

CONSULTATION ON PLANNING CONTROLS, PAY DAY LENDING AND BETTING OFFICES

1.0 EXECUTIVE SUMMARY

- 1.1 The main purpose of this report is to advise the PPSL of the consultation exercise being undertaken by the Scottish Government regarding the possible extension of Planning controls on Betting Offices and Pay Day Lenders.
- 1.2 The report outlines the proposed response to the Scottish Government on this consultation exercise.
- 1.3 Recommendations are that Members:-
- Agree that reference to betting shops should be removed from Class 2, and included in the list of uses which are outwith a particular use class (*Sui Generis*). This would then require an application for planning permission to be submitted for any new betting shop.
 - Agree that change of use from a betting shop to either a Class 1 retail use or a Class 2 Financial, Professional or other services to visiting members of the public, should not require submission of a formal planning application and changes of use in this direction should continue to be permitted development
 - Object to any amendment to Class 2 in order to address the issue of Pay Day Lenders, on the basis that pay day lending cannot clearly be distinguished in land use planning terms from many other businesses in the financial services sector. The proposal to limit the definition of financial services to banks, building societies or other regulated “deposit takers” could mean that a wide range of other businesses offering financial services, such as money transfer, cheque cashing or bureaux de change services.
 - Raise concerns that pay day lenders provide a function which in land use planning terms is indistinguishable from many other services which are considered suitable in town centre locations in terms of transport and parking provision, hours of operation and frequency and duration of customer visit, and that the land use planning system should not be used to regulate activities which are more appropriately controlled by the Financial Conduct Authority or other regulatory bodies.

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2.0 INTRODUCTION

- 2.1 Concerns have been expressed in recent years about the levels of problem gambling and personal indebtedness and the prevalence of betting shops and premises selling high interest short term loans – often referred to as pay day lending (PDL).
- 2.2 The Scottish Government is consulting on possible changes to the planning legislation to address concerns about the negative impact overprovision or clustering of betting shops and pay day lenders on the character and amenity of town centres. The possible legislative changes relate to the requirement for applications for planning permission for change of use to betting shops or pay day lenders. Any legislative change would not apply retrospectively so existing pay day lender or betting shop premises would not be affected.

3.0 RECOMMENDATIONS

That Members:-

- 3.1 Agree that reference to betting shops should be removed from Class 2, and included in the list of uses which are outwith a particular use class (*sui generis*).
- 3.2 Recommend that changes of use from betting shops to Class 1 (Retail) or Class 2 (Financial Professional and other services) continue to be permitted development.
- 3.3 Object to proposed amendments to Class 2 in order to address the issue of Pay Day Lenders, on the basis that the proposals could extend the requirement to apply for planning permission to many other businesses in the financial services , professional or other services sectors, which are considered appropriate to the role and function of town centres, and the use of premises for PDL in planning terms is indistinguishable from other premises offering financial services.

4.0 DETAIL

- 4.1 The planning system generally seeks to control material changes in use, however, the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO) groups similar uses together into use classes. This removes the need to make planning applications for a range of uses which have broadly similar planning implications. Further flexibility is provided by the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (GPDO) which grants a general planning permission for a range of development. These permitted development rights include planning permission for certain changes of use (between use classes).
- 4.2 Currently betting shops and PDL premises are within use class 2, financial, professional or other services (including use as a betting office) which it is appropriate in a shopping area, and where services are provided principally to visiting members of the public. Premises selling pay day loans are not specifically mentioned in the UCO, but are clearly providing financial services. The GPDO grants planning permission for changes of use from class 3 (Food and Drink) and hot food takeaways to class 2 (Financial, Professional, and other services), and from class 2 to Class 1 (Shops). These changes are one way i.e. it is not possible to change from Class 1 to Class 2 or then Class 3 without a formal planning application being made.
- 4.3 The consultation document proposes to remove reference to betting shops in class 2 and add them to the list of uses which do not fall within any of the use classes, currently, amusement arcades; public houses; theatres and hot food takeaways, are included within this unclassified use. The GDPO would then be amended so that change from use as a betting office to other uses (e.g. class 1, or 2) would remain permitted development. This amendment would act like a one way street, in that changes from a betting shop to a class 2 office use or to a class 1 retail shop would not require a formal application for planning permission to be made, but any movement the other way would. Use of premises as a betting shop is a clearly distinguishable use, and had in previous use class orders been identified as a *sui generis* use. They may be distinguished from other class 2 uses, in that they may be open outwith normal business hours, and also typically can have customers spending longer periods of time in them watching sporting events and placing bets on them. They therefore provide a type of entertainment or leisure function which has greater similarities other *sui generis* uses such as public houses or amusement arcades, than other class 2 uses where financial, professional or other services are provided to visiting members of the public.
- 4.4 The position with pay day lending is somewhat more complicated, in that this is not specifically referred to in the UCO, and there is no single agreed definition. PDL can be offered from a variety of premises,

