

<b>Subject:</b>	<b>CLG consultation: 'How change of use is handled in the planning system – tell us what you think.'</b>		
<b>Date of Meeting:</b>	<b>15 September 2011</b>		
<b>Report of:</b>	<b>Strategic Director, Place</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Katie Rasdall</b>	<b>Tel: 29-2263/2361</b>
	<b>Email:</b>	<b>katie.rasdall@brighton-hove.gov.uk</b>	
<b>Key Decision:</b>	<b>No</b>		
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report seeks approval of the council's response to the recent Government Issues Paper seeking views on revisions to improve and reform how changes of use is handled within the planning system, which includes reviewing how the current Use Classes Order (UCO) is structured and possible changes to the General Permitted Development Order (GPDO). This review is part of central government's range of proposed reforms of the planning system. The consultation response expresses a range of concerns should the UCO be abolished, articulates the benefits of the change of use process and suggests ways the system could be made more flexible and efficient. Formal consultation on proposed changes will take place at a later date.
- 1.2 The response was sent on 31<sup>st</sup> August 2011 in order to meet the consultation deadline of 1<sup>st</sup> September 2011 but this was subject to the approval and endorsement at this Cabinet Member Meeting.

**2. RECOMMENDATIONS:**

- 2.1 That the Cabinet Member for Planning, Employment, Economy & Regeneration approves and endorses the council's response to the Government's consultation regarding the reform and further deregulatory role of the change of use process and GPDO (see Appendix 1).

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The Government Department for Communities and Local Government has published an Issues Paper entitled 'How change of use is handled in the planning system – tell us what you think'. The consultation seeks views on how the process of considering applications for change of use could be made less burdensome.

- 3.2 Current legislation allows change of use without needing planning permission where both the existing and proposed uses fall within the same Use Class. These are formally defined in the Town and Country Planning (Use Classes) Order 1987 (as amended). Planning permission is normally needed for change of use between the defined use classes. However, under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO) some changes between use classes are allowed without needing planning permission.
- 3.3 At present the UCO and the GDPO are considered the two deregulatory tools to removing the necessity for submitting a planning application. The purpose of the review is to ascertain if either tool can be reformed to further their deregulatory scope and to remove what central government considers unnecessary burdens to the efficiency of the change of use application process.
- 3.4 The government is already considering removing the need to apply for planning permission through the introduction of Neighbourhood Development Orders (NDO) which will allow certain types and volume of development within a defined neighbourhood. The underlying rationale behind the proposed reforms is to remove unnecessary barriers so that businesses can succeed, homes can be provided and jobs created in order to bring prosperity. The aim is also to ensure that consideration is given to the balance between supporting growth and ensuring communities have the opportunity to influence their environment.
- 3.5 Brighton & Hove City Council supports the review of the Use Classes Order and proposals to expedite the planning process in promoting economic growth, the provision of additional homes and creation of jobs that are appropriate to meet the sustainable development objectives of the Localism Bill and the current and projected economic forecasts. However, it is considered the consultation should be seen in the context of the broader policy changes proposed by government including the enactment of the Localism Bill and the adoption of the National Planning Policy Framework (NPPF).
- 3.6 The city council is not in favour of the complete revocation of the Use Classes Order in favour of enhanced Permitted Development rights and the council is concerned that its revocation will result in unintended impacts derailing economic recovery, resulting in unsustainable practices, creating undue significant impacts on amenity and equality and prohibiting the level of planning certainty currently enjoyed by businesses, both small and large. The following is a summary of this council's response which is expanded upon in Appendix 1:
- Whilst it is recognised that there is scope for improving and/or reforming the UCO, the change of use process allows Local Planning Authorities, who have an important function in place making, to influence at a local level how certain areas are shaped, without bypassing democratic processes.
  - The city council strongly urges the government not to abolish or completely liberalise the UCO because of the detrimental impact on both local and national economic recovery in addition to the negative effect on the physical, social and economic environment. One of the main concerns is the loss of both land and premises for employment and housing particularly where housing land and the space for small to medium sized enterprises is constrained and demand is high.

