

<p>Extend the permitted development rights to increase in the number of flats that can be created above shops without requiring a planning application</p> <p>IA No:</p> <p>Lead department or agency: DCLG</p> <p>Other departments or agencies:</p>	Impact Assessment (IA)				
	Date: 08/05/2012				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: Saima Williams 0303 4442058					

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
--	--

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
£3.0m	£3.0m	- £0.3m	Yes	Out

What is the problem under consideration? Why is government intervention necessary?

We want to make best use of existing buildings to provide homes. Securing a change of use should not be an obstacle to making better use of empty and underused parts of shop buildings providing a suitable residential accommodation. This would mean more people could live in existing communities and town centres which in turn can contribute to regeneration and help sustain local services. Current legislation allows for one flat above a shop without the need for a planning application. We believe there is still unused space above shops that could be utilised better. As part of its Plan for Growth, the Government consulted on options to extend existing permitted developments rights as currently set out in secondary legislation.

What are the policy objectives and the intended effects?

Government believes that a responsive planning system is vital to deliver the sustainable development needed, as part of this there should not be unnecessary change of use burdens. To support the retention of existing strong and vibrant communities Government consulted on changes to the General Permitted Development Order to help create the opportunity to bring vacant and underused properties back into economic use and at the same time contribute to delivering more affordable homes with reduced pressure to develop on greenfield sites.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

(1) Do nothing. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) -Schedule 2 Part 3 Class F remains unchanged.

(2) Amend The Town and Country Planning (General Permitted Development) Order 1995 (as amended) - Schedule 2 Part 3 Class F to increase the number flats for which change of use from a shop is permitted development.

Our preferred option is (2) as this would directly address the issue of making better use of existing buildings, contributing to regeneration and helping sustain local services. This is supported in responses to the 2011 consultation on extending permitted development for converting space above shops into flats. A commitment to make this change was included in the Government Response to the Portas Review of the High Street published on 30 March 2012.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: October 2017					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ **Greg Clark** _____ Date: _____ **31/8/12** _____

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 2.0	High: 4.0	Best Estimate: 3.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

Cost to local authorities: Familiarisation costs for local authority planning officers.

Cost to existing tenants: De-restricting the use of space may increase property rent. Having residential accommodation above shops may impact adversely on the flexibility of use of the whole building and may make the shop less easy to let.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0.2	2.0
High		0.5	4.0
Best Estimate		0.4	3.0

Description and scale of key monetised benefits by 'main affected groups'

Cost savings to applicants: avoiding the costs associated with preparing and submitting a planning application for change of use in the relevant use classes (£0.4m annual average).

Other key non-monetised benefits by 'main affected groups'

Savings to local planning authorities: no longer processing as many applications for change of use (180 fewer applications annually).

Benefit to society: more efficient use of existing stock. Removing the need for planning consent will at the margin increase the use of permitted development to change to the highest value use.

Other benefits: increased use value to property owners; reduced pressure on previously undeveloped sites.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The Department collects data on the proportion of new dwellings delivered on land previously used for retail. The broad category includes all A class uses and, does not therefore, allow us to identify change of use applications for flats above shops. The analysis assumes between 2.5% and 5% of these applications are for flats above shops as set out on page 8.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) 2012 £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.4	Net: 0.4	Yes	Out

Evidence Base (for summary sheets)

Problem under consideration

Planning should be a responsive and not a restrictive tool. It should be one which contributes to economic recovery and sustainable development especially on our high streets and in city, town and village centres and it should do so in a way which makes housing supply more responsive to changes in demand. In order to make best use of existing buildings to provide homes where appropriate, current permitted development rights allow for one flat to be created above a shop without the need for a planning application.

Despite this, there still remains unused space above shops that could be better used. In some cases there may be potential for the vacant space to be converted to more than one flat without the need to be concerned about additional or undue land use impacts. As part of its Plan for Growth, the Government consulted on options to extend existing permitted developments rights. Respondents indicated that relaxing planning restrictions on flats above shops could increase the vitality of town centres, contribute to regeneration objectives and increase the supply of affordable housing, depending on local circumstances.

We therefore intend to extend the existing permitted development rights to further incentivise the change of use of such space by allowing conversion to two flats. The Use Classes Order and General Permitted Development Order which govern changes of use are deregulatory mechanisms which remove unnecessary applications from the planning system and this measure sits firmly within that deregulatory context.

