Planning: change of use system

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The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "Use Classes". The categories give an indication of the types of use which may fall within each use class. There are four main categories:

- 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 residential uses; and
- Class D covers non-residential institutions and assembly and leisure uses.

A further regulation, the *Town and Country Planning (General Permitted Development) Order 1995* (SI 418) grants what are called "permitted development rights". Permitted development rights are basically a right to make changes to a building without the need to apply for planning permission. Under this order planning permission is not needed for changes in use of buildings within each class and for certain changes of use between some of the classes.

A July 2014 Technical Consultation on Planning has proposed further changes to change of use permitted development rights, allowing further changes to residential use, retail to leisure use and creating a larger, renamed A1 class (currently shops) which would incorporate a lot of what are currently A2 uses (currently financial institutions). This is in part aimed at solving the issue of betting shops and payday loan shops being able to open without requiring planning permission (and which would remain in use class A2). Government has also proposed to remove change of use and demolition permitted development rights for pubs which are listed as assets of community value.

Some permitted development rights for change of use have attracted controversy, including allowing offices to change to residential use. There are campaigns for more restrictions on when pubs can be changed into housing and supermarkets. Health campaigners have called for restrictions on the number of fast food outlets on high streets, particularly those near to schools. This note sets out all these issues in more detail. It applies to England only.

Contents

1 The use class system

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "Use Classes". The categories give an indication of the types of use which may fall within each use class. It is only a general guide and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which class a particular use falls into. There are four main categories:

- 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 residential uses; and
- Class D covers non-residential institutions and assembly and leisure uses.

Further information about use class categories is available on the Government's website

A further regulation, the *Town and Country Planning (General Permitted Development) Order 1995* (SI 418) grants what are called "permitted development rights". Permitted development rights are basically a right to make changes to a building without the need to apply for planning permission. Under this order planning permission is not needed for changes in use of buildings within each class and for certain changes of use between some of the classes. A

table on the Government's *Planning Portal website* sets out which changes of use between classes are permitted.

Not every use of building is put into a use class under this legislation. Examples of these are theatres, hostels providing no significant element of care, scrap yards, petrol stations, nightclubs, launderettes, taxi businesses, amusement centres and casinos. If a building or business is "sui generis" i.e., not in a particular category, or the new use is "sui generis", then there will need to be a planning application to change the use under the procedures set out in the *Town and Country Planning Act 1990*. Being sui generis does not preclude a change of use, it just means that a planning application has to be made so that the local planning authority can consider the implications of change of use in detail.

2 Article 4 Directions

In some circumstances local planning authorities can suspend permitted development rights (such as change of use not requiring planning permission) in their area. Local planning authorities have powers under Article 4 of the *1995 Order* to remove permitted development rights. While article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most article 4 directions at any point.[1]

Article 4 directions must be made in accordance with national Government guidance given in the *National Planning Policy Framework* which directs that there must be a clear justification for removing national permitted development rights:

> 200. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Further Government *guidance* states that provided there is justification for both its purpose and extent, it is possible to make an article 4 direction covering:

- Any geographic area from a specific site to a local authority wide;
- Permitted development rights related to operational development or change in the use of land;
- Permitted development rights with temporary or permanent effect.[2]

There are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction. Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:

- refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or

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1 Department for Communities and Local Government, *Extending permitted development rights for homeowners and businesses: technical consultation*, November 2012, page 20

2 Ibid, p3

- grant planning permission subject to more limiting conditions than the GPDO [the 1995 Order] would normally allow, as a result of an article 4 direction being in place.[3]

Whereas before April 2010 the Secretary of State confirmed certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation.

The withdrawal of development rights does not necessarily mean that planning consent would not be granted. It merely means that an application has to be submitted, so that the planning authority can examine the plans in detail.

3 Government proposed changes

In the Budget 2014 the Government said that it would consult on new permitted development rights for change of use to residential use and to allow businesses to expand certain onsite facilities. The Budget 2014 also said Government would consider creating a "much wider 'retail' use class, excluding betting shops and payday loan shops".[4] A Written Ministerial Statement on 30 April 2014 said that the Government would consult in "summer 2014" on creating a new use class for betting shops so that planning permission would be required before a betting shops could be converted from a former bank, building society, restaurant or pub.[5]

In the Government's *Supporting High Streets and Town Centres Background Note*, 6 December 2013, it was set out that there would be a consultation on new permitted development rights to change retail use into leisure use. These were contained in the Government's July 2014 *Technical Consultation of Planning*, which proposed:

- allowing light industrial, storage and distribution buildings to change to residential use;
- allowing some sui generis uses (i.e. uses of buildings not falling into a particular use class), such as launderettes, amusement arcades, casinos and nightclubs to change to residential use;
- introducing a new permitted development right for the change of use from existing A1 and A2 use classes, and some sui generis uses, in use at the time of the Autumn Statement 2013 announcement, to restaurants and cafés (A3); and
- introducing a new permitted development right is introduced to enable the change of use from A1, A2 and some sui generis uses, which were in that use at the time of the Autumn Statement 2013, to assembly and leisure (D2) use.

