planning could stifle the number of new homes which had been forecast and planned and this one step is more critical to the deliverability of 'new' homes than an unnecessary and small-scale change to the GPDO which could result in larger planning losses on other fronts such as noise, quality of life etc.

Another potential risk area is the possibility of land owners who own large amounts of commercial property effectively becoming the key decision makers on residential housing issues. They will be driven by nothing more than the matters such as the need to reduce commercial rates liability, remove capital assets which show a deficit from the balance sheet and dispose of property for financial gain without the input to ensure that refreshed neighbourhoods are created.

Planning policy needs to be flexible but robust enough to ensure that high quality developments are produced which satisfy community needs. As circumstances will vary from city to city, town to town and rural area to rural area, there is not a 'one size fits all' policy which the GPDO could promote.

Question B

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

ICBA is neutral on this particular angle because it believes the proposal is of minimal significance. A very small number of B2 and B8 properties will be suitable for conversion and where this would happen, other major planning issues will become more prevalent (e.g. the suitability of the building to convert, the costs associated with decontamination etc.)

Question C

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

ICBA feels strongly that this proposal should be applied more widely in respect of all planning consents granted subject to a planning limit. There is a balance of views in responding to this question which rests between the need to create sustainable and stable communities and the realisation that some changes are not necessarily made for the longer term good and thus could be reversed. A period of five years could create a medium term issue for local planning authorities making sense of the environments they are trying to promote and to have such a long 'get out period' for a poor requirement initially should not mean that the community picks up the pieces where this has happened. However given the move towards a three-year shelf life for planning consents, a similar period could equally be adopted for reversion use.

Question D

Do you think it would be appropriate to extend the current permitted development rights outlined here to allow for more than one flat? If so should there be an upper limit?

ICBA supports this material change of use proposal on the basis that the physical extent of the building will set the parameters for intensification of use. ICBA does not, however, believe that this relaxation should extend to Homes in Multiple Occupation (HMO) as the additional intensity could lead to adverse impacting planning factors such as parking difficulties, noise transmission within the building, excess rubbish being left outside the premises etc.

An upper limit is impossible to impose because of wide variances in terms of car parking, green space, etc.

ICBA would also welcome consideration of the removal of permitted development rights between C3 and C4 commenced in 2010 which could otherwise lead to an over-intensification of use.

Question E

Do you agree that we have identified the full range of possible issues which might emerge as a result of these proposals? Are you aware of any further impacts that may need to be taken into account? Please give details.

Section 106 contributions under the Town and Country Planning Act 1990 (as amended) have become an integral part of mainstream planning requirements. Where a change of use of physical development is carried out for which formal consent is required, the community can extract some value from the development to offset the impact of the scheme. This offset can come in many

different guises such as affordable housing provision, cash payments and public realm works. The permitted right to change without consent will in theory provide the possibility of a loss of community gain. Whilst debate centres on the extent and cost of the provision of these contributions by developers, there has been a general acceptance that a need exists in supporting community infrastructure and fabric through this regime.

A two-tier system of permitted development rights could thus evolve with buildings where no external changes are needed, funding nothing in the way of contributions and those where some form of additional planning consent is required (due to physical works) being required to make 'payment'.

Selection of buildings for the permitted change could therefore be made on contribution costs rather than desirability.

In other instances converting former business premises could provide sustainability and/or economic benefits although much will rest on the circumstances of each individual case. For example, where commercial properties have been built to a substandard quality of construction and layout, the impact of the VAT regime on the potential for refurbishment of existing buildings could still continue to discourage conversion. In other situations, a well-built former office building could lend itself easily to conversion and provide an opportunity to improve the sustainability credentials of the property and the benefits it brings to fulfilling housing targets for the area.

Question F

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

The ICBA believes that there are very real dangers of the permitted development right regime *c*reating more problems than it tries to solve. As town centres are commercial centres, the loss of commercial buildings will limit the opportunities for commerce in these areas; this has implications for the sequential test in how commercial users then satisfy demand where a future need exists to be centrally located.

It may no longer be appropriate for the starting point for business location to commence with the town centre as the permitted development rights could remove a building from commercial use in any event (or the possibility of it happening).

Policy EC5 (Site Selection and Land Assembly for Main Town Centre Uses) in Planning Policy Statement 4: Planning for Sustainable Economic Growth and adopted in 2009 makes it clear (at page 11) that a 'sequential approach to site selection' should be adopted in accordance with policy EC5.2 ('Sites for main town centre uses should be identified through a sequential approach to site selection. Under the sequential approach, local planning authorities should identify sites that are suitable, available and viable…'). A loss of control over use classification could lead to non-viable town centres (or parts of centres) emerging with the consequence that there would be no reverse provision to maintain the strength of that business environment.

The lack of the 'sequential test', for example, to office developments on 'greenfield' sites was considered by the previous Labour Administration in 2001 and whilst it was a belief held at the time that the test was not needed,

proper safeguards were needed. It is difficult to see what safeguards could be put in place which would otherwise defeat the initiative of the suggested permitted rights change.

The loss of potential accommodation for business in city and town centres could result in a growing need to have new provision in the future built on 'greenfield' sites. Whilst this is not advocated as a poor planning policy requirement along with the intendant need to re-use existing opportunities (so-called 'brownfield' site opportunities through conversion), the real issue centres on the position that business delivery could end up being spread out over a wider area in the medium to long term with the result that servicing costs increase and business becomes less sustainable in delivering its output.

