Bat Conservation Trust

Supporting housing delivery and public service infrastructure

Scope of the consultation

Topic of this consultation: This consultation contains proposed measures to support housing delivery, economic recovery, and public service infrastructure.

Scope of this consultation: This consultation seeks views on: a proposed new permitted development right for the change of use from Commercial, Business and Service use to residential to create new homes, measures to support public service infrastructure through the planning system, and the approach to simplifying and consolidating existing permitted development rights following changes to the Use Classes Order.

Geographical scope: These proposals relate to England only.

Impact Assessment: The consultation seeks views on any potential impacts on business, local planning authorities and communities from these measures. The government is mindful of its responsibility to have regard to the potential impact of any proposal on the Public Sector Equality Duty, and therefore views are additionally sought on whether there are any impacts arising from these measures on those with a protected characteristic.

Introduction

1. The government is committed to reshaping the planning system to make it accessible, efficient, and more predictable. Our Planning for the future white paper sets out a vision for the planning system, one that has full local plan coverage, simpler planning application processes and is supported by digital technologies. We need to address the need for a dynamic system which responds to market needs while safeguarding the environment and amenity of local people. Our consultation on our new vision for planning closed on 29 October, and we will be setting out our next steps in due course.

2. While Planning for the future sets out our longer-term ambitions, we want at the same time to continue to explore more immediate changes to the planning system to provide greater planning certainty and flexibility to ensure that it can effectively contribute to some of the immediate challenges facing the country. These include supporting the economic future of our high streets and town centres, supporting jobs, and the faster delivery of our schools and hospitals.

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The Bat Conservation Trust (known as BCT) is a registered charity in England and Wales (1012361) and in Scotland (SC040116)
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3. Changing consumer behaviour presents a significant challenge for retailers in our town centres. High streets and town centres have felt the effect of structural changes in consumer spending and retailing such as the shift to online shopping for a number of years, but over the 12 months from June 2019 to June 2020 there has been a net reduction of 5,350 units in town centres in England[footnote 1]. The COVID-19 pandemic has magnified these problems. We want to support our town centres and high streets in adapting to these changes to become thriving, vibrant hubs where people live, shop, use services, and spend their leisure time. We are delivering long-term structural support through a range of interventions, including investment from the £3.6 billion Towns Fund. We have brought forward over £80m of this funding this year through the Future High Street Fund to support immediate improvements in town centres. The fund will support local areas in England to renew and reshape town centres and high streets in a way that improves experience, creates jobs, and ensures future sustainability.

4. To provide greater flexibility and enable businesses to respond rapidly to changing market demands from 1 September 2020 we introduced a new planning use class. The Commercial, Business and Service use class includes uses generally found on the high street such as shops, banks and restaurants, and broadens it to encompass a wider range of uses such as gyms, creches and offices. This provides greater flexibility to move between such uses, and to provide for a mix of such uses, without the need for a planning application.

5. Where there is a surplus of retail floorspace, quality residential development will help diversify and support the high street. It will create new housing opportunities including for those who will benefit from close proximity to services, such as the elderly and those living with disabilities. It will also make effective use of existing commercial buildings, bring additional footfall from new residents, and assist in the wider regeneration of town centre and other locations. Repurposing of brownfield sites is better for the environment and reduces the need for greenfield development. In his 'Build, Build, Build' statement of 30 June 2020 the Prime Minister said that we would provide for a wider range of commercial buildings to be allowed to change to residential use without the need for a planning application. To meet this aim, support housing delivery and bring more residential use into our high streets and town centres, boosting footfall and creating additional demand, we propose to introduce a new national permitted development right for the change of use from the new Commercial, Business and Service use class to residential use. The new right would help support economic recovery, housing delivery and the regeneration of our high streets and town centres. Part 1 of this consultation seeks views on the proposed right to deliver on these aims.

6. Separately, we want also to ensure planning supports the faster delivery of the new schools, hospitals, and other public service infrastructure developments which the country needs. In the National Infrastructure Strategy published alongside the Spending Review on 25 November 2020, the government has set out an ambitious long-term investment strategy to improve the country's infrastructure and public services.

7. As part of this strategy, we want to ensure the planning system does not unduly cause delays to public service infrastructure improvements. In Part 2 of this consultation, we propose to amend existing permitted development rights to allow schools, colleges and

universities, hospitals and prisons to expand and adapt their buildings as they respond to changing demands and ways of working, without the need to seek planning permission.

8. We also want to speed up local decision making on planning applications for larger hospital, school, further education college and prison development, including development on new sites. Part 2 of the consultation sets out our proposals for a faster planning application process for these types of development. It is important that local planning authorities prioritise these key applications given that they will enhance public services.

9. Finally, Part 3 of the consultation seeks views on the proposed approach to the consolidation and simplification of some existing permitted development rights, including those which provide for change of use between use classes.

1. Supporting housing delivery through a new national permitted development right for the change of use from the Commercial, Business and Service use class to residential

10. Permitted development rights provide a national grant of permission for specific types of development set out in legislation. The rights provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through the prior approval process. They have been increasingly used to support the delivery of new homes. In the 5 years to March 2020, permitted development rights for the change of use provided 72,687 new homes. Such rights make the best use of existing buildings, supporting brownfield development and avoiding the need to build on greenfield sites.

11. While the majority of homes that are being delivered are of good quality, a few have been unacceptably small or without windows. The government has therefore introduced new quality requirements for this planning process; bringing forward legislation to require that all new homes delivered under such rights meet the nationally described space standards and provide for adequate natural light. All homes are required to meet building regulations, including in respect of fire safety, regardless of the route to planning permission. Going further, we sought views through the consultation on the Planning for the future white paper on whether the proposed Infrastructure Levy would also apply to permitted development rights. Consideration is being given to responses to that consultation and further announcements will be made in due course.

12. To support our high streets and town centres, from 1 September 2020 we introduced a new Commercial, Business and Service use class, enabling these premises to quickly adapt to changing market demands and provide a mix of retail, commercial and leisure uses. This use class groups together a range of uses commonly found on high streets and town centres and provides for movement between such uses without the need for a planning application. While such uses are often found in town centres, in practice the use classes apply everywhere, in all cases. The Commercial, Business and Service use class comprises:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

(a)for the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b)for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,

(c)for the provision of the following kinds of services principally to visiting members of the public—

(i)financial services,
(ii)professional services (other than health or medical services), or
(iii)any other services which it is appropriate to provide in a commercial, business or service locality,

(d)for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,

(e)for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f)for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g)for—

(i)an office to carry out any operational or administrative functions,
(ii)the research and development of products or processes, or
(iii)any industrial process,

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

13. Having first simplified the change of use in such cases, we want now to build on this providing further flexibility to allow this broader range of uses to change to residential use. This will support housing delivery and attract the additional footfall that new residents will bring. Current permitted development rights already provide for shops, financial and professional services, and offices to change to residential use, and these will continue to apply until 31 July 2021. We propose to draw these together into a single right that provides for the change of use from any use within the Commercial, Business and Service use class to residential (C3). This single right would provide clarity and greater planning certainty and support the delivery of a significant number of additional homes, developing brownfield sites and making effective use of existing commercial buildings and help to prevent them

being left empty. All homes would be required to meet the nationally described space standards. This will come into effect from 1 August 2021.

14. This consultation invites views on the proposed right. Any right would be introduced via secondary legislation and apply in England only. As with all permitted development rights, other regulations such as Environmental Impact Assessment and Habitats Regulations would apply.