Under the Town and Country Planning (Use Classes) Order 1987 (as amended), most buildings and development land are classified into four main categories: each of which is itself subdivided. A schedule of its main provisions is shown in Table 1. Broadly Class A covers shops and other retail premises such as restaurants and bank branches; Class B covers offices, workshops, factories and warehouses; Class C covers homes and other residential uses including hotels; Class D covers non-residential institutions such as schools, halls, churches and cinemas

The Use Classes Order is primarily concerned with land use impacts. It works by grouping together uses which are considered to have similar land use impacts into classes. Changes of use within a class do not constitute development and therefore planning permission is not required.

Further flexibility is provided by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the General Permitted Development Order) which grants permitted development rights to allow certain changes of use between classes, where the impact of the proposed use is considered to be less than the existing use, to happen freely without the need for planning applications.

Existing permitted development rights which are framed to allow a change of use, without the need for planning applications, from:

- A1 to mixed use within A1 + single flat (and the reverse)
- A2 to mixed use within A2 + single flat (and the reverse)
- Mixed use A2 + single flat to A1 (with ground floor display window)

All other material changes of use to C3: (dwelling houses) require a planning application. Local planning authorities determine planning applications on a case by case basis depending on the individual circumstances of each case. They assess applications against policies in the local plan.

In practice, the ancillary space associated with a retail unit (A1) or financial/professional services unit (A2) can be converted into residential, as long as the A1 or A2 use at ground floor level is retained, that there remains a ground floor shop frontage /display window, and only a single flat is created as a result of the change of use.

The limited flexibility of an owner being able to create only one residential unit (flat) above a commercial or retail property is an obstacle to making better use of empty and underused parts of shop buildings to provide suitable residential accommodation. In this case, an owner may be deterred from applying for

a change of use resulting in property above shops remaining underused. Bringing this space into residential use, where it is suitable and there is sufficient demand, would mean more people could live in existing communities and town centres which in turn can contribute to regeneration and help sustain local services.

Where it is not already used for separate residential purposes it is a reasonable assumption that much of the space capable of conversion is ancillary space to the main use at ground floor level (A1 – retail, or A2 – financial and professional services). It could be being used as storage space for the shop, or lower cost secondary business use, or could be vacant. It may also already be used as residential accommodation tied to the business use.

Where the ambitions are greater than two flats and there would need to be physical changes to the building a planning application would still be required. The planning application would then provide the opportunity for local planning authorities to consider the impact and desirability of what would be more significant changes.

Table 1: Use Class Orders

SUMMARY GUIDE TO USE CLASSES ORDER AND PERMITTED CHANGES OF USE		
Use Classes Order 1987 including Amendments	Description	Conditions
A1 Shops	Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, funeral directors etc.	No permitted change except to mixed use as a shop and single flat and vice versa
A2	Financial and Professional Services Banks, building societies, estate and employment agencies, professional and financial services, betting offices	Permitted change to A1 where a ground floor display window exists. Also as above to a mixed use as a single flat and A2 use and vice versa
A3 Restaurants and Cafes	Restaurants, snack bars, cafes	Permitted change to A1 or A2
A4 Drinking Establishments	Pubs and bars	Permitted change to A1, A2, A3
A5 Hot Food Takeaways	Hot food takeaway	Permitted change to A1, A2, A3
B1 Business (a)	Offices, not within A2	Permitted change to B8 where no more than 235m ²
(b)	Research and development, studios, laboratories, high technology	Permitted change to B8 where no more than 235m ²
(c)	Light Industry	Permitted change to B8 where no more than 235m ²
B2 General Industry	General Industry	Permitted change to B1 or B8 B8 where no more than 235m ²
B8 Storage or Distribution	Wholesale warehouses, repositories	Permitted change to B1 where no more than 235m ²
C1 Hotels	Hotels, boarding and guest houses	No permitted change
C2 Residential Institutions	Residential schools and colleges, hospitals and convalescent/nursing homes	No permitted change
C2A Secure	Use for a provision of secure residential accommodation, including use as a prison,	No permitted change

