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Date: 24 June 2011

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Relaxation of planning rules for change of use from commercial to residential - consultation

Dear Ms Donohue

Thank you for providing Sevenoaks District Council (SDC) with the opportunity to comment on the above consultation. Our comments are set out below.

The first section of this response outlines general comments and the second section responds to the questions set out in the DCLG questionnaire that accompanied the consultation.

SDC has consulted the local business community in order to represent their views in this consultation response. The local Federation of Small Businesses (FSB) is concerned that these proposals will threaten the supply of commercial premises and increase commercial rents at a time of economic difficulty and therefore they would urge the Government to consider alternative initiatives to kick start housing supply, rather than reducing the supply of land available for business growth. The FSB response is attached as an appendix to this letter.

General Principle

It is understood that DCLG is promoting a relaxation of planning rules for change of use from commercial to residential in order to increase the supply of land for housing. SDC appreciates the need for additional housing, particularly affordable housing, but is concerned that this housing should be appropriately located, of a suitable mix (size and tenure) and be accompanied by supporting infrastructure. The proposed amendments do not safeguard these issues.

SDC also has serious concerns regarding the impact of the proposed amendment on commercial space within the district. SDC is an area with high residential values. The recently adopted Sevenoaks Core Strategy (February 2011) includes policies that

safeguard employment land, as there is a concern that without such policies, vital commercial space would be lost to other uses, such as high-value residential, which would impact on the viability and vitality of the district. Existing employment land in the District cannot readily be replaced due to Green Belt policy (see further comments below)

The overall message of this consultation is that the market should be allowed to decide whether a site is more profitably used for commercial or residential purposes. In simplified terms, developers would therefore make a financial calculation as to which type of use gives greater returns (almost certainly residential in this area) and therefore convert sites in commercial use to residential use. Although this would increase the supply of housing, this would be to the detriment of balanced and sustainable communities with viable local economies.

In summary, SDC understands the aim behind the proposed amendment, but suggests that that a nationwide change to permitted development rights is not the most appropriate course of action, as it is a blunt instrument, which may have beneficial effects in some areas of the country, but will cause serious problems in other areas. Local authorities already have existing powers through Local Development Orders (LDO) which they can use to give permitted development rights for change of use in an area. The Localism Bill is also proposing Neighbourhood Development Orders (NDO), which would give local communities the ability to define specific developments or types of development which will have automatic planning permission without the need to apply for planning permission. It is therefore suggested that the Government promotes the implementation of these existing and proposed locally developed and targeted Orders, which can focus on particular issues, encourage development and support local economic strategies.

Detailed Issues

SDC has a number of specific concerns related to the proposals to allow change of use from commercial to residential as permitted development:

- In relation to **employment sites** within the district, the Council undertook an Employment Land Study in 2007 to assess both the demand and supply of employment land in Sevenoaks. The study demonstrated that the majority of sites are required to provide a range of employment premises and therefore designated employment land is now protected within the Core Strategy (February 2011) from other non employment generating uses. This ensures that adequate land and premises are available to support the local economy. In summary, in relation to employment land, the Council's policy is one of *protection*, not *release*, which is entirely counter to the aim of the proposed permitted development amendment.
- 93% of Sevenoaks District is designated as **Green Belt**. This protection means that there is an inability to add to the supply of new employment sites, since the majority of the surrounding land is designated. The impact on the economy of the loss of employment sites would therefore be exacerbated in areas where there are restrictions on the supply of new sites, such as in areas of environmental protection or strategic planning constraints.
- Sevenoaks is a high value district, and there is **pressure from residential developers** to permit housing schemes, due to the high demand and high returns. SDC's role is to manage this pressure to ensure that residential developments are

permitted in sustainable locations, designed to quality and mix standards and provide supporting infrastructure. The proposed amendment removes the Council's ability to manage these developments to ensure that they are acceptable to the local community and stakeholders. The risk is that due to the locally more profitable nature of housing development, the District could lose significant business and employment sites, exacerbating issues with the local economy, and accentuating the development of Sevenoaks as a dormitory district, devoid of local commercial uses. It is also worth noting the potential impact on business rate receipts.

- Residential developments are normally accompanied by a **S106 agreement** which ensures that the development is acceptable by securing provision and contributions towards **infrastructure** to support the new development. This can include, for example, provision or contribution towards education, open space, community facilities and transport. It also ensures that a certain proportion of the development is secured as affordable housing. The consultation document suggests (para. 39) that these elements would be addressed by the developer on a voluntary basis, which is a highly unlikely scenario.
- The main tenet of SDC's recently adopted Core Strategy (February 2011) is that housing provision should be met within existing urban areas, whilst maintaining the Green belt boundaries. This ensures that residential development is **sustainably located**, close to transport connections and a retail and leisure offer, and does not encroach on areas of protected landscape. The proposed amendment would not enable the local planning authority to ensure that residential development is appropriately and sustainably located in cohesive communities.
- There are also concerns regarding **residential amenity**. The proposed amendment could result in residential development being located in close proximity or adjoining business uses that are incompatible, for example in relation to noise, odour or light pollution. This could impact upon the amenity of the residential occupiers and lead to conflict and potentially restrictions placed on the commercial occupiers.