The proposed right

15. It is proposed that the right would allow for the change of use from any use, or mix of uses, within the Commercial, Business and Service use class (Class E – see paragraph 12 above) to residential use (C3). The right would replace the current rights for the change of use from office to residential (Part 3, Class O of Schedule 2 to the General Permitted Development Order), and from retail etc to residential (Part 3, Class M of the General Permitted Development Order) which remain in force until 31 July 2021. (See also Part 3 of this consultation document in respect of consequential changes.) It will go significantly beyond existing rights, allowing for restaurants, indoor sports, and creches etc to benefit from the change use to residential under permitted development rights for the first time. The protections in respect of pubs, including those with an expanded food offer, theatres, and live music venues, all of which are outside of this use class, continue to apply and a full planning application is always required for the change of use to or from such uses.

16. The Commercial, Business and Service use class applies everywhere in all cases, not just on the high street or in town centres. In order to benefit from the right premises must have been in the Commercial, Business and Service use class on 1 September 2020 when the new use classes came into effect.

Size of the buildings to which the right might apply

17. Building on the delivery success of the permitted development right for the change of use from office to residential, it is proposed that there be no size limit on the buildings that can benefit from the right. The right would allow for the building, or part of the building, to change use, rather than lying vacant for example. It is recognised that some retail and office buildings in particular could be a substantial size, and therefore result in a significant number of new homes, the impacts of which would be managed through prior approvals. Permitted development rights do not apply to development that is screened as requiring an Environmental Impact Assessment.

Q1 Do you agree that there should be no size limit on the buildings that could benefit from the new permitted development right to change use from Commercial, Business and Service (Class E) to residential (C3)?
Please give your reasons.
BCT has no comments to make.

Where the right might apply

18. In certain areas it may be appropriate to allow for individual local consideration of such development. It is therefore proposed that similar to other existing rights, the right would not apply to: sites of special scientific interest; listed buildings and land within their curtilage; sites that are or contain scheduled monuments; safety hazard areas; military explosives storage areas and sites subject to an agricultural tenancy.

19. Existing and previous rights for the change of use to residential, with the exception of office to residential, do not generally apply in article 2(3) land: conservation areas, areas of outstanding natural beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, and World Heritage Sites. However, some high streets and town centres are designated conservation areas, and therefore include many of the uses that could benefit from the right, and residents that could benefit from the conversions. Such areas may be designated as conservation areas for their architectural and historical value and allowing a more diverse range of uses could attract more people to enjoy them and make them more sustainable. It is proposed that while the right would not apply in other sensitive article 2(3) land, such as national parks and areas of outstanding natural beauty, it would apply in conservation areas. However, in recognition of the conservation value that retail frontage can bring to conservation areas the right would allow for prior approval of the impact of the loss of the ground floor use to residential.

Q2.1 Do you agree that the right should not apply in areas of outstanding natural beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, and World Heritage Sites? Please give your reasons.
BCT recognises that the reuse of existing buildings could reduce the need for new development outside the built environment such as on green field\ green belt, and we agree that the right should not apply to these areas. These areas are rural in nature and they are more likely to support a greater abundance and diversity of roosting bats. These areas will support a wide range of biodiversity and be an important part of the much-profiled wildlife corridors that should form part of a Nature Recovery Network. Bats are defined as European Protected Species and therefore require a strict level of protection. The legislation protecting bats does not seek to prevent damaging activities from taking place but is does provide for mechanisms to ensure that bats are not adversely impacted by development proposals via a mitigation hierarchy of avoidance, mitigation and, as a last resort, compensation.

Q2.2 Do you agree that the right should apply in conservation areas? Please give your reasons.
Conservation areas generally apply to areas with special architectural or historic interest and they may therefore also support roosting bats. Older and more complex buildings have an increased likelihood of supporting the range of conditions of importance for bat species for roosting. Bats are long-lived and many species reuse the same roost year after year for generations. All species of bat are defined as European Protected Species and

therefore require a strict level of protection. The legislation protecting bats does not seek to prevent damaging activities from taking place but is does provide for mechanisms to ensure that bats are not adversely impacted by development proposals via a mitigation hierarchy of avoidance, mitigation and, as a last resort, compensation.
BCT does not consider that rights should be extended to conservation areas.

Q2.3 Do you agree that, in conservation areas only, the right should allow for prior approval of the impact of the loss of ground floor use to residential?
Please give your reasons.
BCT recognises that the reuse of existing buildings could reduce the need for new development outside the built environment such as on green field\ green belt however, this may well result in escalating the loss of shops to out-of-town development rather than to benefit the original town or village.

Matters for local consideration through prior approval

20. We want to ensure this new right is carefully balanced, allowing for appropriate residential development but also ensuring there is opportunity for local consideration of plans to mitigate any adverse impacts through prior approval. This also provides an opportunity for the community to make representations on these matters, and for their views to be taken into account by the local planning authority.

21. In considering which prior approvals to apply we have drawn on those generally accepted in other permitted development rights that deliver new homes in order to deliver quality homes in suitable environments. The proposed prior approvals shown below provide necessary safeguards:

- Similar to other permitted development rights for the change of use to residential:
    - flooding, to ensure residential development does not take place in areas of high flood risk
    - transport, particularly to ensure safe site access
    - contamination, to ensure residential development does not take place on contaminated land, or in contaminated buildings, which will endanger the health of future residents
- To ensure appropriate living conditions for residents:
    - the impacts of noise from existing commercial premises on the intended occupiers of the development
    - the provision of adequate natural light in all habitable rooms
    - fire safety, to ensure consideration and plans to mitigate risk to residents from fire
- To ensure new homes are in suitable locations:
    - the impact on the intended occupiers from the introduction of residential use in an area the authority considers is important for heavy industry and waste management

Q3.1 Do you agree that in managing the impact of the proposal, the matters set out in paragraph 21 of the consultation document should be considered in a prior approval? Please give your reasons.

BCT wishes to highlight that bats are a European Protected Species (EPS) and that under the Conservation of Habitats and Species Regulations 2017 (as amended) all such protected species must be considered by local authorities when exercising their duties, where proposals could impact on the animals themselves or their places of shelter (roosts in the case of bats), such as changes to a building are proposed, and whether or not planning permission is required.
Furthermore, the biodiversity duty as set out under section 40 to the Natural Environment and Rural Communities Act 2016 requires a public authority to have regard for the purpose of conserving biodiversity. This duty includes Ministers of the Crown and local authorities. The proposal appears not to consider biodiversity and this may be leaving the Minister open to challenge in this respect. A failure to meet these duties not only leaves the local government open to legal challenge on a domestic scale, but it also leaves applicants vulnerable to prosecution should they negatively impact EPS from their actions. A failure of local government to alert the applicants to this risk means that the local authorities could also be held accountable for the resultant criminal charges.
The ways in which to retain the use of converted buildings by bats and other species is not a new concept and much help and advice exists in how to consider this from the outset, but it needs to be flagged as a requirement to do so. Protocols and triggers currently exist that alert planners to the presence of protected species in developments. It is strongly recommended that the adoption of similar measures accompanies these proposals.
BCT strongly recommends that either:

- **The list of reasons for prior approval should also include statutory protected species to ensure that protected species such as bats are properly takin into account. To fail to do so would be misleading the property owner or developer into potential breaches of that legislation and would also be a gross failure of the duty of national and local Government.**
- **Or that the excluded types of development should include buildings that host protected species.**

Q3.2 Are there any other planning matters that should be considered?
Please specify.