Residential Institution	young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks	
C3 Dwelling Houses	Use as a dwelling house (whether or not as a sole or main residence by: a) a single person, or by people forming a single household; b) not more than 6 residents living together as a single household where care is provided for residents: or c) not more than 6 residents living together as a single household where no care is provided (other than a use within C4)	Permitted change to C4
C4 Houses in Multiple Occupation	Use of a dwelling house by not more than 6 residents as a house of multiple occupation (see note 4).	Permitted change to C3
D1 Non-residential Institutions	Places of worship, church halls, clinics, health centres, crèches, day nurseries, consulting rooms, museums, public halls, libraries, art galleries, exhibition halls, law court, Non residential education and training centres	No permitted change
D2 Assembly and Leisure	Cinemas, music and concert halls, dance, sports halls, baths, skating rinks, gymnasiums. Other indoor and outdoor sports and leisure uses, bingo halls	No permitted change
Sui Generis (See Note 3)	Theatres, houses in multiple paying occupation, hostels providing no significant element of care, scrap yards. Petrol filling stations and shops selling and/or displaying motor vehicles. Retail warehouse clubs, nightclubs, launderettes, dry cleaners, taxi businesses, amusement centres Casinos	No permitted change Permitted Change - Sui Generis to D2

Rationale for intervention

Permitted Development rights provide national planning permissions that remove the need for individual planning applications. In terms of change of use, permitted development rights are usually only introduced where the impact of the new use is no greater or less than the existing use.

As part of the Growth Review commitment, we consulted in April 2011 on extending permitted development for converting space above shops into flats. The driver was to encourage those who owned retail premises to consider the potential for making better use of all the building and contributing to delivering additional housing. The consultation sought views on the level of change that would be appropriate given possible land use impacts. The ability to create and sell or rent multiple self contained living spaces is considered to be likely to improve the financial viability of any conversion project. Therefore this change provides the opportunity to increase housing numbers through increasing the number of circumstances where conversion becomes more attractive and viable.

This intended change was announced in the Government response to the Mary Portas Review of the High Street which was published on 30 March 2012. We believe this intervention will provide the tipping point for those developers who may have considered converting the extra space above their shops to residential use but decide not to pursue a planning application.

Policy objective

We want to create the opportunity to bring vacant and underused properties back into economic use and at the same time contribute to delivering more homes. There has been work to help landlords recognise the opportunity for better use of their properties and this was supported by permitted development rights which allow change of use from A1 (shops) and A2 (financial and professional services) to mixed use of A1 and A2 plus a single flat respectively. However, in many cases there may be potential for greater residential use. Extending permission to create two flats above shops will lead to an improvement in economic efficiency and overall welfare reflecting the more efficient use of scarce land as housing, for which there is relatively strong demand compared to other uses. The added flexibility will help increase footfall in town centres helping strengthen the customer base for local businesses and support high street regeneration.

Description of options considered (including do nothing)

Option 1 - Do Nothing: Planning applications for change of use to two flats continue to have to be submitted to the local planning authority with no certainty as to whether they will be approved. There will be no behaviour change or reassessment of economic opportunities by property owners and an opportunity to increase housing supply will not have been taken.

Option 2 – Two flats above shops: The impacts of the proposed change are likely to be localised reflecting particular circumstances such as the suitability and availability of space. The proposal to allow change of use of space above A1 and A2 uses to two flats was brought forward on the basis of the consultation responses received as well as recommendations made in other reports about increasing the viability and vitality of our high streets. **This is the preferred option. The costs and benefits of option 2 are set out below.**

Assessing the costs and benefits of the options

There is little data available to model the economic impact of the preferred option. The consultation assisted in establishing parameters for what was likely to be considered appropriate.

The consultation recognised that more substantial changes to residential use above shops was likely to cause impacts that should be considered by the local planning authority and where neighbours and communities should have the opportunity to comment on and influence the proposals (see: *Risks*, page 9). This would in turn allow mitigations to be offered and proposed to ensure the development was acceptable in planning and community terms. There is an acceptance that where no planning application is required building regulations will play a part in ensuring any conversions meet the required building standard.

