

**TO: DEVELOPMENT CONTROL AND LICENSING COMMITTEE**

**ON: 18 MARCH 2002**

**Agenda Item No: 7**

**Title: CONSULTATION PAPER: USE CLASSES ORDER –  
CONSULTATION ON POSSIBLE CHANGES TO THE USE  
CLASSES ORDER TEMPORARY USES PROVISIONS**

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### **Introduction**

- 1 The Planning Green Paper sets out proposals for reforming the planning system. It announced the Government's intention to review the Town and Country Planning (Use Classes) Order 1987 (UCO) and the Temporary Use provisions of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), to ensure that they are constructed in a way that allows the maximum possible deregulation consistent with delivering planning policy objectives.
- 2 The purpose of the UCO is to distinguish uses that are so similar that requiring a planning application for a change between them would be overburdensome. Part 4, Class B of the GPDO conditionally allows some activities to take place without the need for planning permission for up to 14 or 28 days each year depending on the specified use.
- 3 From time to time activities change as the economy develops; new activities emerge and taste changes. This Department for Transport, Local Government and the Regions (DTLR) consultation paper seeks views of local authorities as to whether any changes are desirable to the current UCO and GPDO temporary use provisions.
- 4 This consultation paper from DTLR sets out:
  - The Government's objectives for the UCO and Part 4 Class B of the GPDO,
  - The Government's policy objectives, in general set out in PPGs, relating to each of the Use Classes A, B, C and D and GPDO Temporary Uses,
  - Concerns about the operation of the Use Classes and Temporary Uses provisions,
  - The options for change.
- 5 The document concludes by asking several questions about whether the options put forward meet the objectives, it sets out the benefits of each option as the DTLR sees them, and makes recommendations about the extent of change proposed.

## UCO AND GPDO OBJECTIVES

### Key Principles

- 6 The UCO and the GPDO work on the basis of a balance to be struck between market freedoms and the need to control certain types of activity. By allowing such deregulation, the resources available for the operation of the planning system can be deployed efficiently to achieve the greatest benefit. The paper asks:

**Question 1** *Do you agree that the UCO and the GPDO provisions should be constructed in a way which allows the maximum possible deregulation consistent with delivering planning policy and wider objectives, including protecting amenity?*

**Officer comment** It is considered that this wording accurately reflects the key principle that should govern any change considered to the UCO and the GPDO.

### Local flexibility

- 7 The paper seeks views as to whether the designation of Local Orders, which could relax GPDO provisions, would be appropriate in local circumstances. Thus permitted development rights could be extended to help local authorities to be proactive in promoting sustainable economic development, and the paper makes specific reference to rural businesses.

**Question 2** *Do you agree that local authorities should be able to relax the need for permission for changes of use in certain specified areas?*

**Question 3** *Do you believe that this can be done through local orders as set out in the Planning Green Paper?*

**Officer comment** It is considered that for some local authorities a flexible approach could be useful but for the sake of consistency and certainty a Local Order would need to be adopted within a Local Plan.

### Restricting changes of use

- 8 The Government believes that the use of conditions to limit the uses into which a building could change within its class should continue to be discouraged. The Government recognises that in exceptional circumstances the use of conditions might be appropriate to address local circumstances. It proposes that such conditions only be imposed when there is an appropriate development plan policy establishing where such conditions could be applied.

**Question 4** *Do you agree that local authorities should be able to limit the scope for changes of use by the use of conditions only in exceptional circumstance?*

**Question 5** *Do you agree that this should be limited to circumstances which have been set out in an authorities local plan?*

**Officer comment** Whilst it is appreciated that such conditions should not be imposed lightly, in the local context there may be a need to apply them often and therefore not exceptionally. Nonetheless they are essential, e.g. prevention of change to Class B8 (distribution) close to Stansted Airport. Often the evolution of uses means that material conditions arising from them are not foreseen. Limiting the application of such conditions to those set out in local plans would require greater prescription in them. This would be too inflexible to meet changing circumstances in a fast changing world.

## **THE A USE CLASS**

- 9 This includes retail shops, public houses and bars, fast food takeaways, sandwich shops, warehouse clubs, Internet shops/cafes and motor sales. The consultation paper focuses on these uses more than any other. The paper sets out concerns about the uses and suggests several options for change.

**Option 1** Providing greater flexibility within the A Use Classes by combining the current A1 (shops), A2 (professional services) and A3 (food and drink) to form a new “mixed retail” Use Class. Change within the new Class would be determined by the market and maximise opportunities for full use of premises. However, also recommended is that control should be maintained for premises over 100 sq. m. floorspace and changes into or out of the new “mixed retail” Use Class for activities currently within class A3 (restaurants, pubs, cafes etc). Above that size threshold, separate Use Classes would be set for restaurants etc and public houses etc. Establishments for the sale of takeaway hot food should be separated from restaurants/cafes etc. into a class of their own (*sui generis*).