BCT wishes to highlight that bats are a European Protected Species (EPS) and that under the Conservation of Habitats and Species Regulations 2017 (as amended) all such protected species must be considered by local authorities when exercising their duties, where proposals could impact on the animals themselves or their places of shelter (roosts in the case of bats), such as changes to a building are proposed, and whether or not planning permission is required.
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the local government open to legal challenge on a domestic scale, but it also leaves applicants vulnerable to prosecution should they negatively impact EPS from their actions. A failure of local government to alert the applicants to this risk means that the local authorities could also be held accountable for the resultant criminal charges.
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- **Or that the excluded types of development should include buildings that host protected species.**

Applications for prior approval and fees

22. The application for prior approval would be accompanied by: detailed floor plans showing dimensions and proposed use of each room, including the position of windows, information necessary for the consideration of the matters for prior approval, and an appropriate fee.

23. The right has the potential to deliver significant numbers of quality new homes to buy or to rent. It is therefore proposed to introduce a fee per dwellinghouse, and that this is set at the current prior approval fee of £96 applied as a fee per dwellinghouse capped at a maximum of the fee for 50 homes. We consider that a fee of £96 per dwellinghouse would not impact significantly on the costs to developers within the context of the overall costs of the development and land value uplift to be gained. If taken forward, the fee would be introduced through separate affirmative regulations at the earliest opportunity.

Q4.1 Do you agree that the proposed new permitted development right to change use from Commercial, Business and Service (Class E) to residential should attract a fee per dwelling house?
Please give your reasons.
BCT has no comments to make.

Q4.2 If you agree there should be a fee per dwelling house, should this be set at £96 per dwelling house?
Please give your reasons.
BCT has no comments to make.

Q5. Do you have any other comments on the proposed right for the change of use from Commercial, Business and Service use class to residential?
Please specify.

BCT recognises that the reuse of existing buildings could reduce the need for new development outside the built environment such as on green field\ green belt however, this may well result in escalating the loss of shops to out-of-town development rather than to benefit the original town or village.

Public Sector Equality Duty Assessment and impact assessment

24. A Public Sector Equality Duty Assessment and an impact assessment will be prepared prior to any secondary legislation being laid.

25. In consideration of the assessment of impact, the proposed right for the change of use from the Commercial, Business and Service use class to residential would be deregulatory, removing the need for a full planning application and thereby benefiting building owners and developers (individuals and business) by providing greater planning certainty and reducing costs. It will also create construction jobs.

26. The Commercial, Business and Service use class is broad and encompasses uses, such as gyms, restaurants and research and development premises that have not previously benefited from permitted development rights for the change of use to residential. The existing right for the change of use from office to residential (Class O), that has delivered 54,000 homes in the 4 years to March 2019 would be subsumed within the new right. However, more buildings would be in scope as they would no longer be required to be in use on 29 May 2013. Similarly, more shops and financial professional services premises would be able to benefit than under the existing Class M right as it is proposed to have no size limit and buildings would not be required to have been in use on 20 March 2013.

27. Take-up of the right might therefore be expected to be high. In such cases developers would benefit from the greater planning certainty afforded by local consideration only of the specific planning matters. They would also make financial savings from the reduced costs of preparing applications and lower planning fees. Depending on the final scope of the right and how suitable the non-office buildings within the use class are for residential development there could be a significant increase in housing delivery above the 13,500 - 14,000 p.a. average currently delivered through the existing rights.

28. Local planning authorities would benefit from reduced volume of planning applications, offset by a reduction in fees. The community would benefit from the quality new homes that meet nationally described space standards whether to buy or to rent. Your views would be helpful in understanding the range of issues and scale of impacts.

29. We are required to assess these proposals by reference to the Public Sector Equality Duty contained in the Equality Act 2010. We would welcome your comments as part of this consultation.

Q6.1 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could impact on businesses, communities, or local planning authorities?
If so, please give your reasons.
BCT recognises that the reuse of existing buildings could reduce the need for new

development outside the built environment such as on green field\ green belt however, this may well result in escalating the loss of shops to out-of-town development rather than to benefit the original town or village.

Q6.2 Do you think that the proposed right for the change of use from the Commercial, Business and Service use class to residential could give rise to any impacts on people who share a protected characteristic?
If so, please give your reasons.
BCT has no comments to make.

2. Supporting public service infrastructure through the planning system

30. The government is committed to an ambitious investment programme to ensure our public services are world class. The Spending Review on 25 November 2020 set out our vision for a long-term programme of investment in the vital public service infrastructure the country needs. This will include new hospitals, schools, further education colleges and prisons that will:

- ensure the health service will have world-class facilities for patients and staff for the long term, with many new hospitals started this Parliament
- make sure schools are fit for the future, with better facilities and brand-new buildings so that every child gets a world-class education
- deliver modern and more efficient prisons that protect the public, boost rehabilitation, and cut reoffending - providing improved security and additional training facilities to help rehabilitate offenders and supports them to find employment on release
- ensure public buildings benefit from the quicker assembly times, lower energy use, and stronger green footprint offered by new construction technology
- provide a major spur to local economies and support the construction industry to invest and innovate following the COVID-19 pandemic

31. It is crucial this investment in new public service infrastructure is planned and delivered faster and better. The government has been considering how best to achieve this under Project Speed, and we set out our new approach through the National Infrastructure Strategy at the Spending Review. In particular, we know one of the key issues is securing planning permission for new hospitals, schools, further education colleges and prisons which can often take significant time, leading to project delays and cost increases.

32. So, to ensure there is faster delivery immediately, we are consulting on a package of proposals to streamline and speed up the planning process for these types of developments within the current planning system. Over the longer term, our planning reforms set out in the Planning for the future white paper provide a further opportunity to speed up and improve the planning of new public service developments.

Providing further flexibilities for public service infrastructure through permitted development rights

33. To enable vital public infrastructure to respond quickly to the societal and economic effects of COVID-19 we propose to provide further flexibility for additional educational and hospital capacity on existing sites. This could be taken forward through the amendment of the existing national permitted development right which allows schools and other educational establishments and hospitals to expand or construct additional buildings without the need for a planning application.

34. The existing right Class M – extensions etc. for schools, colleges, universities, and hospitals (Part 7 to Schedule 2 of the General Permitted Development Order) is subject to size limits, limiting extensions or additional buildings to no more than 25% of the gross floorspace of the original buildings with a maximum cap of 100 square metres, or 250 square metres in the case of schools. It also restricts the height of new buildings to 5 metres. The right provides protections for nearby residents in that it restricts development close to the boundary and, in the case of schools, safeguards playing fields.

35. We propose to amend the right to allow such uses to expand their facilities by up to 25% of the footprint of the current buildings on the site at the time the legislation is brought into force, or up to 250 square metres, whichever is the greater. This would allow greater flexibility for those sites that have enlarged or developed additional buildings over time and flexibility for those premises with a smaller footprint. To provide further flexibility, it is also proposed that the height limit is raised from 5m to 6m, excluding plant on the roof, except where it is within 10 metres of the boundary or curtilage. We are interested to know if there is any evidence that the height limit should be raised further, subject to fire safety considerations. To benefit from the right, the site would already have to have sufficient land to build the extension or new building. In the case of schools, playing fields would continue to be protected. We will ensure decisions made by government departments, and project delivery by public service infrastructure providers, take account of environmental advice available to them.

36. There are societal benefits in providing such flexibility. For example, providing this greater flexibility for schools will help them deliver additional capacity and replace ageing school buildings more quickly with modern, energy-efficient designs. Similarly, many major hospitals have needed to expand their sites over recent months to respond more effectively to the COVID-19 pandemic, such as by increasing the size of emergency departments to allow social distancing to take place. The response to the pandemic has highlighted the need for a more streamlined planning process for NHS developments. The proposed amendment provides greater certainty and shorter timescales.