In this consultation the Government also proposed putting on a permanent basis the temporary permitted development which currently allows change of use from office to residential use (subject to certain restrictions). For more information on this proposal see section 4.2 below.

The Technical Consultation also proposed changes to the A1 (shops) and A2 (financial institutions) use classes, to create a larger, renamed A1 class which would incorporate a lot

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3 Department for Communities and Local Government, *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, June 2012, para 6.2

4 HM Treasury, *Budget 2014*, 19 March 2014, para 2.249

5 HC Deb 30 April 2014 c53WS

of what are currently A2 uses. This is in part aimed at solving the issue of betting shops and payday loan shops being able to open without requiring planning permission (and which would remain in use class A2). For more information about this proposal see section 5.2 of this note.

The Technical Consultation on Planning closed on 29 September 2014 and the Government has not yet issued a response to this part of the Consultation. It is not yet known when or if any of these proposals will be taken forward.

On 26 January 2015 the Government put forward proposals to provide that the listing of a pub as an asset of community value would trigger a temporary removal of the national permitted development rights for the change of use or demolition of those pubs. For further information see section 5.2 below.[6]

4 Recent Government changes

4.1 New residential uses, shops, schools and childcare facilities

On 6 August 2013 the Government published a consultation, *Greater flexibilities for change of use*. The consultation proposed new permitted development rights in five areas:

- To create a permitted development right to assist change of use and the associated physical works from an existing building used as a small shop or provider of professional/financial services (A1 and A2 uses) to residential use (C3);
- To create a permitted development right to enable retail use (A1) to change to a bank or a building society;
- To create a permitted development right to assist change of use and the associated physical works from existing buildings used for agricultural purposes to change to residential use (C3);
- To extend the permitted development rights for premises used as offices (B1), hotels (C1), residential (C2 and C2A), non-residential institutions (D1), and leisure and assembly (D2) to change use to a state funded school, to also be able to change to nurseries providing childcare; and
- To create a permitted development right to allow a building used for agricultural purposes of up to 500m^2 to be used as a new state funded school or nursery providing childcare.[7]

The consultation document goes into more detail about what each of these new permitted development rights would allow and the circumstances in which they could happen.

The Government officially responded to the consultation on new permitted development rights on 14 March 2014. It confirmed that it would go ahead with the majority of these new change of use permitted development rights as proposed. An exception to this is that the change to allow agricultural buildings to convert to residential use will not apply in areas of National Park land and other protected areas. These changes were be implemented through the *Town and Country Planning (General Permitted Development) (Amendment and*

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6 Government press release, *Coalition ministers change the law to protect the Great British pub*, 26 January 2015

7 Department for Communities and Local Government, *Greater flexibilities for change of use*, 7 August 2013

Consequential Provisions) (England) Order 2014 (SI 2014/564), which came into force on 6 April 2014.

4.2 Office to residential

In April 2011 the Government consulted on a proposal to on granting permitted development rights to change use of buildings from commercial to residential use, *Relaxation of planning rules for change of use from commercial to residential: Consultation*. Responses to the consultation were published in July 2012, *Changing land use from commercial to residential consultation: summary of responses and government response*. In it the Government said that it would include a new policy in the National Planning Policy Framework to direct local planning authorities to normally approve planning application for change from commercial to residential use:

> to include a new policy in the National Planning Policy Framework1, to be read in the wider context of the Framework document, that local planning authorities '…*should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate…'*;[8]

On 24 January 2013 the Government announced that it would introduce new permitted development rights to allow change of use from B1(a) office to C3 residential.[9] A letter to chief planning officers confirmed that the new rights would run for a period of three years from the date of coming into force. [10] This change to permitted development rights to allow change of use from offices B1(a) to homes (C3) has now been made by the *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013* (SI 2013/1101), which came into force on 30 May 2013.[11] Local Authorities were given the chance to apply for exemption from this Order before it came into force and this change does not apply to areas in 17 local authorities, as set out in the Order. Information about the scoring criteria and where each local authority came in the exemption process is available on the gov.uk website.