A similar position could also exist in relation to flood risk areas where there are existing buildings suitable for conversion from B1 to C3 planning use. Planning Policy Statement 25: Development and Flood Risk promotes the use of the sequential test in ensuring that development is guided away, wherever possible, from high flood risk areas. A mere change of use through a permitted development right would not invoke this important safeguard at a time when flooding has become a real crisis issue in some towns, villages and rural areas.

A further potential adverse impact is that poor quality buildings will be extended instead of new quality developments constructed. Real estate sustainability measures should seek to re-use existing buildings although this could become a short-sighted measure where the building fabric and integrity of existing materials is poor. Buildings do become obsolete and seeking to extend the life of a building for short-term profit may not provide the best solution where redevelopment in the future could enhance the overall environmental return.

At the current time there is no singular cost-benefit model which could demonstrate how potential mitigation proposals could demonstrate loss or gain but there is evidential need for the development of one.

Question G

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

The imposition of planning conditions where outline or detailed consent has been gained provides a working opportunity for a local planning authority to lessen the impact of any scheme, whether involving a change of use of physical development. Whilst planning conditions (and to a different extent, planning obligations under section 106 Town and Country Planning Act 1990) provide a statutory controlling mechanism, the advocacy of a conditionality requirement against a permitted change would only result in defeating the sole reason such permitted changes are allowed. In other words, conditionality requirements on a permitted change of use defeats the object of the change in the first place. It would also be very difficult to have any form of general condition as circumstances vary considerably between buildings and their locations.

However there could be circumstances where the permitted change will be subject to satisfying other criteria, such as materials used, parking provision etc. Were the permitted development right regime be subject to fulfilling other criteria, the sole object of the right of flexibility and removing the need to seek a formal consent from the planning authority is diluted or lost.

The use of Article 4 Directions is discussed under Question I.

Question H

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

Small-scale mitigation measures, such as limitations on car parking, could responsibly control use as a result of a material change but the range of measures would need to be limited and controlled.

Crucial to any permitted change is the need to maintain the quality of life of those living in the converted building and those impacted upon by the change. Whilst Building Regulation consent will be needed for the building works, if a conversion risks damaging the quality of life for new residents it should not be allowed. Controls could therefore be enhanced to ensure that Building Regulations are fit for purpose.

Question I

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

Article 4 Directions are a powerful way through which a local planning authority can control development rights. However, an abuse of process could see local planning authorities pre-empt any potential areas they wish to safeguard and invoke this power, often without any major consultation with the property owners or users concerned. This then brings into direct conflict one set of planning provisions against another. Permitted development rights and changes of use under the GPDO are important ways of ensuring that small-scale development can occur without the need for formal consent and that

flexibility in the way property is used is not caught up in a planning system which would have little to contribute to the overall physical environment (e.g. a change of use from a building society to retail use does not add to the overall floor-plate and still maintains the town centre as a retail destination).

The current position is that, in amending section 108 Town and Country Planning Act 1990, section 189 Planning Act 2008 introduced a new provision in relation to gaining compensation based on a 12-month window where the permitted development right had begun. It is evident that injustice can be done to a claimant where, due to weak market conditions, development rights will not be invoked for the time being. Such weak market conditions can exist for some years with the impact on the availability of finance and owners' or developers' willingness to undertake the scheme stifled due to weak market demand. There could also be an issue concerning the need to satisfy other matters, such as legal considerations, gaining vacant possession and similar issues, all of which can impact heavily on the compensation window.

ICBA actually supports longer periods because this will prevent property owners being disadvantaged by market vagaries or compensation being calculated at times of low property values. In this regard, ICBA favours a more relaxed regime based on a timescale of three years.

Question J

Do you consider there is any justification for considering a national policy to allow change of use from C to certain B use classes? Please give your reasons.

The enactment of the Localism Bill 2010/11 will open a new history in English planning law and practice. The specific aims of making planning more local and the removal of a regional tier of planning, which in theory would have continued to have been more responsive to regional needs than an overarching non-directed national policy, should endeavour to remove the requirement for national policies.

The needs of businesses and residential users are quite different although there are some merits in looking to see whether under-utilised residential accommodation, particularly where there is a direct interface with commercial use, can be used more effectively as a unit of planning opportunity. Much of the functional and position links between commercial and residential property sits between property in the A-user class (shop type premises) rather than B-users (business) so the gain losing B class commercial use in favour of residential use has little to commend it.

However the ICBA, in representing the professional interests of members who are involved in business transfer situations, does see the merit in looking at greater opportunities for work/live units which will encourage more home working and therefore reduce traffic and pollution (thus retaining some business use in a business class property but enhancing overall use by the introduction of a residential element).

Question K

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

The ICBA maintains the position that the use of 'permitted development rights' legislation is a blunt instrument to provide flexibility in property use where the use transcends use classes. Further it is a nationally imposed policy which rather defeats the localism agenda where local communities make the decisions appropriate to their own needs. Permitted development rights legislation has found its strength in cases where changes of use within a particular use class are permitted and opportunities exist to allow a more intensive use of existing property, subject to planning and building regulation safeguards.

However ICBA does not believe that the permitted development rights regime as advocated between business (Class B) and residential (Class C) use provides a greater set of benefits versus the potential costs that could result. Further, given the widening of the Class C category in 2010, the use of former business property for such uses as HMOs would create additional planning risks which would have a wider detrimental impact on existing home owners and businesses.

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