

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO DEVELOPMENT CONTROL COMMITTEE

11 October 2018

REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES

WG CONSULTATION DOCUMENT: SUBORDINATE LEGISLATION CONSOLIDATION AND REVIEW – CONSOLIDATION OF THE TOWN AND COUNTRY PLANNING (USE CLASSES) ORDER 1987 AND TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995

1. Background

1.1 The Welsh Government (WG) has issued a consultation document seeking views on the consolidation of the Town and Country Planning (Use Classes) Order 1987 (UCO) and Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The purpose of this report is to draw Members' attention to the consultation and provide details of the BCBC response. The consultation ran between 31 May and 28 September 2018.

1.2 The WG consultation documents can be accessed by Members using this hyperlink: <https://beta.gov.wales/subordinate-legislation-consolidation-and-review>

2. What are the Use Classes Order (UCO) and General Permitted Development Order (GPDO)?

2.1 The UCO removes the need for planning permission for many material changes of use where the Planning impacts of the new uses are similar - the current Use Classes Order in Wales can be viewed on page 3 of the consultation document.

2.2 Changes between uses within the same 'class' should not result in any significant change in Planning impact, so there is little benefit in requiring a Planning application. Therefore, a material change of use within a class does not require Planning permission. A material change of use to a use either in a different class or not specified in a class (a *sui generis* or 'unique use'), does require Planning permission.

2.3 The GPDO grants Planning permission for many small and low impact developments. Permitted development is development which can be undertaken without the need to apply for Planning permission, as it is already permitted under the GPDO. The GPDO contains 43 parts which grant Planning permission for a wide range of developments across many different sectors.

3. The Consultation Document – an Introduction

3.1 Requiring an application for Planning permission for all development would be an unnecessary use of scarce Local Planning Authority (LPA) resources and would impose unwarranted costs on individuals and businesses, as much development is small in scale and has limited effects. For many decades, such development has either been granted Planning permission on a national basis or excluded from the need for permission.

3.2 The Town and Country Planning (Use Classes) Order 1987 (UCO) removes the need for Planning permission for many material changes of use where the Planning impacts of the new uses are similar. The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) grants Planning permission for many small and low impact development.

3.3 The Welsh Government commissioned a review of the UCO and associated permitted development rights and the recommendations arising from the report are considered in the consultation document. The proposed changes to the GPDO are also explored in the consultation document.

3.4 The UCO is now over 30 years old and the GPDO is over 21 years old. Both have been subject to multiple amendments and revocations, not all of which apply to Wales, creating confusion for all

users. To address the difficulty for the public to find up-to-date versions of the Statutory Instruments and, most importantly, the parts which are relevant to Wales, the WG propose to consolidate both the UCO and GPDO.

4. A Summary of the Proposals

4.1 The WG propose to consolidate the UCO and GPDO to:

- streamline the Planning legislation for small and low impact developments and
- make sure the most accurate version of the legislation is readily available.

4.2.1 The following changes/clarifications (amongst others) are proposed as part of the consultation:

- beauty salons (and associated uses) should be included within use class A1 (shops)
- betting offices are to be removed from use class A2 (Financial and Professional Services)
- hot food takeaways are to be placed in their own use class
- drinking establishments and restaurants are to be placed in the same use class
- cafes and sandwich bars are to be grouped and placed in their own use class with limited hours of opening, goods for sale and floorspace thresholds
- renumbering the B use class by changing B8 (storage and distribution) to B3 (storage and distribution)
- nightclubs and retail warehouse clubs are to be specified as unique uses
- make provision for two types of Article 4 Direction; Directions with immediate effect (“Immediate Directions”) and Directions without immediate effect (“Non-immediate Directions”)
- developers and LPAs should be able to agree longer determination periods for the consideration whether prior approval is required
- HMOs should not benefit from permitted development rights granted by Part 1 of the GPDO
- permitted development proposals for electric vehicle charging infrastructure
- no permitted changes of use from the new use class A4 (drinking establishments and restaurants)
- permitted changes of use from hot food takeaways but no permitted changes of use to a hot food takeaway
- no permitted development rights for the change of use of car showrooms
- permitted development rights for mast heights above ground level to be increased from 15 metres to 20 metres on Article 1(5) land or any land which is within a site of special scientific interest and from 15 metres to 25 metres in unprotected areas
- the introduction of permitted development rights to assist CADW in their role as the responsible body for the management, maintenance and restoration of historic buildings and monuments in Wales
- Planning permission required for the demolition of a public house to consider the impacts resulting from the loss of the use
- establishing the principle of permitted development rights for small scale, low risk hydropower developments in Wales

5. Recommendation

(1) That Members note the content of this report, the WG Consultation Document and the LPA’s response to the WG consultation (Appendix 1).