Costs

Costs to local authorities: familiarisation costs

Development Management and enforcement staff in local authorities will already be aware of the existing permitted development rights in respect of converting space above shops to a flat. They will have established processes for ensuring there are no breaches and where there are will have procedures in place for considering enforcement action. Staff will need to be made aware of the relaxation of the permitted development right. This would be a routine matter, with a Chief Planner letter to all local planning authorities the likely route. Any transition cost would only occur immediately after the introduction of the policy. It is difficult to quantify this cost, however, as the changes are in line with an existing provision and local authorities are likely to incorporate this within routine training and development it is expected to be minimal.

Costs to existing tenants: Increase in market rent

In instances where space above a retail unit is converted to residential use, there could be a theoretical reduction in the availability of lower cost secondary business locations. However, it is often the case that existing space is unused or used for storage.

This will only be the case in instances where the residential use value is higher than the retail use value and can only be determined by local economic and housing market conditions. This concern is only valid in the case of rented accommodation. In this case the increase in accommodation cost for the retail use is a transfer to the property landlord in the form of an increase to the highest use value rent level (from either retail or residential use). Under current regulation, where these conditions are present, the property owner is able to apply for permission to make the change, and thus these affects are only likely to be felt at the margin (where the application costs deterred the landlord previously). The planning system is not intended to artificially restrict market rents by constraining land use.

These impacts will be entirely offset by the transfer of benefit to the property owner from the resultant most efficient use. It is also important to understand these impacts will be localised based upon prevailing economic and housing market conditions and are difficult to estimate in advance.

Consideration should be given to the adverse impact on a shop of having residential accommodation above in terms of reduced flexibility of operation and opening hours which could lead to operational challenges for existing retailers. For the owner of the building this will be outweighed by the additional income and the benefits forthcoming from the increased value obtained. However this will need to be measured against the risk of losing retail tenants and difficulty in finding new tenants should the new flat disrupt the operation of the retail business. This impact, will of course, be reflected in the rental value of the retained retail unit. If adverse impacts are significant, retail rents may reduce, and the residential conversion will become unviable and will, therefore, not proceed.

Benefits

Savings to applicants: No longer preparing and submitting a planning application

Under option 2 applicants will no longer required to prepare and submit a planning application for a change of use to two flats for space above A1 and A2 retail classes.

In 2010, 5.6% of dwellings were built on land previously used for retail¹. This represents 5,780 completions. In order to estimate the savings to applicants it is necessary to convert the number of completions into an assumed number of applications. In 2010, the approval rate for minor change of use application was 81%.

The implied number of applications therefore increases. As discussed above, change of use from retail to dwellings incorporates changes from A1 to A5. Additionally there is no information on the average size of applications. Only applications from A1 and A2 for 2 dwellings will benefit from these savings.

It is assumed that of all applications, change of use from A1 or A2 to residential will represent 2.5%, 3.75% and 5% in the low, central and high scenarios respectively.

In a report for the Department, Arup estimated the cost of preparing and submitting a change of use planning application as £1,300 (current prices)². This includes producing the application and the current change of use application fee of £335. The total saving per application avoided is therefore assumed to be £1,300 as shown in Table 2. The assumed number of annual applications and savings per application are shown in Table 2.

Table 2: Average annual planning Applications and associated savings

Scenario	Annual Applications	Saving per Application	Average Annual Saving
Low	180	£1,300	£234,000

¹ DCLG (2010) *Land Use Change*: <http://www.communities.gov.uk/documents/planningandbuilding/xls/1955418.xls>

² DCLG (2009) *Benchmarking the costs to applicants of submitting a planning application*: <http://www.communities.gov.uk/publications/planningandbuilding/benchmarkingcostsapplications>

Central	270	£1,300	£351,000
High	360	£1,300	£468,000

Over the 10 year appraisal period the present value saving to applicants is estimated to be between £2.0m and £4.0m.

Savings to local authority: No longer processing change of use applications

Local authorities will no longer be required to process change of use applications for two flats above A1 or A2 retail premises. There will be no net change for local authorities as they will also forego the fee income associated with these applications. The current fee for a change of use application is £335.

Based upon the assumptions around the number of existing applications that will no longer require permissions the local authority will process 180 fewer applications annually. Total fee income will reduce by £90,000 annually. Given that planning application fees are set to allow local authorities to recover the costs of processing and deciding the application, the fee loss will be equivalent to the reduction in cost for the local authority.