A case was brought in the High Court to challenge the Secretary of State's decision not to grant exemptions to these new rules for the London Boroughs of Islington, Richmond and Camden.[12] In December 2013 Judge Mr Justice Collins dismissed the judicial review claim and said that the Government's actions had not been unlawful.[13] Following the court case, the Government reviewed the use of Article 4 directions established by some councils to try to block the permitted development right to change office to residential use. In a written statement Planning Minister Nick Boles said that Government had requested that Islington and Broxbourne councils make their directions more targeted:

> I am now aware of 8 local authorities who have made directions which prevent office to home conversions under national rights. These directions vary in extent, some apply to entire local authority areas and others are targeted at specific sites.

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8 Department for Communities and Local Government, *Changing land use from commercial to residential consultation: summary of responses and government response,* July 2012

9 HC Deb 24 January 2013 c16WS

10 HC Deb 24 January 2013 c16WS

11 Department for Communities and Local Government*, New measures coming into force ensure the very best use is made of empty and underused buildings*, 9 May 2013

12 For more information see Inside Housing, "*Office to residential scheme comes under fire at High Court*" 4 December 2013.

13 "*London boroughs lose office-to-homes High Court legal challenge*" Planning, 20 December 2013

> Having reflected on the reasoned justification presented by each authority for their Article 4 direction, and given the special exemption process which had already taken place, it is considered that the London Borough of Islington and Broxbourne Borough Council have applied their directions disproportionately.
>
> My department is therefore writing to these authorities to request that they consider reducing the extent of their directions so that they are more targeted. This will ensure that offices which should legitimately benefit from this national right can do so. Ministers are minded to cancel Article 4 directions which seek to re-impose unjustified or blanket regulation, given the clearly stated public policy goal of liberalising the planning rules and helping provide more homes.[14]

Planning magazine reported a study by Savills which suggested that in some parts of the country it would not be economic for offices to be converted into homes:

> A study by consultancy Savills points out that permitted development rights for change of use from class B1(a) offices to class C3 residential use will "only bring forward new homes through conversions in locations where residential values are higher than office values".
>
> Savills said the rules, due to come into force on 30 May, will create a "north-south opportunity divide". It said its statistics show that developers in Manchester and Leeds would make a loss if they converted offices to homes.
>
> This is because the uplift in capital value of a converted property in either of those cities would be insufficient to cover conversion costs of at least £100 per square foot, according to the report.
>
> In contrast, the statistics show that developers in Croydon, for example, would make a profit.[15]

In the Government's July 2014 *Technical Consultation of Planning*, it proposed to put the temporary permitted development right allowing change of use from office to residential use on a more permanent basis, as follows:

> 2.42 To continue supporting the housing market, the Government proposes introducing an amended permitted development right for change of use from office to residential from May 2016. It will replace the existing right and the exemptions which apply to the current permitted development right will not be extended to apply to the new permitted development right. While the intention is that the new right will be legislated for at the earliest opportunity, it would not come into force until the existing permitted development right ends in May 2016. This will give local planning authorities over a year to prepare for the introduction of the new permitted development right. We propose that:
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> - the prior approval will continue to consider the impact of the proposed development in relation to highways and transport, flooding and contamination
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> - additionally prior approval will now consider the potential impact of the significant loss of the most strategically important office accommodation. To ensure that the ability of the policy to deliver much needed new housing is not undermined, this will be a tightly defined prior approval, and we would welcome suggestions about the specific wording

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[14] Written Statement to Parliament, *Change of use: new homes*, 6 February 2014

[15] "Office-to-resi changes 'will create north-south opportunity divide'" *Planning*, 23 April 2013

- development on or in the following types of structures or areas should be excluded as they raise issues requiring further consideration: listed buildings and land within the curtilage

  - scheduled monuments and land within the curtilage

  - safety hazard areas

  - military explosive storage areas

2.43 In support of this policy, we will be making an amendment to the existing permitted development right to extend the time for completion for developments with prior approval from 30 May 2016 to 30 May 2019.

4.3 Other new permitted changes of use

In July 2012 the Government published a consultation, *New opportunities for sustainable development and growth through the reuse of existing buildings*. It proposed to create new permitted development rights to assist change of use from existing buildings:

(...) the Government is proposing action in four areas:

- To create permitted development rights to assist change of use from existing buildings used for agricultural purposes to uses supporting rural growth;

- To increase the thresholds for permitted development rights for change of use between B1 (business/office) and B8 (warehouse) classes and from B2 (industry) to B1 and B8.