Thank you for providing Sevenoaks District Council with the opportunity to comment on this policy consultation. If you have any queries in relation to the above response, please do not hesitate to contact me.

Yours sincerely

Hannah Gooden
Principal Planning Officer (Policy)

Appendix 1 FSB Policy Position:

Relaxation of Planning Rules for Change of Use from Commercial to Residential

Whilst the FSB recognises the need to address England's housing supply shortage, it is concerned about the Government's proposals to relax planning rules regarding land use, which will make it easier to change commercial land into residential land. The FSB is concerned that this proposal threatens the supply of oven-ready commercial premises, so vital to small businesses. The FSB believes there needs to be safeguards in place to protect that commercial land which, once the economic climate improves, will be hugely important to new enterprise and businesses wishing to grow.

The FSB is also concerned that the relaxation in planning rules for change of use will push commercial rents up, at a time when other costs, such as energy prices and fuel prices are already squeezing business margins and stifling growth.

The FSB also believes that some commercial land would not be appropriate for residential use, as it doesn't have appropriate access to transport links and other local infrastructure, and therefore would not support sustainable housing. The FSB would urge the Government to consider alternative initiatives to kick start housing supply, rather than threatening the supply of land available for business growth.

The DCLG consultation questions:

Question A:

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

Yes No

Please give your reasons:

SDC does not support the proposed amendment as it is too blunt an instrument to be applied nationwide as there is significant variation in relation to demand for land for housing/business use across the country, which would lead to unintended effects in areas with high development pressure and could impact upon the viability of the local economy. LDOs and NDOs are much more flexible tools that can be applied locally where appropriate to target specific issues, and the government should instead concentrate promoting the use of these tools to local planning authorities and the development community.

Specific concerns related to:

- Loss of employment land (Council policy to protect not release)
- Impact on local economy and promotion of 'dormitory' settlements
- Lack of control to ensure developments provide or contribute towards supporting infrastructure and affordable housing
- Residential development in unsustainable locations
- Impact on residential amenity related to neighbouring uses
(see detailed comments above)

Question B:

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

Yes No

Please give your reasons:

As above, but with even greater concerns related to development of residential dwellings in unsustainable locations, of inappropriate design and which may be incompatible with neighbouring uses.

Question C:

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

Yes No

Comments:

Do not agree with the general principle of the amendment, but if it was to be implemented, there may be a case to allow a reversion to the original commercial use, if the residential use was not proving to be successful. In practice, once an employment use is lost to residential then it is likely to be permanently removed from the commercial supply.

Question D:

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

Yes No

If so, should there be an upper limit?

Yes No (n/a)

Comments:

Currently landlords are permitted to convert the space above shops and financial/professional services into a single residential flat. The new proposal is to extend this to allow for more than one flat to be provided. It is accepted that there may be potential for greater residential use above town centre uses. If the shops are located in a town or village centre, then the flats above them will be located in a sustainable location. The conversion of the space is unlikely to impact upon the viability and vitality of the local economy, as the retail unit will be retained. Therefore, the issues are slightly different to those raised by the above proposal to allow commercial to residential conversion. However, there is still the need to ensure that the residential uses contribute to supporting infrastructure and the provision of affordable housing, and without the requirement to seek planning permission for such a conversion, these issues would not be adequately addressed.

Question E:

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

Yes No

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

Yes No

Please give details:

- Loss of employment sites and the corresponding impact on local economies. SDC undertook an Employment Land Study in 2007 to assess both the demand and supply of employment land in Sevenoaks. The study demonstrated that the majority of sites are required to provide a range of employment premises and therefore designated employment land is now protected within the Core Strategy (February 2011) from other non employment generating uses. This ensures that adequate land and premises are available to support the local economy. In summary, in relation to employment land, the Council's policy is one of *protection*, not *release*, which is entirely counter to the aim of the proposed permitted development amendment.
- 93% of Sevenoaks District is designated as **Green Belt**. This protection means that there is an inability to add to the supply of new employment sites, since the majority of the surrounding land is designated. The impact on the economy of the loss of employment sites would therefore be exacerbated in areas where there are restrictions on the supply of new sites, such as in areas of environmental protection or strategic planning constraints
- Risk is developing 'dormitory districts', devoid of local commercial uses. Sevenoaks is a high value district, and there is pressure from residential developers to permit housing schemes, due to the high demand and high returns. SDC's role is to manage this pressure to ensure that residential developments are permitted in sustainable locations, designed to quality and mix standards and provide supporting infrastructure. The proposed amendment removes the Council's ability to manage these developments to ensure that they are acceptable to the local community and stakeholders. The risk is that due to the locally more profitable nature of housing development, the district could lose significant business and employment sites, exacerbating issues with the local economy, and accentuating the development of Sevenoaks as a commuter district.
- Residential developments are normally accompanied by a S106 agreement which ensures that the development is acceptable by securing provision and contributions towards **infrastructure** to support the new development. This can include, for example, provision or contribution towards education, open space, community facilities and transport. It also ensures that a certain proportion of the development is secured as affordable housing. The consultation document acknowledges this impact but suggests (para. 39) that these elements would be addressed by the developer on a voluntary basis, which is a highly unlikely scenario.