MARK SHEPHARD
CORPORATE DIRECTOR COMMUNITIES

Background Papers
None

Appendix 1

Q1	Do you agree beauty salons (and associated uses) should be included within use class A1 (shops)?
Yes	
Q2	Do you agree betting offices should be removed from use class A2?
Yes – move to Sui Generis as in England. However, this will come in too late to affect any positive change as many of the banks/building societies etc. have been converted to betting offices already and it is likely that the growth in online gambling will reduce the demand for new betting shops.	
Q3	Do you agree hot food takeaways should be placed in their own use class?
Yes	
Q4	Do you agree restaurants and takeaways with drive-through facilities should be grouped with hot food takeaways?
Yes	
Q5	Do you agree with the proposal to place drinking establishments and restaurants in the same use class?
Yes – on the basis that most drinking establishments now serve food to be commercially viable. However, in order to achieve consistency with England and to avoid confusion, it is suggested that it should A3 (Restaurants and Cafes) and A4 (Drinking Establishments) and a mixed A3/A4 use for pubs that provide meals/hot food or, as in England, a separate AA use class for drinking establishments with expanded food provision.	
Q6	If you answered no to Q5, how should the UCO be amended to protect public houses in Wales?
It can be amended to remove the permitted CoU from A4 to mixed A3/A4 or A3.	
Q7	Do you agree with the principle of a new Café and Sandwich Bar Use Class?
Yes although, for consistency and to avoid confusion, it would be simpler to follow the English system and keep cafes in A3 and Coffee Shops/Sandwich Bars (without hot food sales or seating) in A1.	
Q8	Do you consider this new use class will help the flexible management of town centre uses and contribute to their vitality and viability? Please explain your view.
Yes if it is meant to allow easy interchanges between cafes and coffee shops/sandwich bars. However, there are more benefits to be gained by following the English model i.e. an A3 Restaurants and Cafes use class which will avoid having to differentiate between a café and a restaurant and imposing unenforceable opening hour conditions on the	

cafe premises.

Q9 Will the clarification of the A1 Use Class in relation to consumption on the premises help understanding of the order or cause additional confusion to users of the planning system?

Yes - it is clearer than the incidental sale of hot or heated up food from coffee shops/sandwich bars.

Q10 Is a timescale appropriate to help define this use class? If yes, is 6am to 7pm suitable or are there more appropriate times?

A typical café would operate during normal shop opening hours on the high street. 6am to 7pm is sufficient as any later would blur the lines between a café and a restaurant use. Notwithstanding this comment, it is the LPAs view that cafes serving hot food for consumption on the premises should be grouped with restaurants as an A3 use as in England in order to avoid confusion.

Q11 We welcome your views about how a distinction can be made between a daytime café use and mixed takeaway and restaurant use.

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Q12 Should cafes solely catering for on premises consumption be included in this use class? If so, how can a clear distinction be made between restaurants and café uses?

As stated above, cafes and restaurants should still be grouped together in the A3 use class. It is too difficult to make a clear distinction between a café and a restaurant and it would be difficult to enforce.

Q13 Should a floorspace threshold be used to help define this use class? If yes, what threshold would be appropriate and why?

No. It would be too difficult to quantify/measure/assess and enforce and would leave the system open to interpretation.

Q14 Do you agree with the proposal to re-number B8 (Storage and Distribution) as B3 (Storage and Distribution)?

Yes although, in effect, the LPA has not experienced any confusion from landowners/developers regarding the differentiation between B1, B2 and B8 or the lack of Use Classes B3, B4, B5, B6 and B7. The B uses have not been changed in England and it could cause more confusion instead of simplifying the UCO.

Q15 Do you agree use as a nightclub should be specified within the UCO as a unique use?

Yes – potentially different and negative impacts compared to other D2 (Assembly and Leisure) uses.

Q16 Do you agree use as a retail warehouse club should be specified within the UCO as a unique use?

Yes although a “retail warehouse club” would have to be clearly defined.

Q17 Other than the changes discussed above, does the UCO remain fit for purpose as a deregulatory tool?

Yes

Q18 Are there any other changes not referred to in this consultation which you wish to see made to the UCO? If yes, please specify and provide justification/evidence for the proposed change.