- To introduce a permitted development right to allow the temporary use for two years, where the use is low impact, without the need for planning permission.

- To provide C1 (hotels, boarding and guest houses) permitted development rights to convert to C3 (dwelling houses) without the need for planning permission.

On 24 January 2013, the Government confirmed that it would make the following changes:

Getting redundant agricultural buildings back into use

As part of the 2011 growth review we undertook to review how change of use is handled in the planning system. We ran a consultation "New opportunities for sustainable development and growth through the reuse of existing buildings" in July 2012.

Following that consultation, I can confirm that in order to help promote rural prosperity and job creation, agricultural buildings will be able to convert to a range of other uses, but excluding residential dwellings. There will be a size restriction and for conversions above a set size a prior approval process will be put in place to guard against unacceptable impacts, such as transport and noise.

Flexibility for business uses

To enhance flexibility in the planning system, which can be vital when a quick response is necessary to support business growth, we will increase the thresholds for permitted development rights for change of use between business/office (B1) and warehouse (B8) classes and from general industry (B2) to B1 and B8 from 235 m(2) to 500 m(2).

Getting empty town centre buildings back into use

> To create opportunities for new and start-up businesses and help retain the viability and vitality of our town centres, we will allow a range of buildings to convert temporarily to a set of alternative uses including shops (Al), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) for up to two years.[16]

On 9 May the Government confirmed that "existing redundant agricultural buildings of 500m^2 or less will be able to change to a range of new business uses, to boost the rural economy whilst protecting the open countryside from development." The change has now been made by the *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013* (SI 2013/1101), which came into force on 30 May 2013.[17]

The 2013 Order also made the following changes to permitted development rights, as set out in a written ministerial statement:

> People looking for premises to test new business ideas and other pop up ventures will find it easier to identify sites and open quickly: new retail ventures, financial and professional services, restaurants, cafes and businesses will be able to open for up to 2 years in buildings designated as A1, A2, A3, A4, A5, B1, D1 or D2 classes (shops, financial services, restaurants, pubs, hot food takeaways, business, non-residential institutions, leisure and assembly).
>
> Thresholds for permitted development rights for change of use from B1 (business) or B2 (general industry) to B8 (storage and distribution) classes and from B2 (general industry) or B8 (storage and distribution) to B1 (business) will increase from 235m^2 to 500m^2.[18]

The Government also published a *summary of responses* to the July 2012 consultation on 9 May 2013. In it the Government confirmed that it would not proceed with the proposal to allow use class C1 hotels to have permitted development rights to convert to class C3 houses. The Government noted that "in comparison with the rest of the proposals in this consultation, there was a general lack of support for this idea." The Government said it would seek change of use of hotels to houses by other means:

> 43. The Government will look to local authorities to manage effective change of use of surplus or outdated hotel accommodation to new uses through Local Plan policies and, where appropriate, Local Development Orders.[19]

5 Calls for change

5.1 Betting shops and payday loan shops

Betting and payday loan shops are generally classed as financial institutions and so fall into use class A2:

> A2 Financial and professional services - Financial services such as banks and building societies, professional services (other than health and medical services) including estate and employment agencies and betting offices.

This means that planning permission is not required to convert a bank or building society into a betting shop or a payday local shop. Furthermore, under the *Town and Country Planning*

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16 HC Deb 24 January 2013 c16WS

17 Department for Communities and Local Government, *New measures coming into force ensure the very best use is made of empty and underused buildings*, 9 May 2013

18 Written Ministerial Statement by Communities Secretary Eric Pickles on promoting regeneration, 9 May 2013

19 Department for Communities and Local Government, *New opportunities for sustainable development and growth through the reuse of existing buildings: Summary of responses*, 9 May 2013

(General Permitted Development) Order 1995 (SI 1995/418) planning permission is not required to convert restaurants and cafes, drinking establishments and hot food takeaways into class A2 establishments. Changes from other uses, such as A1 (shops), for example, would need planning permission.