37. To build on these further flexibilities, we recognise that there is an opportunity to allow prisons to benefit from such a right for the first time. It is therefore proposed that prisons will be able to expand their facilities by up to 25% of the footprint of the current buildings on the site at the time the legislation is brought into force, or up to 250 square metres, whichever is the greater. The buildings may be no higher than 6 metres, excluding plant on the roof. These changes would enable more efficient and effective use of the existing estate

and enable prisons to provide additional prison accommodation to address an increase in prisoner numbers without the need for a planning application. This flexibility would apply specifically to prisons and not to other residential facilities, such as to immigration removal centres.

38. The Defence estate is a significant part of public service infrastructure and in the coming years will receive investment to fulfil the operational requirements of the UK Armed Forces and the accommodation standards deserved by their Service personnel and families. As part of the wider consultation we will consider how the permitted development rights set out in this chapter, or similar rights, could enable the expansion or construction of new buildings 'within the wire' on existing Defence sites. This will support the Ministry of Defence as it commences its once-in-a-generation Defence Estate Optimisation Programme (DEOP), both improving the standard of Defence infrastructure and creating 5,000 jobs throughout the United Kingdom.

39. The changes to support schools, other educational establishments, hospitals, and prisons are de-regulatory. They would support both public and private institutions and therefore would benefit business. Local planning authorities would benefit from the reduced volume of planning applications. An assessment of impact will be completed prior to any legislation being laid. We would welcome any comments on the potential impacts of these proposals on business, local planning authorities and communities.

40. We are required to assess these proposals by reference to the Public Sector Equality Duty contained in the Equality Act 2010, and an assessment will be prepared prior to any secondary legislation being laid. We would welcome your comments as part of this consultation.

Q7.1 Do you agree that the right for schools, colleges and universities, and hospitals be amended to allow for development which is not greater than 25% of the footprint, or up to 250 square metres of the current buildings on the site at the time the legislation is brought into force, whichever is the greater?
Please give your reasons.

There are two issues that BCT would like to draw your attention to.

1. **BCT wishes to highlight that bats are a European Protected Species (EPS) and that under the Conservation of Habitats and Species Regulations 2017 (as amended) all such protected species must be considered by local authorities when exercising their duties, where proposals could impact on the animals themselves or their places of shelter (roosts in the case of bats), such as changes to a building are proposed, and whether or not planning permission is required.**

   Furthermore, the biodiversity duty as set out under section 40 to the Natural Environment and Rural Communities Act 2016 requires a public authority to have regard for the purpose of conserving biodiversity. This duty includes Ministers of the Crown and local authorities. The proposal appear not to consider biodiversity and this may be leaving the Minister open to challenge in this respect. A failure to meet these duties not only leaves the local government open to legal challenge on a domestic scale, but it also leaves applicants vulnerable to prosecution should

they negatively impact EPS from their actions. A failure of local government to alert the applicants to this risk means that the local authorities could also be held accountable for the resultant criminal charges.
The ways in which to retain the use of converted buildings by bats and other species is not a new concept and much help and advice exists in how to consider this from the outset, but it needs to be flagged as a requirement to do so.
Protocols and triggers currently exist that alert planners to the presence of protected species in developments. It is strongly recommended that the adoption of similar measures accompanies these proposals.

2. **Consent for the original development may have included mitigation measures either in a voluntary context or where mitigation was required for planning consent for example, the retention of landscape features that species such as bats might use for commuting. School grounds in particular may have areas set aside for biodiversity interest and gain. Extending permitted development could undermine the existing development mitigation and without proper assessment, permitted development would have a negative impact**.

BCT strongly recommends that either:

- **The list of reasons for prior approval should also include statutory protected species to ensure that protected species such as bats are properly takin into account. To fail to do so would be misleading the property owner or developer into potential breaches of that legislation and would also be a gross failure of the duty of national and local Government.**
- **Or that the excluded types of development should include buildings that host protected species.**

Q7.2 Do you agree that the right be amended to allow the height limit to be raised from 5 metres to 6?
Please give your reasons.
BCT has no comments to make.

Q7.3 Is there any evidence to support an increase above 6 metres?
Please specify.
BCT has no comments to make.

Q7.4 Do you agree that prisons should benefit from the same right to expand or add additional buildings?
Please give your reasons.

There are two issues that BCT would like to draw your attention to.

1. **BCT wishes to highlight that bats are a European Protected Species (EPS) and that under the Conservation of Habitats and Species Regulations 2017 (as amended) all such protected species must be considered by local authorities when exercising their duties, where proposals could impact on the animals themselves or their places of shelter (roosts in the case of bats), such as changes to a building are proposed, and whether or not planning permission is required.**

Furthermore, the biodiversity duty as set out under section 40 to the Natural Environment and Rural Communities Act 2016 requires a public authority to have regard for the purpose of conserving biodiversity. This duty includes Ministers of the Crown and local authorities. The proposal appears not to consider biodiversity and this may be leaving the Minister open to challenge in this respect. A failure to meet these duties not only leaves the local government open to legal challenge on a domestic scale, but it also leaves applicants vulnerable to prosecution should they negatively impact EPS from their actions. A failure of local government to alert the applicants to this risk means that the local authorities could also be held accountable for the resultant criminal charges.
The ways in which to retain the use of converted buildings by bats and other species is not a new concept and much help and advice exists in how to consider this from the outset, but it needs to be flagged as a requirement to do so. Protocols and triggers currently exist that alert planners to the presence of protected species in developments. It is strongly recommended that the adoption of similar measures accompanies these proposals.

2. **Consent for the original development may have included mitigation measures either in a voluntary context or where mitigation was required for planning consent for example, the retention of landscape features that species such as bats might use for commuting. Extending permitted development could undermine the existing development mitigation and without proper assessment, permitted development would have a negative impact**.

BCT strongly recommends that either:

- **The list of reasons for prior approval should also include statutory protected species to ensure that protected species such as bats are properly takin into account. To fail to do so would be misleading the property owner or developer into potential breaches of that legislation and would also be a gross failure of the duty of national and local Government.**
- **Or that the excluded types of development should include buildings that host protected species.**

Q8. Do you have any other comments about the permitted development rights for schools, colleges, universities, hospitals and prisons?
Please specify.
BCT recognises that extending Permitted Development Rights could reduce the need for new development outside the existing development envelope thereby protecting new development on land such as on green field\ green belt.
BCT strongly recommends that either:

- **The list of reasons for prior approval should also include statutory protected species to ensure that protected species such as bats are properly takin into account. To fail to do so would be misleading the property owner or developer into potential breaches of that legislation and would also be a gross failure of the duty of national and local Government.**
- **Or that the excluded types of development should include buildings that host protected species.**

Q9.1 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could impact on businesses, communities, or local planning authorities?

If so, please give your reasons.

BCT wishes to highlight that bats are a European Protected Species (EPS) and that under the Conservation of Habitats and Species Regulations 2017 (as amended) all such protected species must be considered by local authorities when exercising their duties, where proposals could impact on the animals themselves or their places of shelter (roosts in the case of bats), such as changes to a building are proposed, and whether or not, planning permission is required.
Furthermore, the biodiversity duty as set out under section 40 to the Natural Environment and Rural Communities Act 2016 requires a public authority to have regard for the purpose of conserving biodiversity. This duty includes Ministers of the Crown and local authorities. The proposal appear not to consider biodiversity and this may be leaving the Minister open to challenge in this respect. A failure to meet these duties not only leaves the local government open to legal challenge on a domestic scale, but it also leaves applicants vulnerable to prosecution should they negatively impact EPS from their actions. A failure of local government to alert the applicants to this risk means that the local authorities could also be held accountable for the resultant criminal charges.