Clarification on Bed and Breakfast uses, Air BnB lets/units and ‘party houses’. Also clarification with C4 Small HMOs where the occupants are unrelated but share more than just basic facilities such as a communal lounge/living room.

Q19 Do you agree with the proposals for amending Article 4 directions? If not, how could the proposal be improved?

No. Apart from the occasional and site specific need to control permitted development in Conservation Areas (under Article 4(2)), LPAs can remove pd rights by condition on consents where necessary and this system works well.

Q20 Do you agree that developers and LPAs should be able to agree longer determination periods for the consideration whether prior approval is required?

Yes

Q21 Do you agree that HMOs should not benefit from permitted development rights granted by Part 1 of the GPDO?

Yes to large (Sui Generis) HMOs but no to small (C4) HMOs.

Q22 Do you agree that condition A3(a) relating the materials for Class A development should be removed?

No

Q23 If you answered no to Q22, should condition A3(a) be varied to allow more flexible use of materials for additions to the rear where there is no visual impact?

Yes. For additions to the rear which cannot be seen from public vantage points. Particularly for UPVc/glazed conservatories etc.

Q24 Do you agree with the proposed condition for the provision and replacement of hard surfaces within the curtilage of a dwellinghouse in Development Class F? If not, please suggest alternative approaches, restrictions or thresholds that could be adopted.

Yes

Q25 Do you agree with the introduction of permitted development rights for the installation of smart meter antenna?

Yes
Q26 Do you agree with the permitted development proposals for electric vehicle charging infrastructure?
Yes
Q27 Do you agree that there should be no permitted changes of use from the new use class A4 (drinking establishments and restaurants)?
Yes although it is suggested that drinking establishments should be separated from restaurants as is the case in England.
Q28 Do you agree with the proposed permitted changes from hot food takeaways (A5)?
Yes
Q29 Should the permitted development rights be extended to permit two flats with a betting office or part of a mixed A1 or A2 use?
No – keep to one flat above an A1/A2 unit or a new Betting Office use class unit with a window display as it is likely that the flat will be occupied by the manager/owner of the ground floor commercial premises and any intensification of residential uses on upper floors will require greater access to amenity space, bin storage, parking etc. and would need to avoid any loss of residential amenity.
Q30 Do you agree with the proposed permitted changes from a betting office?
Yes to the first two permitted changes (to A1 and A2 uses) but not to a mixed use betting shop and up to two flats.
Q31 Do you agree that permitted development rights for the change of use of car showrooms should not be restated in the consolidation GPDO?
Yes. This is long overdue.
Q32 Does Part 16 provide sufficient permitted development rights for development by or on Behalf of Sewerage Undertakers?
Not as it stands. There should be pd rights to erect permanent buildings (subject to limitations in terms of size, finishes and location) other than for “survey or investigation” as technological advances occur.
Q33 If not, what types of development should be included within Part 16? Please specify any associated limitations and conditions.
Size limits should be set in conjunction with DC/WW in terms of their standardised pieces of kit/buildings.
Q34 Do you agree with the proposed increases in height for the installation, alteration or replacement of a mast on protected and unprotected land?
Yes on unprotected land (up to 25m). No on protected land (up to 15m).

Q35 Do you agree with the change to mast width described in relation to the alteration or replacement of a mast?

No

Q36 Do you agree with the definition of 'small antenna' and 'small cell system'?

Yes

Q37 Do you agree with the proposed changes to small antennas and small cell systems allowed on buildings and structures (other than dwellinghouses and within their curtilages) in unprotected areas, and protected areas?

Yes

Q38 Do you agree with the changes to permitted development rights for small antenna and small cell systems on dwelling houses and within their curtilages in unprotected areas; and dwelling houses in protected areas and conservation areas?

Yes

Q39 Do you agree these changes are sufficient to accommodate the likely needs of future network requirements?

Yes

Q40 Do you agree with the changes to other antenna system and to the increase in numbers of electronic Communications code operators present on a building?

Yes

Q41 Do you agree to an increase in the time from 6 months to 18 months, where land may be used in an emergency to station and operate moveable electronic communications apparatus required to replace unserviceable equipment?

Yes

Q42 Do you agree the clause inserted by The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No. 2) Order 2014 relating to broadband services should be made permanent, removing the requirement to submit a prior approval?

Yes

Q43 If you answered yes to Q42, should the notification requirement be retained?

Yes

Q44 Do you agree Cadw should be granted permitted development rights to reflect their role in the management, maintenance and restoration of historic buildings and monuments in Wales?