**Option 2** An alternative would be to include within the “mixed retail” Use Class only current A1 and A2 uses. This would enable greater control over food and drink Classes and restaurants etc. and public houses etc. would be separated into their own Classes with no permitted change of use from restaurants to public houses. Take-aways would again be *sui generis*.

**Option 3** The “mixed retail” Use Class would include current A1 and A2 uses and restaurants but exclude public houses etc. Take-aways would be *sui generis*.

**Option 4** “Mixed retail” uses would include current A1 and A2 uses. Food and drink would be a separate Class and take-aways would be *sui generis*.

**Option 5** As any of the above but take-aways would be included within the sale of food Classes.

**Question 6** *What option for Use Class A do you think would meet the objectives of sustaining and enhancing the vitality and viability of town centres and strengthening local centres? Would you prefer to leave Use Class A as it*

*currently is (the do nothing option)? Would you prefer an alternative option not set out above?*

**Question 7** *Why do you prefer your chosen option?*

**Question 8** *If a size threshold were introduced do you think that 100 sq m floorspace would be appropriate? In your view what would be the effect of setting such a threshold on the mix of uses in town centres and local centres.*

**Officer comment** Planning permission for change of use away from Class A1 has been given on a number of occasions by the Council within the retail only frontages because units have remained vacant. These frontages are proposed to be removed from the Deposit Local Plan. Given the change in retail patterns, and this approach by the Council, it is considered that little can be served by requiring planning permission for changes within current Use Classes A1, A2 and A3 (e.g. shops, post offices, small cafes/bars, financial services, banks and travel agents) and the “mixed retail” use principle is well founded because this would encourage the full and varied use of the smaller premises. Issues would arise from greater freedom to interchange uses, such as relating to the emission of odours from restaurants, but other regulations open to the Council should overcome them, albeit using the best practical means principle. It would be essential to ensure that only small units would be able to be used for food and drink uses within the “mixed retail” Class without permission to ensure that large uses that may well give rise to nuisance can be controlled. The 100 sq m threshold appears to be reasonable. The separation of large food and drink uses into discrete Classes is desirable because of the differing nature of their activities, food establishments may stay open longer, large pubs could cause local nuisance at closing time. It is also considered essential to ensure that take-away food establishments are outwith other food and drink classes because of the local issues (nuisance, traffic, etc) that they raise. Option 1 is favoured therefore. This is broadly favoured by DETR.

## **THE B USE CLASS**

- 10 These include business uses appropriate in a residential area (light industry, offices and research and development), Class B1; general industry, Class B2; and warehousing and distribution, Class B8.

**Option 1** Current flexibility within Use Class B1 (whereby industrial uses can change to office use) has meant that meeting the Government objective of locating office accommodation in the most accessible areas is being prejudiced. It is suggested that office and research and development uses be separated from (light) industrial uses (proposed to be called clean production). Class B2 and B8 uses remain as at present. The ability to change to B8 from any of these uses up to 235 sq m floorspace would also remain. Whilst the UCO flexibility for these uses would be reduced, where the location is suitable it would still be open to landowners to apply for planning permission for developments incorporating all activities currently within Class B1.

**Option 2** In order to retain the current flexibility this is a do nothing option.

**Question 9** *Do you think that allowing more use to be made of the existing sub-divisions of the B1 Use Class (for example by splitting them into separate Use Classes) would help or hinder the Government objective of siting office developments in highly accessible areas? It would be helpful if you could illustrate your answer with examples of where the current composition of the B1 Use Class has had direct affect (either desirable or undesirable) on the promotion of the Governments policy objectives.*

**Question 10** *Do you think that either of these options would meet these objectives? Would you prefer an alternative option not set out?*

**Officer comment** The Council often imposes conditions preventing the change of use of buildings with a potential for considerable traffic generation, particularly in the countryside. Separating these uses would give greater assurance about the consequences of granting planning permission for very rural sites, and assist the Government sustainability objectives. This is also preferred by the DETR.

### **THE C USE CLASS**

- 11 These include hotels, boarding and guest houses (C1); residential institutions such as old persons homes and residential schools (C2); and dwelling houses which enable individuals, families and up to six individuals to live as a single household (C3).

**Options** No alternatives were suggested.

**Question 12** *Do you consider that a change to the C use class would better meet the objectives of providing everyone with the opportunity for a decent home?*

**Question 13** *If yes, what would you recommend and what do you consider would be the benefits?*

**Officer comments** Some concern is expressed in the paper that Class C2 may be too wide; for instance comparing the impact of care homes for people with special needs with halls of residence, and the impact of houses in multi occupancy (up to 6 people) with normal use as a dwelling house. However, there has been no local concern about these issues and the no change option is supported. This is the DETR preferred option.