The Budget 2014 set out that the Government would consider creating a "much wider 'retail' use class, excluding betting shops and payday loan shops".[20] A Written Ministerial Statement on 30 April 2014 said that the Government would consult in "summer 2014" on creating a new use class for betting shops so that planning permission would be required before a betting shops could be converted from a former bank, building society, restaurant or pub:

> The Government want to give local communities a proper voice so their views are taken into account when plans for a new betting shop are submitted. My right hon. Friend, the Secretary of State for Communities and Local Government, is therefore proposing a re-emphasis within the current planning classes. A smaller planning use class containing betting shops will mean that in future where it is proposed to convert a bank, building society or estate agents into a betting shop it would require a planning application. In addition, the Government will remove the ability for other premises such as restaurants and pubs to change use without being obliged to seek planning permission. The Department for Communities and Local Government will consult on the detail of proposals as part of a wider consultation on change of use in summer 2014.[21]

The Government's July 2014 Technical Consultation on Planning set out the official proposals. It proposed changes to the A1 (shops) and A2 (financial institutions) use classes, to create a larger, renamed A1 class which would incorporate a lot of what are currently A2 uses. This is in part aimed at solving the issue of betting shops and payday loan shops being able to open without requiring planning permission (and which would remain in use class A2):

> 2.57 We propose that the retail offer is strengthened by incorporating into a revised wider A1 use class the majority of financial and professional services currently found in A2. It is proposed that the Use Class Order will be revised in respect of use classes A1 and A2, and the names of both uses classes revised to better reflect their new scope.
>
> 2.58 This will expand the flexibility for businesses to move between premises such as a shop to what would have been an A2 use such as an estate agent or employment agency without the need for a planning application. This will support local communities and growth by enabling premises to change use more quickly in response to market changes, reducing the numbers of empty premises that can contribute to blight in an area. Betting shops and pay day loan shops will not form part of the wider A1 retail use class, but will remain within the A2 use class.

This proposal for a new use class for betting shops follows calls over a number of years for this to happen, in order to give local authorities greater control over betting shop proliferation in their areas.

For example, in a debate on Bookmakers and Planning (Haringey) in November 2010, David Lammy regretted that his constituency had 39 bookmakers but no book shop. He argued that modern bookmakers were like mini-casinos, with gaming machines where people could play for high stakes at great speed. He asked for betting shops to be reclassified as sui generis

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[20] HM Treasury, *Budget 2014*, 19 March 2014, para 2.249

[21] HC Deb 30 April 2014 c53WS

so that a planning application would need to be made to change use from any other establishment on the high street to become a betting shop:

> Will the Minister consider a revision of the classification of betting shops from A2 to sui generis, a category unto itself. After all, the diversity of footfall that they attract is unique. Their economic impact in an area is wholly different from that of almost any other establishment, particularly those in the A2 class. A sui generis planning category for betting shops would not be revolutionary. Casinos and amusement arcades, which have similar characteristics, are classed as such. Being able to consider each planning application in kind would enable councils and residents to consider the cumulative impact of an additional betting shop, and they could manage the proportion of frontage occupied by them.[22]

The then Planning Minister, Robert Neill, rejected the request and recommended the use of an Article 4 Direction, whereby a local council can suspend permitted development rights in certain circumstances:

> **Mr Lammy**: Does the Minister accept that it is very costly to proceed through an article 4? The main point is that bookmakers should clearly not be in the A2 class with banks. They should be in a separate class of their own. I suspect that the hon. Gentleman understands that because he concentrates his remarks on banks and estate agents. Bookmakers are wholly different; surely they should be somewhere near to casinos and amusement parks.
>
> **Robert Neill**: Two or perhaps three points arise. I was interested in the right hon. Gentleman's observation that his local council thinks it would take years to produce the policy for an article 4 direction. I can see nothing on the face of the system that should require such a long period. Secondly, there is compensation. We must have a rule that applies to all article 4 directions because such a direction is-justifiably or otherwise-an interference or at least a restriction on the proprietary rights of the owner of the property. It limits what the owner can do with that property, which can affect its value, so it is reasonable and proportionate that there should be compensation. We cannot say that that should be any difference for an article 4 direction that applies to only one type of use as opposed to another. That would be neither just nor proportionate.[23]

Mary Portas's *High Street Review*, December 2011, recommended putting betting shops into a separate use class:

> 13. Put betting shops into a separate 'Use Class' of their own
>
> I also believe that the influx of betting shops, often in more deprived areas, is blighting our high streets. Circumventing legislation which prohibits the number of betting machines in a single bookmakers, I understand many are now simply opening another unit just doors down. This has led to a proliferation of betting shops often in low-income areas.
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> Currently, betting shops are oddly and inappropriately in my opinion classed as financial and professional services. Having betting shops in their own class would mean that we can more easily keep check on the number of betting shops on our high streets.[24]

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[22] HC Deb 24 November 2010 c406
[23] HC Deb 24 November 2010 c409
[24] The Portas Review: *An independent review into the future of our high streets*, December 2011

In response to a Lords PQ in November 2012 about limiting betting shops on the high street, the Government said that it did not want to risk imposing "ineffective regulation":