Q9.2 Do you think that the proposed amendments to the right in relation to schools, colleges and universities, and hospitals could give rise to any impacts on people who share a protected characteristic?
If so, please give your reasons.
BCT has no comments to make.

Q10.1 Do you think that the proposed amendment to allow prisons to benefit from the right could impact on businesses, communities, or local planning authorities?
If so, please give your reasons.
BCT recognises that extending Permitted Development Rights could reduce the need for new development outside the existing development envelope thereby protecting new development on land such as on green field\ green belt.
BCT strongly recommends that either:

- **The list of reasons for prior approval should also include statutory protected species to ensure that protected species such as bats are properly takin into account. To fail to do so would be misleading the property owner or developer into potential breaches of that legislation and would also be a gross failure of the duty of national and local Government.**
- **Or that the excluded types of development should include buildings that host protected species.**

Q10.2 Do you think that the proposed amendment in respect of prisons could give rise to any impacts on people who share a protected characteristic?
If so, please give your reasons
BCT has no comments to make.

A faster planning application process for public service developments

41. The proposed changes to permitted development rights as outlined above will ensure that planning for public service projects where new facilities involve the expansion of existing sites will be significantly streamlined to support their faster delivery. However, many of the new hospitals, schools, further education colleges and prisons which the government will be funding will involve more substantive development, especially on new sites, which are outside the scope of proposed permitted development right changes. In these cases, public service providers will continue to submit an application to the local planning authority to secure planning permission.

42. Recent experience has shown that the determination by local planning authorities of applications for such substantive public service developments has often taken considerably longer than the statutory timetable of 13 weeks (or 16 weeks in the case of EIA (Environmental Impact Assessment) development). The Ministry of Justice, for example, report an average of 8 months for new prison infrastructure across the past 4 years. This has created delays to project delivery, and in some cases, increased the cost of these new projects.

43. The government believes that it is right for local planning authorities to make planning decisions in the normal way on proposals for more substantive new public service developments in their area, particularly those involving new sites. These new developments will impact on the local area, and it is important local communities are able to express their views. However, it is critical that decisions on these projects are made faster. We therefore propose to create a new faster process for applications for planning permission with a view to encouraging greater prioritisation of decision making by local planning authorities for these key public service developments.

44. Our intention is to amend secondary legislation to modify the process for applications for permission for certain development, principally the Town and Country Planning (Development Management Procedure) (England) Order 2015. The new process would have a number of features to encourage greater prioritisation by local planning authorities of public service infrastructure projects, including shorter timescales for determination. By identifying this sub-set of development within the major development category, we will also increase transparency of these applications with the Secretary of State, supporting a faster appeals process if decisions are not made or applications are rejected.

45. This consultation seeks views about the proposed changes, including:

- the development within scope of the modified process
- a shorter determination period
- modified consultation and publicity requirements
- measures to increase transparency

46. We recognise that, public service providers delivering these key public service developments will need to engage with local planning authorities at an early stage, so that the right information is available to enable decisions to be made more quickly.

47. These proposed changes are also intended to be implemented quickly within the current planning system. Our proposals in the Planning for the future white paper to reform the planning system more widely over the longer term will provide an opportunity to consider how the process can be improved further.

What public service developments should be in scope?

48. For the new faster process to be effective, we want it to focus on important public service developments requiring planning permission. This requires a clear definition of the developments that will be within scope of the new process in order that local planning authorities and the Secretary of State can clearly identify and prioritise them. We propose a two-tier approach based on the scale and definition of the proposed development.

49. **Scale.** This reform is targeted at substantive public service developments which extend beyond the permitted development right changes. We are proposing that proposals for development would fall within scope of the modified process if they:

- are "major development"[footnote 2] carried out on a site having an area of 1 hectare or more, and/or involve the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; and
- involve the type of development described in paragraph 53 below; and
- would currently be subject to a 13-week statutory determination period[footnote 3]

50. A lower size limit would mean that the development would normally be subject to a shorter 8-week determination period because it would not fall within the definition of "major development. In addition, it could, depending on the definition adopted (see below), result in significant numbers of developments being brought within scope which could lead to resource pressures in local planning authorities. We estimate that, on average, it would be unlikely that an individual planning authority would receive any more than 5 such applications each year.

51. In addition, the proposed new application process would not in the first instance apply to developments that fall within the definition of EIA development. The definition, timescales and procedures for EIA developments are set in separate EIA regulations which remain in force. This means in practice public service developments which are over 5 hectares in size will not be covered by the modified process, unless there has been a screening opinion that determines that the development does not constitute EIA development.

Q11 Do you agree that the new public service application process, as set out in paragraphs 43 and 44 of the consultation document, should only apply to major development (which are not EIA developments)? Please give your reasons.
BCT has grave concerns over the general trend towards using Permitted Development Rights to circumvent proper and due scrutiny of development proposals. Para 42 outlines says that the statutory time for determination is often not met by local planning authorities, but it fails to explain why that is the case to justify shortening the timescale to a 10-week determination period. Simply moving the goal posts will not in itself achieve

the desired outcomes. We therefore expect this proposal to result in a lowering of environmental standards.
Not only will this proposal result in a significant reduction in public scrutiny and local democracy, but more worryingly it also has consequential adverse impacts on statutory consultees who may themselves already be stretched to delivering their advisory duties resulting in poor and inadequate consideration and subsequent advice.
Prioritisation is likely to lead to poorer quality planning applications and decisions.
We also express concerns as to how Permitted Development Rights will fit with the Government's intention to introduce Biodiversity Net Gain as detailed in the draft Environment Bill.
BCT recommends that:

a. **applicants and\or local development plans should look for development sites that are not going to bring the proposal into conflict.**
b. **better engagement with planning authorities at an early stage**
c. **the time-period must be reasonable and achievable without causing adverse knock-on impacts elsewhere within the planning system.**
d. **The time-period does not start until the planning application has been validated to ensure that all relevant information has been satisfactorily provided and that statutory consultees have been able to properly provide their advice,**

52. **Categories of "major development" which will be subject to the modified process.** We propose to apply the modified process to development of hospitals, schools, further education colleges and prisons. We recognise that it will be necessary to provide a clear definition for these categories, but there are a range of existing definitions that could be adopted.

53. We propose to have definitions for:

- hospitals
- schools and further education colleges
- prisons, young offenders' institutions, and other criminal justice accommodation

54. We also propose to limit the application of the modified process to those public service infrastructure projects which are principally funded by government. We will be working closely with departments to establish clear statutory definitions for the types of government-funded public service infrastructure projects to which the new applications process would apply.