Benefits to society: More efficient use of existing stock

Removing the requirement to make a planning application for up to two flats above an A1 or A2 retail premises is likely to increase the efficiency of stock use. Currently, landlords are free to make a planning application where they value the residential use more highly than the current A1 or A2 use.

Under the current regulation, there will be potential applicants who, at the margin, are deterred from converting A1 or A2 space by the perceived (economic) cost of preparing and submitting a planning application. This benefit is reflected in the value uplift that occurs from the higher value use. This is of overall benefit to society by ensuring more efficient use of scarce land. It is, however, difficult to estimate the additional housing units that may occur as a result of this change. This will depend, both on local housing market conditions that determine the value of the residential use and on the applicants perception of the cost of submitting an application.

Other benefits

The change should provide an incentive to owners to reassess whether they are maximising the economic benefit of their assets and to consider whether there would be a value uplift of property where space is suitable for conversion. This benefit can then be realised as it will be possible to create two rather than one flat which should produce either a greater rental stream or one off receipt from sale of the accommodation. Owners may also see an increase in demand to purchase the whole building. The maximum value uplift is the difference between the value of a site in its current (business) use and its value as business and housing.

By being able to create two flats without the need to submit a planning application there will be an added incentive for more housing to be sourced from within existing buildings. This should contribute to reduced pressure on greenfield sites. Because of the nature of the original space it is likely that the type and location of new accommodation may prove more attractive for young people and students reducing the pressure to meet demand for student housing through the conversion of existing family housing into small houses of multiple occupation. This will also encourage greater occupation of living space within town centres and existing communities helping broader regeneration objectives and increasing the likely footfall for business in the area.

Risks and Sensitivity

Quality of new development

In order to prevent development of low quality dwellings the number of permitted units is limited to two. There was support for the imposition of an upper limit on the number of flats that would be allowed. Suggestions for an upper limit generally fell within the range of 2 to 6 flats. Many suggested that there

should also be a minimum size limit per flat either instead of or in addition to an upper limit of the number of flats to mitigate against low quality residential development. Others felt that the physical limits of the building and the market would dictate the maximum number of flats. On this basis rather than seek to introduce size specifications it was decided to set the permitted development at two flats.

Localised impacts of additional development

There is some risk that permitting the development of one additional flat above a shop may lead buildings to be used for incompatible purposes, causing nuisance to the occupants. However the land-use impacts of one additional flat are likely to be minimal and parties will be able to exercise choice over their location.

Certificate of Lawful Development

Although applicants will no longer be required to prepare and submit a planning application for two flats above a retail premises, they may choose to apply for a certificate of lawful development prior to carrying out any works. The charge for certification is usually 50% of the application fee.

If all applicants apply for certification, the annual cost saving to applicants will reduce from £234,000 to £468,000 to £204,000 to £408,000. **Net present value over the appraisal period will reduce to £1.8m to £3.5m.**

Direct costs and benefits to business calculations

In the cases where businesses are applicants there will be a saving in planning applications preparation. The Department does not hold information on the how many change of use applications are submitted by business however it does seem reasonable to assume that most applications for a change of use for space above a retail unit will be submitted by business.

The Equivalent Annual Net Cost to Business (2009 prices) is - £325,000.

Wider impacts

Social: beneficial impacts on health and wellbeing due to the economic benefits they will bring to communities. These will have a beneficial impact upon job creation and opportunity, service provision and overall prosperity.

Rural: The proposals are focused on changes of use of existing development and do not relate to new development, which might be of greater concern in rural locations. Option (2) is focused on bringing additional living accommodation to existing communities and shopping areas which could be in rural areas. New residential accommodation as flats is likely to be at the more affordable end of the market.

Monitoring: The Government will seek to monitor over a period of 5 years the impact of any changes it implements following consultation, in particular to see if a relaxation of controls has led to an increase in the amount of change of use taking place.

Summary and preferred option with description of implementation plan

The preferred option which is being taken forward is to amend The Town and Country Planning (General Permitted Development) Order 1995 (as amended) - Schedule 2 Part 3 Class F to increase the number flats for which change of use from a shop is permitted development.

The Government has given a commitment in its response to the Portas Review of the High Street to bring forward the secondary legislation necessary in time for the change to come into force at the October 2012 common commencement date. The statutory instrument required follows the negative resolution procedure.