including ones which might specialize in such lending, or others which offer it as part of a range of products or services like pawn broking, cheque cashing, money transfers and other financial services or a combination of these. PDL may therefore only form a limited part of a range of financial services and may only form a very small part, of the overall use of the premises. However, it clearly falls within the remit of use class 2 (Financial, Professional and other services) at present.

- 4.5 The Financial Conduct Authority's definition of a PDL relates to high cost short term credit where: APR is equal to or higher than 100%, credit is provided for any period up to 12 months; and it is not secured by a mortgage, charge or pledge. While this definition is useful, this may not help in extending planning controls to PDL, as slight changes to loan terms might avoid controls. In order to achieve additional planning controls over changes of use within the financial services sector, a wider range of services would have to be removed from Class 2 of the UCO. Two options are proposed: The first would seek to identify and exclude from Class 2 the sorts of businesses likely to offer PDL and which are likely to cluster in shopping areas, undermining the character or amenity of the area or the wellbeing of communities. The second would be to replace the general reference to financial services with references to specific financial activities, and thereby include: "Accountancy services", "Insurance Services", and "Deposit takers" including; banks, building societies, credit unions, and friendly societies.
- 4.6 This approach would not include explicit exemptions for "professional services" or "other services" who may be engaged in some "financial services" as part of an overall package of services, e.g. estate agents' or solicitors' offices. As with other mixed uses, it would be for the planning authority in individual cases to consider whether the extent of any financial services provided by such premises was material change of use requiring planning permission. While this has the advantage of applying control to a wider range of uses of premises that might also offer PDL services, it is likely to mean that more financial services activities that are not of concern would in future require planning permission.
- 4.7 The consultation document recognizes that PDL can be offered from a variety of premises, and by businesses which may offer it as part of a range of products or services like pawn broking, cheque cashing, money transfers. There is some difficulty in making a distinction between the activities of a PDL and other financial lending institutions, where in practical terms the only distinction may be the period of the loan and the rate of interest or charges which such a facility might incur. In land use planning terms pay day lenders provide a function which is indistinguishable from many other services which are considered suitable in town centre locations in terms of transport and parking provision, hours of operation and frequency and duration of customer visit. The land use planning system should not be used to regulate

activities which are more appropriately controlled by the Financial Conduct Authority or other regulatory bodies.

5.0 CONCLUSION

- 5.1 PPSL approval is sought for the responses as detailed in the appendix to this report to be sent to the Scottish Government as the Councils response to the consultation on the possible changes to the Use Classes Order in order to deal with the perceived proliferation of Betting Shops and Pay Day Lenders.

6.0 IMPLICATIONS

- 6.1 Policy This stage is for consultation purposes only. If the proposed changes are to be implemented then the Councils Local Development Plan policies for town centres will have to be reviewed, in order to provide an appropriate policy response to applications for change of use which might be engendered as a result of changes to the Use Classes and General Permitted Development Orders.
- 6.2 Financial None arising from this report
- 6.3 Legal None arising from this report.
- 6.4 HR None arising from this report
- 6.5 Equalities Equality impact Assessment screening has been undertaken; this shows that gambling is most prevalent amongst younger men, and the likelihood of problem gambling is 11.6 times higher among men than women. Gambling is least prevalent amongst Muslims.
- 6.6 Risk None to the Council

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APPENDIX

The consultation document seeks the answer to the following questions:

Q1. Do you agree with this approach to dealing with betting offices? If not, please specify why not.

Yes. Use of premises as a betting shop is a clearly distinguishable use, and had in previous use class orders been identified as a sui generis use. They may be distinguished from other class 2 uses, in that they may be open outwith normal business hours, and also typically can have customers spending longer periods of time in them watching sporting events and placing bets on them. They therefore provide a type of entertainment or leisure function which has greater similarities other sui generis uses such as public houses or amusement arcades, than other class 2 uses where financial, professional or other services are provided to visiting members of the public.