> *Asked by* ***Baroness Jones of Whitchurch***
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> To ask Her Majesty's Government whether they will take steps to limit the number of betting shops in United Kingdom high streets. [HL3445]
>
> To ask Her Majesty's Government whether they will consider further restricting the number of fixed-odds betting terminals allowed to be sited in each betting shop on United Kingdom high streets. [HL3446]
>
> **Viscount Younger of Leckie:** The Government are aware of concerns that have been expressed about betting shops and category B2 gaming machines (also referred to as fixed odds betting terminals). However, causal links with problem gambling are poorly understood and to impose new restrictions without clearer evidence of harm risks ineffective regulation that unnecessarily threatens businesses and jobs. The Government has committed to looking at the evidence around B2 gaming machines and problem gambling, and will announce shortly the timing and scope of a review.[25]

There has also been some discussion in the press about whether a new use class should be created for payday loan shops – for example, "Medway Council in legal bid to ban payday loan shops", *BBC News*, 6 August 2012.

In April 2013 the Labour Party published a local election campaign document, *One Nation Rebuilding Britain Together*. In it the Party said that it would give "local residents and their councillors new powers to prevent certain types of business, such as payday lenders and betting shops, from growing on their high streets." In Planning magazine it was reported that these new powers would involve creating a new "umbrella class" use class category into which local councils could place certain types of shops and institutions, such as payday loan providers.[26]

In addition, there have been reported arguments in planning application meetings as to whether granting planning permission for payday loan shops could be seen as consistent with the Government's aims for sustainable development in the *National Planning Policy Framework*. See for example, "Tower Bridge Road payday loan shop plan blocked by councillors" *London SE1 website*, 17 April 2012.

5.2 Village pubs

Change of use to residential houses

It is common to find village pubs that the owners wish to close in order to sell the property as a residential house. Owners claim that the pub could not be made profitable. Local critics claim that the owners are exaggerating the problems in order to make money by selling the building. In July 2009 the Campaign for Real Ale (CAMRA) called for a change in planning law to prevent closures of pubs[27]

Change of use to supermarkets

Under the *Town and Country Planning (Use Classes) Order 1987* (SI 764) pubs generally fall into use class A4 – drinking establishments. Supermarkets generally fall into class A1 –

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25 HL Deb 29 Nov 2012 cWA76

26 "Labour proposes new use class to limit growth of payday loan shops" *Planning*, 19 April 2013

27 CAMRA Press Release, *Amend planning law to save pubs*, 8 July 2009

shops. The Town and Country Planning (General Permitted Development) Order 1995 (SI 418) sets out that planning permission is not required for a change of use from class A4 (pub) to class A1 (supermarket).

In November 2012 CAMRA called for the Government to change planning laws to restrict permitted development from change of use from a pub to a supermarket:

> CAMRA, the Campaign for Real Ale, has today urged the Government to change planning laws which are currently allowing the nation's major supermarket chains and developers an easy route to ripping the hearts out of small communities, with new research showing that since January 2010, over 200 pubs across Britain have been converted into supermarket convenience stores.
>
> CAMRA has been lobbying hard in recent years to persuade the Government to close arcane planning law loopholes in England and Wales which are allowing pubs - amenities which provide a community centre and a managed environment to consume alcohol - to be demolished or converted without the need for planning permission, and therefore rendering communities powerless in the fight to save their locals.
>
> Based on a national pub conversion survey carried out by its members, CAMRA has found that since the beginning of 2010, a staggering 130 pubs have been converted into convenience stores by supermarket giant Tesco, and 22 by Sainsbury's, with a further 54 by other companies such as The Co-Operative, Asda and Costcutter.
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> With a further 45 pubs reported to be under threat of conversion across Britain at present, Mike Benner, CAMRA Chief Executive, said:
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> *'Weak and misguided planning laws and the predatory acquisition of valued pub sites by large supermarket chains, coupled with the willingness of pub owners to cash-in and sell for development, are some of the biggest threats to the future of Britain's social fabric. For years, large supermarket chains have shown a disregard for the wellbeing of local communities, gutting much-loved former pubs in areas already bursting with supermarket stores.*
>
> *'Pubs are being targeted for development by supermarket chains due to non-existent planning controls allowing supermarkets to ride roughshod over the wishes of the local community. At a time when 18 pubs are closing every week this is damaging a great British institution. Unless action is taken by the Government to address obvious loopholes in planning legislation, more local communities will be forced to give up their local pub without a fight, and seeing the pub signs of Red Lions and Royal Oaks being corporately graffitied over by supermarket empires will become an all too common sight.*[28]