Yes. Agree in principle. The assumption is that the proposed permitted development rights will in practice relate only to those buildings or monuments within the control/ownership or management of Cadw. Alternatively could Cadw use these permitted development rights to undertake with prior agreement of a Public/Private landowner works pursuant to purposes in para 3.107? Has any consideration been given to granting Local Authorities permitted development rights to undertake the same with regard to its own historic assets (if listed building delegation is in place for all other buildings). This may be an incentive for Local Authorities to secure delegation and would remove delays.

Q45 Do you agree that the demolition direction should be cancelled and the categories of demolition currently in the direction prescribed in the permitted development order?

Yes. The outcome of the Law Commission report with regard to the proposed merging of Listed Building/Conservation Area and Planning Consent is yet unknown nevertheless there have been strong objections from the Historic Environment Sector in view of how the proposal will dilute conservation controls and this would further compound this. For clarity would the 50 cubic metre volume limit still apply for buildings within a conservation area or could this be amended to include all buildings within a conservation area. If the Law Commission recommendations are adopted, in line with the Historic Environment Act 2016 and subsequent guidance, could this also provide that buildings of special local interest will always need planning permission for demolition, the benefits of which are two fold, to encourage the preparation and adoption of local lists by LPA's but also greater control over the demolition of the wide range of historic buildings that are of significance some of which provide community benefits. This may include public houses and whilst there is agreement that safeguarding public houses is important, there are also other buildings including chapels/village/community halls/rural buildings etc. outside conservation areas which are of significant heritage value and could also be afforded a level of protection from demolition if an adopted list and policy was in place.

Q46 Do you agree that the demolition of a public house should require planning permission in order for the LPA to consider the impacts resulting from the loss of the use?

No. Potentially, the best way to protect rural public houses of note would be to have a designated local list of buildings.

Q47 Do you agree with reintroducing permitted development rights for the protection of poultry and other captive birds?

Yes, upon avian influenza controls being put in place.

Q48 Do you agree with the principle of establishing permitted development rights for non-domestic Solar PV and Thermal without applying a specific energy threshold?

Yes

Q49 Do you agree that ‘development not permitted’ listed, (a) to (f), is sufficient to control the potential impacts of solar PV or solar thermal permitted development?

Yes

Q50 Do you agree that the existing conditions are sufficient to control the potential impacts of solar PV or solar thermal permitted development?

Yes

Q51 Do you agree there should be no change to the size of ground based solar panel developments (and therefore their energy output) within the curtilage of a non-domestic building?

Yes

Q52 Do you agree ‘development not permitted’ listed above, (a) to (c), is sufficient to control the potential impacts of ground based solar PV or solar thermal permitted development within the curtilage of a non-domestic building?

Yes

Q53 Do you agree no change is required to the conditions for non-domestic ground based solar PV or thermal developments?

Yes

Q54 Do you agree with our approach of not including limitations on non-domestic ground based solar PV or thermal developments on listed buildings, scheduled monuments or other landscape areas? If not, what limitations would you like to see which would still maximise opportunities for deployment on these buildings / sites?

Yes. Considered on a case by case basis.

Q55 Do you agree with the principle of establishing permitted development rights for small scale, low risk hydropower developments in Wales?

No. Each site is different in terms of topography, visual impact and biodiversity etc.

Q56 Do you agree that new permitted development rights should be accompanied by practice guidance? If yes, what aspects should the guidance cover?

N/A

Q57 Do you agree with the concept to allow permitted development rights for small scale, low risk Hydropower schemes in National Parks and AONBs?

No

Q58 Do you agree with those areas where permitted development rights for

hydropower schemes would not apply?

N/A

Q59 Do you agree with the proposed non-spatial limitations where permitted development rights for hydropower schemes would not apply?

N/A

Q60 Do you agree with these conditions relating to minimising the visual / environmental impact of the intake structures and the header tank elements?

N/A

Q61 Do you agree with these conditions to minimise the visual impact of the pipelines?

N/A

Q62 Do you agree with these conditions to minimise visual / amenity / environmental impacts of the powerhouse and outfall?

N/A

Q63 Do you agree with these miscellaneous conditions relating to tree felling, water course crossings, construction practices and decommissioning?

N/A

Q64 We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Clarification as to the thresholds/circumstances surrounding what can be considered to be homeworking requiring planning permission for a change of use and what can be deemed to be ancillary to the main residential use of the property is needed i.e. frequency of visitors, staff and deliveries etc.

Also, some clarification over the operation of a taxi service from a residential unit would be useful.