Q12 Do you agree the modified process should apply to hospitals, schools and further education colleges, and prisons, young offenders' institutions, and other criminal justice accommodation?
If not, please give your reasons as well as any suggested alternatives.
BCT does not agree to the proposed modified process.
BCT has grave concerns over the general trend towards using Permitted Development Rights to circumvent proper and due scrutiny of development proposals. Para 42 outlines says that the statutory time for determination is often not met by local planning

authorities, but it fails to explain why that is the case to justify shortening the timescale. Simply moving the goal posts will not in itself achieve the desired outcomes.
Whilst educational establishments and hospitals are more likely to be sited closer to the existing built environment, development such as prisons will tend to be sited away from the public and therefore more likely to negatively impact on biodiversity. We would therefore expect this proposal to result in a lowering of environmental standards.
Not only will this proposal result in a significant reduction in public\civil society scrutiny and local democracy, but more worryingly it also has consequential adverse impacts on statutory consultees who may themselves already be stretched to delivering their advisory duties resulting in poor and inadequate consideration and subsequent advice.
We also unclear as to how these Permitted Development Rights will fit with the Government's intention to introduce Biodiversity Net Gain as detailed in the draft Environment Bill.
BCT recommends that:

a. **applicants and\or local development plans should look for development sites that are not going to bring the proposal into conflict.**
b. **better engagement with planning authorities at an early stage**
c. **the time-period must be reasonable and achievable without causing adverse knock-on impacts elsewhere within the planning system.**
d. **The time-period does not start until the planning application has been validated to ensure that all relevant information has been satisfactorily provided and that statutory consultees have been able to properly provide their advice,**

Faster decision-making

55. The key change we propose to make to speed up the process of determining these planning applications is to provide for the statutory determination period for development within scope of the modified procedure to be 10 weeks, which will require local planning authorities to prioritise these decisions over other applications for major development.

56. This shorter timescale for determination will encourage positive, pro-active, and effective pre-application engagement between all parties, including statutory consultees, on applications for significant public service development. This would be clearly set out in the National Planning Policy Framework as explained in paragraph 69 below. Early and effective pre-application engagement is already a core part of the process for many of these projects and the more issues that can be resolved at pre-application stage, the greater the benefits, ensuring local planning authorities can issue timely decisions. Given the nature and importance of these proposals for development, it is likely that local discussions and engagement with local communities will have been underway for some time prior to the submission of a formal planning application. We will issue further guidance to applicants, statutory consultees, and local planning authorities on the importance of pre-application engagement and prioritising these developments.

57. It will be important that local planning authorities have effective case management systems so they can clearly identify and prioritise the application, undertake the necessary consultation, analyse responses from consultees and reach a final decision. To assist with

this, we will design and specify a new planning application form for developments that fall within scope of the modified process.

58. Where decisions are to be taken by a planning committee, local planning authorities may wish to consider bringing forward the committee meeting. It will also be important to engage committee members at the pre-application stage as this will help to improve understanding of the proposals.

59. Where appropriate, statutory consultees should also prioritise these types of applications. To enable this to happen, we expect applicants to engage with relevant statutory consultees through pre-application discussions. Nevertheless, we recognise this prioritisation could have resource implications for key statutory consultees. As part of the implementation of the Planning for the future white paper reforms, we will be considering the role of statutory consultees and their resourcing to ensure they can support faster and more certain decision making.

Q13 Do you agree the determination period for applications falling within the scope of the modified process should be reduced to 10 weeks?
Please give your reasons.
BCT does not agree that the 10-week determination period is adequate, and we do not believe that it will achieve the desired results. Faster and more certain decision making does not equate to to better decision making or improved delivery.
We are especially concerned that not only will this proposal result in a significant reduction in public scrutiny and local democracy, but more worryingly it also has consequential adverse impacts on statutory consultees, which you have acknowledged in paragraph 59, who may themselves already be stretched to delivering their advisory duties resulting in poor and inadequate consideration and subsequent advice. BCT would therefore expect this proposal to result in a lowering of environmental standards.
In recent years, statutory bodies such as Natural England have undergone under-investment with huge losses in funding, resulting in low levels of staffing now unable to properly discharge their duties to scrutinise and comment on planning applications. Furthermore, local authorities do not have the full complement of ecological staff to be able to advise planning officers (less than a third of LPAs have recourse to ecologists). The requirement to provide advice within a shortened time frame is highly likely to result in other adverse impacts on consideration of more routine planning applications resulting in delays.
Notwithstanding that, BCT does not support the proposals for shortening the time for determination, BCT would recommend that issues of underfunding and resourcing must be rectified before there is any further consideration of this proposal.

60. It should be emphasised the aim of this reform is to speed up local decisions. Existing protections already in place, which would impact on new public service infrastructure developments, will not be affected. National and local planning policies must still be taken into account where proposals come forward. This means that, for example, any proposals for new schools submitted for determination under the new applications process must still have regard to existing guidance concerning the disposal or change of use of playing fields

and school land. Similarly, they must ensure that existing environmental and sustainable transport policies are taken into account.

Consultation

61. To support faster decision-making, we also propose to shorten the statutory publicity and consultation periods for applications.

62. Currently the statutory provisions (principally article 15 of the Town and Country Planning (Development Management Procedure) (England) Order 2015) require local planning authorities to publicise applications for planning permission made to them using methods which vary, depending on the type of development proposal. For example, in the case of major development which is not EIA development or development which does not accord with the provisions of the development plan or affect a public right of way the authority must give requisite notice by site display or by serving the notice on an adjoining owner or occupier and by the publication of the notice in a local newspaper and by the publication of information about the application on its website[footnote 4]. The local planning authority must allow a minimum of 21 days for representations before determining the application.

63. We believe it would be appropriate to reduce the minimum period for representations from 21 days to 14 days (maintaining the current requirement to add extra days if the consultation period includes bank or public holidays) as we expect that many of these developments will have already been subject to extensive prior engagement with the local community. This 14-day period is the current minimum consultation period for applications for Permission in Principle[footnote 5].

64. Where the authority is required to consult a statutory consultee (such as a local highway authority) they currently have 21 days to provide a substantive response[footnote 6]. We propose to reduce this period to 14 days and statutory consultees would be expected to prioritise their consultation responses for these cases. By limiting the scope of these applications to those of the greatest importance we expect these applications to form a very small proportion of a local planning authority's caseload.

Q14. Do you agree the minimum consultation/publicity period should be reduced to 14 days?
Please give your reasons.
BCT does not agree that the reducing the minimum period for representations to be made, should be reduced to 14 days.
We are especially concerned that not only will this proposal result in a significant reduction in public scrutiny and local democracy, but more worryingly it also has consequential adverse impacts on statutory consultees, which you have acknowledged in paragraph 59, who may themselves already be stretched to delivering their advisory duties resulting in poor and inadequate consideration and subsequent advice.
In recent years, statutory bodies such as Natural England have undergone under-investment with huge losses in funding and resulting in low levels of staffing to be able to properly discharge their duties to scrutinise and comment on planning applications.

Furthermore, local authorities do not have the full complement of ecological staff to be able to advise planning officers. The requirement to provide advice within a shortened time frame is highly likely to result in knock-on adverse impacts on consideration of more routine planning applications resulting in delays.
The proposal to restrict the time for public\civil society representation to 14 days is alarming. This would effectively rule out NGO engagement as this **sector does not necessarily have the resources to be able to consider a major application within the time scales proposed. This represents a fundamental assault on a sector that has prided itself in being able to contribute and participate in delivering better and shared outcomes.**
Notwithstanding that BCT does not support the proposals for shortening the period for determination, BCT would recommend that issues of underfunding and resourcing must be rectified before there is any further consideration of this proposal.

Notifications to the Secretary of State

65. In order to promote greater transparency, we also propose requiring local planning authorities to notify the Secretary of State when they receive a valid planning application for these developments, to allow for effective engagement, support and monitoring of progress.

66. We also propose that all local planning authorities in receipt of such applications will be required to inform the Secretary of State no later than 8 weeks from having validated the application, when they anticipate making the decision.