### **THE D USE CLASS**

- 12 Class D1 relates to non-residential institutions (clinics, day nurseries, museums, libraries etc) and D2, assembly and leisure (cinemas, swimming pools, bingo halls etc).

**Option 1** Nightclubs above 100 sq m should be included in the consumption of drink category within Class A. Clearly this is dependent on what option is agreed for the A Use Classes.

**Option 2** It is suggested that nightclubs are no more similar to traditional pubs than they are to dance halls. Option 2 proposes that nightclubs should be sui generis.

**Option 3** Further suggested is that Class D uses are so disparate that there is no benefit to be gained from distinguishing between D1 and D2 uses. It is suggested that all institution and leisure uses comprise one Class (except theatres, amusement arcades and centres and fun fairs which remain sui generis).

**Question 14** *Which option for Use Class D do you think would most meet the objectives of providing large movement generators in accessible places? Would you prefer to leave Use Class D as it currently is (the do nothing option)? Would you prefer an alternative option not set out?*

**Question 15** *Why do you prefer your chosen option?*

**Question 16** *What treatment do you prefer for nightclubs? Why do you prefer your chosen option?*

**Officer comment** The Council received planning applications for four alternative sites for a nightclub in Great Dunmow some time ago. They were dismissed on appeal. Had there been the ability to implement these proposals under the UCO provisions, the harm argued at appeal would have materialised. It is considered desirable to make this use sui generis, which by definition occurs at unsociable hours with associated noise and disturbance considerations. There does not appear to be an advantage in changing the current provisions regarding D1 and D2 uses generally. Many non-residential institutional uses are located without undue detriment, in, or close to, residential areas. An unrestricted change of a use in a residential area from Class D1 to a use within Class D2, which would be more appropriately located in major centres, may well have undesirable affects on amenity and sustainability principles. Option 2 is preferred. The DETR preferred option is for nightclubs to be distinct from dancehalls and to be included with the use of premises for the consumption of alcohol

## **TEMPORARY USES**

- 13 The objective of this part of the UCO are to enable infrequent recreational and fund raising events to occur without the need for permission, thus benefiting the rural economy, communities and planning departments which might otherwise have to process many applications relating to harmless developments. Uses can occur without planning permission on open land that does not include a building for up to 28 days in a calendar year. The holding of a market, including car boot sales and motorcar and motorcycle racing events are subject to a maximum of 14 days. The paper identifies these temporary uses as likely to cause problems including traffic and noise.

**Option 1** This suggests the retention of the current provisions because local authorities have the ability to serve Article 4 Directions (withdrawal of permitted development rights by geographical area). However, compensation may be payable when these Directions are served. When permitted development rights are removed by a change to the GPDO, compensation is still payable but only for the first 12 months after the change.

**Option 2** In order to address all the problems arising from temporary uses, the paper considers that the provision should be removed and replaced with a need for planning permission to be sought for the use of a site on which a future temporary use might take place.

**Option 3** So that the benefits of this provision can be retained, permitted development rights should be removed only for temporary markets, all motor sports, and clay pigeon shooting.

**Option 4** Reduce the number of days on which temporary markets, all motor sports, and all clay pigeon shooting can operate without planning permission to 7 days in a year.

**Option 5** Introduce a size threshold above which permitted development rights would be removed for temporary markets, all motor sports, and clay pigeon shooting.

**Option 6** This would be to introduce a notification procedure seeking local authority agreement that a proposed use does not require planning permission, and for the need to submit an application if not agreed.

**Question 17** *Which option for temporary use provision do you most favour. Would you prefer an alternative option not set out?*

**Question 18** *Why do you prefer your chosen option?*

**Officer comment** By its rural nature, the District has experienced problems relating to noise and disturbance and traffic arising from temporary markets, motor sports and clay pigeon shooting. It is considered that requiring planning permission in advance for sites that may be seen by landowners as having a future potential for temporary uses would be an onerous provision, particularly for those uses likely to occur on one or a few occasions only. Reducing the number of days that the most harmful uses could occur would not overcome the cumulative affect of the activities taking place on separate sites in close proximity and in any event harm could still occur on the days the activities took place. Creating size thresholds for individual uses would result in greater complication of the provisions and difficulties for enforcement officers when required to monitor the activities. The notification procedure would be problematic for one off harmless uses in that it could create potential delays. Problems could also occur in deciding what action would need to be taken in the event that notification does not occur or a planning application is not received. Option 3 is preferred, although this would mean that local farmers would be required to submit planning applications for events such as

farm markets. This, however, would not prevent landowners submitting a planning application for them. The DETR preferred option is Option 2.

### **COSTS**

- 14 There would be likely to be impact costs on landowners and local authorities in options proposing the removal of current flexibilities, but they may be offset by increased flexibility suggested in other options. Local authorities might be liable for compensation where existing permitted development rights are removed.

### Recommendation

That this report, together with any amendments or additional comments, is forwarded to the DTLR as the comments of Uttlesford District Council.