In response to a Parliamentary question on 7 January 2013 the Planning Minister, Nick Boles, said that local authorities could restrict when a pub could turn into a supermarket by putting in place an Article 4 Direction.[29] In the PQ response, the Minister said the key issue here was the economic situation, not the planning system:

> More broadly, pubs do not turn into supermarkets because of the planning system. Rather, the key issue is that pubs may close and the premises are sold because they are not economically viable. In that context, I refer the hon. Member to the answer of 18 September 2012, *Official Report*, column 610W, on the steps the Government is

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[28] CAMRA, *Community pubs taken to the checkout by major supermarket chains*, 19 November 2012

[29] HC Deb 7 January 2013 c129W

> taking to support community pubs—including tackling unfair competition by some supermarkets by selling alcohol below cost price.
>
> Moreover, one of the public policy objectives that we also need to consider is avoiding premises standing empty. Disproportionate restrictions on change of use would result in more empty buildings, harming local amenity and the broader local economy.[30]

There are several examples of where Article 4 directions have made to suspend permitted developments in relation to pubs:

- In April 2013 Lewisham Council confirmed an Article 4 direction which prevented the Catford Bridge Tavern using permitted development rights to change the use of the pub from Class A4 (drinking establishments) to Class A1 (shop), Class A2 (financial and professional service) or Class A3 (restaurant and cafes).

- Camden Council has made two article 4 directions relating to pubs as follows:

  The Old White Bear PH, Well Road, NW3. Article 4 Direction removing permitted development rights for the following type of work: Change of use to Class A1 (shops), Class A2 (financial and professional services) and Class A3 (restaurant). Article 4 Direction confirmed 22nd May 2014.

  The Golden Lion PH, Royal College Street, NW1. Article 4 Direction removing permitted development rights for the following type of work: Change of use to Class A1 (shops), Class A2 (financial and professional services) and Class A3 (restaurant); Temporary change of use to Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurant) and B1(business). Article 4 Direction confirmed 3rd October 2014.

- In December 2014 Wandsworth Borough Council made an article 4 direction in respect of the Wheatsheaf public house which removed permitted development rights for change of use (including to supermarkets). Wandsworth Council has also recently consulted on a draft Town Centres Supplementary Planning Document, although not yet formally approved, in it, it sets out the council's intention to put in place an article 4 direction relating to a number of pubs in the area:

  > 3.3 A case could be made to use Article 4 Directions to control the change of use of public houses and bars to other uses, painting and the demolition of public houses and bars that may otherwise be 'permitted development'. It is likely that the Council will make Article 4 Directions covering all the relevant public houses and bars considered worthy of protection rather than make separate Directions relating to each individual premises. This work will begin following the adoption of the SPD.

Waltham Forest Council also published a draft public houses supplementary planning document in December 2014 which again proposes making an article 4 direction to cover a wide number of pubs across the borough. This has not yet been formally adopted.

On 26 January 2015 the Government put forward proposals to provide that the listing of a pub as an "asset of community value" would trigger a temporary removal of the national permitted development rights for the change of use or demolition of those pubs.[31] The

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[30] HC Deb 7 January 2013 c129W

[31] Government press release, *Coalition ministers change the law to protect the Great British pub*, 26 January 2015

change would be made by the introduction of new secondary legislation. The press notice stated:

> This will mean that in future where a pub is listed as an asset of community value, a planning application will be required for the change of use or demolition of a pub. This then provides an opportunity for local people to comment, and enables the local planning authority to determine the application in accordance with its local plan, any neighbourhood plan, and national policy. The local planning authority may take the listing into account as a material consideration when determining any planning application.[32]

In a debate on the Infrastructure Bill on the same day, the Communities Minister, Stephen Williams gave assurances that the new regulations would be made soon:

> Stephen Williams: Yes. In this instance, terms such as "earliest opportunity", "shortly" and "soon" really do mean that. We all know that we are up against the buffers of a fixed-term Parliament, which is a very good constitutional initiative. When I say "at the earliest opportunity", I mean "at the earliest opportunity". In other words, we hope that the statutory instrument to which my hon. Friend has referred will be published and laid before Parliament in the next few weeks.[33]

Part of the debate on the Infrastructure Bill focussed on whether a new clause 16 should be added which would remove permitted development rights for change of use and demolition of drinking establishments. Shadow Planning Minister Roberta Blackman-Woods MP welcomed the new clause:

> We welcome new clause 16, in the name of the hon. Member for Leeds North West (Greg Mulholland). His proposals are in line with our localist policy to return decision making about permitted development and change of use class to local authorities and the local communities they represent. We are very much against permitted development being able to ride roughshod over the needs and wishes of local communities, so we welcome the amendment and concur that having to make a pub an asset of community value, or make an article 4 direction, is bureaucratic and burdensome on local communities and not at all necessary. The hon. Gentleman's new clause provides communities with a straightforward way of saying what is happening to their local pub and whether or not they wish a change to be made.[34]

The Minister rejected the proposal in the new clause explaining that he thought a blanket ban against change of use for all pubs would be inappropriate in some circumstances:

> A blanket protection for every single public house in the country, which is what the new clause envisages, would protect pubs that for various reasons are no longer enjoying the patronage of the community. In my constituency, lots of pubs have closed, but it is usually because of demographic change. Some parts of my constituency, which had a "white working-class community" 20 or 30 years ago, are now populated primarily by recently arrived Somalis and other people. Obviously the pubs in those areas have closed, and some have been converted to other uses, but some of them are still derelict. Is the hon. Gentleman really saying that in all those circumstances, whatever they might be, full planning permission should be required simply to change the use of a former pub to something that may be of benefit to the community?

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[32] Ibid

[33] HC Deb 26 January 2015 c633

[34] HC Deb 26 January 2015 c639

> The Government are proposing to look at the public houses that are genuinely popular and valued by the community now, giving them the protection that is already allowed under the Localism Act, and further enhancing that protection under the planning laws, saying, "You cannot convert this pub into another use or demolish it without planning permission." That should address all the worries that people rightly have about the pubs that really are important to them.[35]

The new clause was defeated on a vote by 245 votes in favour and 293 against.[36]

Further information about assets of community value is provided in Library standard note, Assets of Community Value, SN06366.

5.3 Change of use of shops

People sometimes argue that change of use of shops within a use class can change the character of a retail area. For example a local planning authority may consider that too many of the high street shops are of one particular type. While that may be true, the local planning authority may not to be able to do anything about it, unless shops are in different use classes. Planning consent is not required for a change of use when two small shops merge into a larger one, unless outside building works take place.[37]

An adjournment debate in September 2010 heard complaints of the way that small shops are converted into urban supermarkets under permitted development rights.[38]

5.4 Hot food takeaways

The *Town and Country Planning (Use Classes) Order 1987* (SI 764) puts hot food takeaways for consumption of food off the premises into use class A5.

In March 2009 the Health Select Committee reported on health inequalities.[39] It recommended that local councils should be given greater planning powers to restrict the number of fast food outlets on high streets.

Case law has shown that proximity to a school and the existence of a school's healthy eating policy can be a "material consideration" for a local authority taking a planning decision in relation to an A5 takeaway establishment.[40] Further decisions on appeal by Planning Inspectors have shown however, that in order to successfully refuse planning permission on these grounds a local authority must also show that there is an over-concentration of A5 establishments in the area and provide evidence to show a link between childhood obesity and the proximity of A5 establishments to schools. It was also found that a policy explicitly seeking to control proliferation of fast-food outlets near schools, would make it easier for a planning inspector to uphold a decision to refuse an application.[41]

Following these decisions, several councils have now published supplementary planning guidance relating to takeaway establishments. This guidance examines the concentration of A5 establishments near to schools in their areas, as well as the link between childhood

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35 HC Deb 26 January 2015 c635
36 HC Deb 26 January 2015 c649
37 HC Deb 10 July 2007 c1430W
38 HC Deb 13 September 2010 cc712-20
39 Health Committee, *Health Inequalities*, 15 March 2009 HC 286 2008-9
40 Planning Portal, *Landmark ruling over takeaway consent near a school*, 17 June 2010
41 Tower Hamlets 2011, *Tackling the Takeaways: a new policy to address fast-food outlets in Tower Hamlets*, 2011

obesity and proximity to takeaways and puts in place a clear policy to exclude A5 establishments from a certain distance around schools. An example is the *Supplementary Planning Guidance from St Helens Council*, adopted in June 2011. Section 5 (pages 9 -10) of the guidance gives reasoned justifications for this policy and has established a 400 metres exclusion zone around schools in which A5 establishment planning applications will be refused.

In November 2012 the Mayor of London published a "*Takeaways Toolkit*" described as "Tools, interventions and case studies to help local authorities develop a response to the health impacts of fast food takeaways." The document sets out planning controls and voluntary measures which have, or could, be used to help prevent an over-prevalence of hot food takeaways in a particular area.