Q15 Do you agree the Secretary of State should be notified when a valid planning application is first submitted to a local planning authority and when the authority it anticipates making a decision?
Please give your reasons.
BCT is unclear what the intended purpose of this is and whether is about policing or transparency. The Secretary of State should be required to make a public, a list of all such notices and the outcomes of such notices.

Other matters

Post-permission matters

67. While it is vital that decisions on applications for planning permission for these key public service developments are made more quickly, it is equally important that local planning authorities prioritise any subsequent post-permission consents for these projects, including reserved matters applications for outline permissions, discharge of condition applications, and any section 73 or section 96A applications to amend the permission, to ensure the permission is readily implementable. We propose to monitor local planning authorities' performance with these detailed consents.

68. Similarly, we expect local planning authorities to prioritise the negotiation and finalisation of any section 106 agreements associated with these types of development.

Guidance

69. It is already made clear in paragraph 94 of the National Planning Policy Framework that local planning authorities should work with schools' promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted. We intend to expand this approach to other priority public infrastructure developments. This will make it clear that local planning authorities are expected to take a proactive approach to engaging with key delivery bodies and other stakeholders at the pre-application stage.

70. Alongside these proposals to introduce a faster applications process and amend the National Planning Policy Framework, we will also amend the National Planning Practice Guidance for applicants, statutory consultees, and local planning authorities on the importance of pre-application engagement and prioritising these developments.

Fees

71. We do not propose making any amendments to the Fees Regulations for these public service infrastructure developments. While we recognise that the process for determination would be faster, we do not think it is necessary for the planning application fee to change. The requirements for consultation and publicity will still apply to these applications and local planning authorities will still be required to undertake their usual duties when consulting on public service infrastructure projects, in line with existing legislation.

Q16 Do you agree that the policy in paragraph 94 of the NPPF should be extended to require local planning authorities to engage proactively to resolve key planning issues of other public service infrastructure projects before applications are submitted?
Please give your reasons.
BCT would support the principle of extending p94 of NPPF to resolve key planning issues, including those relating to biodiversity in general and protected species specifically, as part of the validation process and <u>before</u> applications are submitted. We would suggest that this should be adopted as good practice.

Q17.1 Do you have any comments on the other matters set out in this consultation document, including post-permission matters, guidance and planning fees?
Please specify.

Q17.2 Do you have any other suggestions on how these priority public service infrastructure projects should be prioritised within the planning system?
Please specify.

Public Sector Equality Duty

72. We are required to assess these proposals by reference to the Public Sector Equality Duty contained in the Equality Act 2010, and an assessment will be prepared prior to any secondary legislation being laid. We would welcome your comments as part of this consultation.

Q18 Do you think that the proposed amendments to the planning applications process for public service infrastructure projects could give rise to any impacts on people who share a protected characteristic?
If so, please give your reasons.

3. Consolidation and simplification of existing permitted development rights

73. From 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 made changes to Town and Country Planning (Use Classes) Order 1987 ("the Use Classes Order") amending the use classes as they apply in England. This created the new Commercial, Business and Service (E), Learning and non-residential institutions (F1), and Local Community (F2) use classes. The Regulations additionally provided that the existing national permitted development rights that made reference to use classes in force up until 31 August 2020 should continue to be read that way and would continue to have effect until 31 July 2021.

74. The Use Classes Order groups together uses into Classes and provides that movement within them is not development requiring planning permission. The material change of use from one use class, such as from Class C3 residential to another, such as Class E Commercial, Business and Service, would require planning permission. The General Permitted Development Order provides planning permission for certain material changes of use across England through national permitted development rights. It is now therefore necessary to review references to use classes throughout the General Permitted Development Order and to update individual rights, and articles as appropriate.

75. The review and update is a significant and complex exercise requiring consideration of those rights affected across the entire Order and potentially this may require amendment of 49 individual rights and additional paragraphs and articles. (See Annex A for the list of rights and articles to be reviewed.) The intention is that in doing so we take opportunity to simplify and rationalise those existing rights, and then to bring forward appropriate legislative amendments before 31 July 2021.

76. We consider that the rights fall into 4 broad categories. Taking Part 3 to Schedule 2 of the Order **Changes of use** as an example:

Category 1 - the right is no longer required. Example - Class D shops to financial and professional

- What were previously two separate use classes - Class A1 (Shops) and Class A2 (Financial and Professional Services), as of 1 September, are now both within the same broad Commercial, Business and Service use class (Class E). Therefore, change of use from a shop to a financial/ professional service no longer needs planning permission through the permitted development right. Class D no longer serves any effective purpose and therefore we intend that it is revoked.

Category 2 - the right is unchanged by the amendments to the Use Classes Order and therefore no amendment is necessary. Example - Class L small HMOs to dwellinghouse and vice versa.

- Class L grants planning permission to change from small Houses of Multiple Occupation (Class C4) to residential (Class C3) and vice versa. The latest amendments to the Use Classes Order did not affect either of these classes. Therefore, the right can remain unchanged.

Category 3 - the right may be replaced by the new proposed permitted development right from the Commercial, Business and Service use class to residential. Example – Class O offices to dwellinghouses

- Class O grants permission for change of use from office (which was formerly use class B1(a)) to residential (Class C3). The B1(a) use class is now subsumed into the broader Class E Commercial, Business and Service use class. As set out in Part 1 of this consultation, we propose to create a separate right granting planning permission to change from Class E to Residential (Class C3). Therefore, if that right is taken forward, this earlier right would no longer be necessary and could be revoked.

Category 4 - the right requires detailed consideration. There are several rights that may fall into this category.

- Example (a) Classes A, B, C, E. F, J, JA, and K which allow the change of use to one or more uses now within the Commercial, Business and Service use Class. A range of individual rights allow for the change of use from, for example, hot food takeaways, betting shops and pay day loan shops, to uses that are now within the Commercial Business and Service use class. These individual rights differ in some details, such as size limits, matters for prior approval and exclusions such as for listed buildings. Recognising the driver for greater flexibility behind the broader use class, there is potential to consolidate and simplify these, and possibly other rights, into one or more rights. In doing so there could then be some changes to the detail of the limitations in respect of size and matters for prior approval etc.
- Example (b) Class J retail or betting office or pay day loan shop to assembly and leisure. The Class J right provides for the change of use to what was the D2 Assembly and Leisure use class. Individual uses previously within this use class may now be found in the Commercial, Business and Service use class, F2 Local Community use class, and some such as cinemas and concert halls are now listed as not in any use class. Change to the range of uses previously in D2 may therefore be treated differently in future. For example, betting shops and pay day loan shops may in future require a planning application for the change of use to those leisure uses now listed at article 3 (6) as not in a use class.

77. While the focus will primarily be on Part 3 Change of use, other Parts of the Order raise similar issues: in particular Part 4 in respect of temporary use, and Part 7 in respect of non-domestic extensions and alterations.