Question E continued:

- The main tenet of SDC's recently adopted Core Strategy (February 2011) is that housing provision should be met within existing urban areas, whilst maintaining the Greenbelt boundaries. This ensures that residential development is **sustainably located**, close to transport connections and a retail and leisure offer, and does not encroach on areas of protected landscape. The proposed amendment would not enable the local planning authority to ensure that residential development is appropriately and sustainably located in cohesive communities.
- There are also concerns regarding **residential amenity**. The proposed amendment could result in residential development being located in close proximity or adjoining business uses that are incompatible, for example in relation to noise, odour or light pollution. This could impact upon the amenity of the residential occupiers and lead to conflict and potentially restrictions placed on the commercial occupiers.
- The issue of **monitoring** the success or otherwise of this policy is not addressed. It is unclear how local planning authorities will be able to measure a current employment land supply as de-regulated changes of use can neither be measured nor predicted sufficiently to inform planning decisions on development plans or planning applications.

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?

Do not agree with the general principle of the amendment, but if it was to be implemented, mitigation of any adverse impacts will be required. Impact mitigation is usually secured via the S106 process, which is linked to the grant of planning permission, and therefore this route would be unavailable if the use class change becomes permitted development. The consultation document sets out a number of potential mitigation options:

- attach a condition to the permitted development right (i.e. similar to B1 to B8 condition 'provided no more than 235sqm floorspace'). However, it is suggested that the number of conditions that would need to be attached to the PD right would be extensive (e.g. location/size/type/number of housing units/local supply of employment land), and this would also not secure supporting infrastructure.
- Article 4 is suggested as a mechanism that Councils could use to remove such a PD right for a local area, in order to require planning permission for such a development. Although this would be useful in removing the proposed PD right in areas where it is not appropriate, the risk that local authorities may be required to pay compensation where a planning application is refused or granted subject to conditions is likely to discourage local authorities from using this tool in areas where it may be appropriate to restrict the use of this PD right.

Question G:

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

Local Development Orders (LDOs) are suggested as a mechanism that local authorities could use for 'balancing changes' in the local planning regime e.g. to allow for a corresponding change of use from residential to certain business use classes (para.63). Although re-classifying this change of use as permitted development is not supported for similar reasons to those outlined above, the use of LDOs, which are developed and implemented at the local level, is supported.

A nationwide change to permitted development rights is not the most appropriate course of action, as it is a blunt instrument, which may have beneficial effects in some areas of the country, but will cause serious problems in other areas. Local authorities already have the existing powers through LDOs which they can use to give permitted development rights for change of use in an area. It is therefore suggested instead that the Government promotes the implementation of these locally developed and targeted Orders, which can focus on particular issues, encourage development and support local economic strategies.

In addition, the Government is currently considering the introduction of Neighbourhood Development Orders (NDO), via the Localism Bill, which would give local communities the ability to define specific developments or types of development which will have automatic planning permission without the need to apply for planning permission. NDOs could be used as a tool, subject to conditions, to ensure that any contributions due for housing development under the adopted Development Plan are realised, for example, on commencement. NDOs (like neighbourhood plans) require examination and referendum before adoption, but do represent an alternative option. It is suggested, as with LDOs, that the Government further explores the introduction of these new local, community-led measures to increase the supply of housing, rather than a blanket nationwide change to permitted development rights.

Question H:

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

See above, regarding use of LDOs, to be determined at the local level. A local authority could choose to implement an LDO in a specific area, to promote change of uses from business to residential, where local circumstances dictate that this would be the most appropriate approach.

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:

Do not agree with the general principle of the amendment, but if it was to be implemented, Article 4 is a mechanism that Councils could use to remove such a PD right for a local area, in order to require planning permission for such a development. Although this would be useful in removing the proposed PD right in areas where it is not appropriate, the risk that local authorities may be required to pay compensation where a planning application is refused or granted subject to conditions is likely to discourage local authorities from using this tool in areas where it may be appropriate to restrict the use of this PD right. The potential to reduce the compensation provision connected to Article 4 (to compensation only payable on applications made within 12 months of the direction) may go some way to alleviate concerns associated with implementing Article 4 directions and therefore the provision with S.189 of the Planning Act 08 should be applied.

Question J:

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

Yes No

Please give your reasons:

The consultation document outlines the potential for a corresponding permitted development change of use from residential to certain business use classes (para.63). Re-classifying this change of use as permitted development is not supported for similar reasons to those outlined above in relation to B to C3 change of use. It is possible that this would result in businesses being operated in unsuitable locations, resulting in amenity impacts on neighbouring (residential) uses, that could not be mitigated via the planning application process.

Question K:

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

Please see general comments at the front of this letter