Q2. Do you consider there to be a more effective approach to changes around betting offices? If so, please describe the approach.

The proposal to remove reference to betting shops in class 2 and include them in the list of uses which are sui generis would appear to be a reasonable approach. There are unlikely to be any significant implications for town centres in Argyll and Bute, where most town centres have two or three betting shops, and where there has been no discernible trend, regarding increase or clustering. Change of use from Betting shop to a Class 2 or Class 1 use should continue to be "permitted development".

Q3. Do you believe that a specific definition of PDL, similar to the FCA's definition in paragraph 23 above, should form part at least of the exclusion of uses from the UCO? If so what should the definition be?

If PDL are to be excluded from Class 2 then it should be on the basis of their definition by FCA only. However it is considered that, in land use planning terms, pay day lenders provide a function which is indistinguishable from many other services which are considered suitable in town centre locations in terms of transport and parking provision, hours of operation and frequency and duration of customer visit. The land use planning system should not be used to regulate activities which are more appropriately controlled by the Financial Conduct Authority or other regulatory bodies.

Q4. Do you agree that Class 1 (Shops) should be excluded from any changes regarding PDL? If not, why not?

Yes

Q5. Do you think this (option 1) would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of pay day lenders? If not, why not?

This approach is dependent on a satisfactory definition of a PDL, and there may be too much scope for PDL to alter their business practice slightly to fall out of such a definition. PDL is not a significant problem in many of Argyll and Bute's town centres. The majority of premises within town centres are Class 1 retail shops anyway, and therefore a formal application for planning permission is already required if such premises are to be used for PDL or other Class 2 use.

Q6. What other activities which might be involved in PDL should be added to the exclusions? Please explain why and provide any examples.

There are too many other activities which could be developed in association with PDL, and which could in fact blur the lines between PDL, pawn broking, and second hand goods sellers, all of which can make a valid contribution to the vitality and viability of town centres. Premises offering PDL should therefore continue to remain in Class 2

Q7. What other exceptions to the exclusion of financial lending should be included (i.e. alongside "deposit takers")? Please explain why and provide examples.

Pay Day Loan shops and other financial services such as banks provide very similar functions in planning terms, the only difference being the terms and conditions attached to loans. These and other Class 2 activities are all appropriate town centre functions and can make a contribution to the overall vitality and viability of town centres. Class 2 financial services should therefore remain unaltered, and some other (non planning) mechanism such as licensing or regulation by Financial Conduct Authority employed to regulate PDL.

Q8. Do you think this would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of PDL? If not, why not?

The wholesale reclassification of uses within use class 2 is not considered proportionate. PDL is not a significant problem in many of Argyll and Bute's town centres. In many instances PDL may only be one part of a business model, determining whether a change of use occurs would be hard to ascertain from observation/visiting premises. The majority of premises within town centres are Class 1 retail shops anyway, and therefore a formal application for planning permission is already required if such premises are to be used for PDL or other Class 2 use. The Adopted Argyll and Bute Local Plan already has policies which seek to restrict change of use from Class 1 retail uses within defined core areas of town centres.

Q9. Should the exclusions from the UCO be extended beyond those described in this option? If so please explain and provide examples.

No

Q10. What other exceptions to the exclusion of financial services should be included (i.e. alongside “deposit takers” etc.)? Please explain and provide examples.

None are proposed as it is considered that the existing definitions of use class 2 (with the exception of betting shops) are appropriate, and PDL should be controlled by the financial regulation authorities rather than planning authorities, as in land use terms, this activity is indistinguishable from other financial services.

Q11. Which approach would you prefer, Option 1 or Option 2? Please explain your answer.

While neither option is preferred for the reasons outlined above, option 1 would be more preferable than option 2, in that the only implications would be the removal of PDL (subject to a satisfactory definition of what constitutes a PDL being established), rather than complete redefinition of various types of financial services being attempted.

Q12. Do you have any other comments or suggestions? Please elaborate.

None

Q13. BRIA – Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?

None

Q14. EqIA – Please provide details of any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief) which you think may arise in relation to the potential changes discussed in this paper.

None