78. We therefore intend to review and update those individual rights that have been affected by the amendments to the Use Classes Order, recognising the intent behind the greater flexibilities those amendments afford. In doing so we will consider the scope of individual rights, and seek to simplify and rationalise rights where possible, by revoking unnecessary rights and merging where appropriate. We intend that this approach would result in a more accessible set of rights. In doing so a number of issues arise:

- There may be rights under category 4 where the scope of the right is broadened, for example to allow for the change of use **to** the Commercial, Business and Service use class rather than an individual use within it, such as a shop. Or may similarly be broadened by providing for the change of use **from** a greater range of uses, such as from the Commercial, Business and Service use class.
- There may be other cases where rights that provide for limited physical works to support the change of use are merged with others that do not, and the provision for physical works falls away.
- The review or merger of rights with no or differing size limits may result in a broader or more restricted right.
- Where individual rights that either do or do not apply in conservation areas or other protected land are merged we will consider the balance of safeguards to be provided, and whether that could mean that some rights would in future apply in protected land.
- We will seek to preserve the safeguards in respect of those uses listed in article 3 (6) of the Use Classes Order as 'no class specified' and that we wish to protect, such as public houses. We would therefore not look to a permitted development right to grant permission and instead continue to require a planning application for the change of use to or from such uses.
- Uses within the previous D2 Assembly and Leisure use class are now found in either the Commercial, Business and Service use class, Local Community use class or listed as being in no class specified. Rights that previously allowed for the change of use to any use within the D2 assembly and leisure use class may therefore in future be more restrictive in allowing change to uses within the Local Community use class.
- It is proposed that no changes are made in respect of the scope of the recently introduced Part 20 rights to construct new homes: extending buildings upwards, and demolition and rebuild. It is important that these rights are given time to establish and for impacts to be assessed before any changes are made.

79. Views are invited on the broad approach in respect of the categories set out above.

Q19.1 Do you agree with the broad approach to be applied to the review and update of existing permitted development rights in respect of categories 1,2 and 3 outlined in paragraph 76 of the consultation document?
Please give your reasons.

Q19.2 Are there any additional issues that we should consider?
Please specify.

Q20 Do you agree that uses, such as betting shops and pay day loan shops, that are

currently able to change use to a use now within the Commercial, Business and Service use class should be able to change use to any use within that class?
Please give your reasons.

Q21 Do you agree the broad approach to be applied in respect of category 4 outlined in paragraph 76 of the consultation document?
Please give your reasons.

Q22 Do you have any other comments about the consolidation and simplification of existing permitted development rights?
Please specify.
BCT considers that the list of prior approvals is limited, and it needs to ensure proper diligent consideration of biodiversity impacts.
As stated previously in questions 3.1, 7.1, 7.4 and 9.1:
BCT bats are a European Protected Species (EPS) and that under the Conservation of Habitats and Species Regulations 2017 (as amended) all such protected species must be considered by local authorities when exercising their duties, where proposals could impact on the animals themselves or their places of shelter (roosts in the case of bats), such as changes to a building are proposed, and whether or not planning permission is required.
Furthermore, the biodiversity duty as set out under section 40 to the Natural Environment and Rural Communities Act 2016 requires a public authority to have regard for the purpose of conserving biodiversity. This duty includes Ministers of the Crown and local authorities. The proposal appears not to consider biodiversity and this may be leaving the Minister open to challenge in this respect. A failure to meet these duties not only leaves the local government open to legal challenge on a domestic scale, but it also leaves applicants vulnerable to prosecution should they negatively impact EPS from their actions. A failure of local government to alert the applicants to this risk means that the local authorities could also be held accountable for the resultant criminal charges.
BCT has previously written to the Department of Communities and Local Government (2014 and 2015) expressing our concerns and providing evidence that many local planning authorities do not follow Government advice with respect to the Conservation of Habitats and Species Regulations when it comes to Permitted Development Rights. On each occasion Government has relied on this advice to discharge its responsibilities but we believe that this advice is still not being followed.
BCT strongly recommends that either:

- **The list of reasons for prior approval should also include statutory protected species to ensure that protected species such as bats are properly takin into account. To fail to do so would be misleading the property owner or developer into potential breaches of that legislation and would also be a gross failure of the duty of national and local Government.**
- **Or that the excluded types of development should include buildings that host protected species.**

We remain concerned that changes to Permitted Development Rights may impact on the scope of Biodiversity Net Gain (questions 11 and 12) and we should suggest that

consideration should be given to Permitted Development Rights for activities that benefit biodiversity outside activities that are required under derogation licences.

Public Sector Equality Duty Assessment and impact assessment

80. We are required to assess these proposals by reference to the Public Sector Equality Duty contained in the Equality Act 2010. A Public Sector Equality Duty Assessment and an impact assessment will be prepared reflecting the detail of the changes to be made prior to any secondary legislation being laid.

Annex A: List of potential rights that may require consolidation and simplification, update and cross-referencing following changes to the Use Classes Order

This list is based on the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, on 7 October 2020. This list is not definitive, and the final legislation may vary by the addition or omission of individual rights.

Article 2 Interpretation

Part 1 Development within the curtilage of a dwellinghouse

- Class A enlargement, improvement or other alteration of a dwellinghouse
- Class AA enlargement of a dwellinghouse by construction of additional storeys
- Class B additions etc to the roof of a dwellinghouse
- Class C other alterations to the roof of a dwellinghouse
- Class D porches
- Class E buildings etc incidental to the enjoyment of a dwellinghouse
- Class F hard surfaces incidental to the enjoyment of a dwellinghouse
- Class G chimneys, flues etc on a dwellinghouse
- Class H microwave antenna on a dwellinghouse

Part 2 Minor operations

- Class A gates, fences, walls etc

Part 3 Changes of use

- Class A restaurants, cafes, or takeaways to retail
- Class AA drinking establishments with expanded food provision
- Class B takeaways to restaurants and cafes
- Class C retail, betting office or pay day loan shop or casino to restaurant or cafe
- Class D shops to financial and professional
- Class E financial and professional or betting office or pay day loan shop to shops
- Class F betting offices or pay day loan shops to financial and professional
- Class G retail or betting office or pay day loan shop to mixed use
- Class H mixed use to retail

- Class I industrial and general business conversions
- Class J retail or betting office or pay day loan shop to assembly and leisure
- Class JA retail, takeaway, betting office, pay day loan shop, and launderette uses to offices
- Class K casinos to assembly and leisure
- Class M retail, takeaways, and specified sui generis uses to dwellinghouses
- Class N specified sui generis uses to dwellinghouses
- Class O offices to dwellinghouses
- Class R agricultural buildings to a flexible commercial use
- Class S agricultural buildings to state-funded school or registered nursery
- Class T business, hotels etc to state-funded schools or registered nursery
- Class U return to previous use from converted state-funded school or registered nursery

Paragraph W Procedure for applications for prior approval
Paragraph X Interpretation

Part 4 Temporary buildings and uses

- Class C use as a state-funded school for 2 academic years
- Class CA provision of a temporary state-funded school on previously vacant commercial land
- Class D shops, financial, cafes, takeaways etc to temporary flexible use

Part 6 Agricultural and forestry

- Class A agricultural development on units of 5 hectares or more
- Class B agricultural development on units of less than 5 hectares

Part 7 Non-domestic extensions, alterations etc

- Class A extensions etc of shops or financial or professional premises
- Class B construction of shop trolley stores
- Class C click and collect facilities
- Class D modification of shop loading bays
- Class E hard surfaces for shops, catering or financial or professional premises
- Class F extensions etc of office buildings
- Class G hard surfaces for office buildings
- Class J hard surfaces for industrial and warehouse premises
- Class M extensions etc for schools, colleges, universities and hospitals

Paragraph O Interpretation

Part 11 Heritage and demolition

- Class B demolition of buildings

Part 20 Construction of New Dwellinghouses

- Class ZA Demolition of buildings and construction of new dwellinghouses in their place
- Class A New dwellinghouses on detached blocks of flats
- Class AA new dwellinghouses on detached buildings in commercial or mixed use
- Class AB new dwellinghouses on terrace buildings in commercial or mixed use

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