- The city council is concerned that if the UCO is collapsed entirely as part of central government's planning reforms, that a market led system will deny local authorities the ability to assess the impact of a change of use, particularly where large or intense changes occur. This is unsustainable, most notably in areas where speculative developers may lock away land and premises awaiting uplift in value. Brighton & Hove has a proliferation of small businesses and a lack of affordable business space will have unintended consequences such as out commuting and drawing investment away from the city.
- The UCO provides an element of certainty, especially for businesses, where their business models may rely on the availability of and proximity to certain uses, both on a local and national scale. Unmonitored movement between classes will undermine the plan-led system which allows the council to make provision for locations for different types of uses over the plan period, particularly where there are pressures on land. The change of use process also ensures that adjacent properties do not result in unpleasant development and that they are neighbourly in their appearance, impact and function. The short term gains need to be balanced against the longer term impacts.
- A total abolition of the UCO appears to be contradictory to the Decentralisation and Localism Bill as it would not represent sustainable development, is likely to impede economic recovery and may have the unintended effect of removing the ability for decision making to shape and influence at the local level. The current evolution of neighbourhood planning will rely on the presence of the UCO to define sustainable development at a local level, particularly if its classification continues to be impact based. Residential, community groups and businesses alike will have a say in the kind of development in their neighbourhoods, based on the impact proposed development will have on their interests.
- Applications for change of use allow planning authorities to obtain developer contributions to mitigate the harmful impacts of development and provide necessary infrastructure. Unregulated movement between classes will push the burden of infrastructure provision on to local authorities at a time when funding and resources have to be significantly scaled back.

3.7 Suggested alternatives: For the reasons detailed above and in Appendix 1, possible proposals for the abolition or significant liberalisation of the UCO is not supported. However, if the government is minded to make changes, the council supports alterations to the UCO as listed below and a review of the change of use process to expedite applications and support economic growth whilst protecting the physical and social environment. Brighton & Hove City Council suggests the following amendments to the deregulatory approach to managing change of use which is considered consistent with the Localism agenda:

- There may be scope to simplify the planning application process for changes of use. The prior approval process (Town and Country Planning General Permitted Development Order 1995 Schedule 2, part 24) used for proposals mostly relates to telecommunication development and does not require determination by the local planning authority. The application would be made on the presumption that the principle of the development is acceptable and the Local Planning Authority (LPA) has a specified time period in which to object. Criteria for objection, for example no external changes, and development thresholds would accompany this process. A full planning

application would be the default position if change fell outside the accompanying criteria. As the prior approval process currently attracts no fee, the government is advised to consider revising the current fee structure to sufficiently resource the management of this process.

- Brighton & Hove City Council suggests the adoption of a legislative framework and the NPPF before further consultation on the reform of the current deregulatory tools takes place. This will give local authorities a better opportunity to fully articulate the advantages and disadvantages of the current deregulatory tools within the context of the range of reforms that the government is proposing whilst maintain consistency of public service expected and to fully support their local communities.
- In order to support businesses and encourage the use of empty commercial premises, Brighton & Hove City Council proposes that a system similar to discontinuance powers used to control advertisements could be applied (The Town and Country Planning (Control of Advertisements) (England) Regulations 2007). Evidence of any detrimental impact on the amenity of neighbouring properties would be resolved with a visit to assist with overcoming problems and as a last resort the possible issue of a discontinuance notice. Evidence and compliance will require specialist disciplines such as Environmental Health and Planning Enforcement.
- Alternative to discontinuance powers, Section 61 in the Town and Country Planning Act 1990 (as amended) allows Local Authorities to make Local Development Orders (LDO). An LDO gives Permitted Development Rights to a specified area or site for particular development provided the LDO complies with the provisions in the adopted Local Plan. An LDO can be revoked at any time therefore it can be adopted with a time limit in place as a temporary provision to aid recovery/expansion in certain areas over a shorter time span than the plan period.
- The UCO is a useful deregulatory tool which allows local authorities to plan positively for economic growth, jobs, housing and better social equality. However, it is acknowledged that the impact of some uses differ considerably. There is scope to redefine the General Permitted Development Order and allow greater interchange between selected uses where their impacts are similar.
- Increase the Permitted Development floor space thresholds for selected uses, accompanied by conditions, to allow expansion of businesses without the need to apply for planning permission. Similarly, floor space thresholds for a change of use between restricted uses could also negate the need for a change of use application.
- Central government is advised to consider a range of measures to aid economic recovery and to assess the relative importance that the planning system makes to the UK economy, on the basis of sound evidence, in comparison with other mechanisms for example exchange rates and rates of tax.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

- 4.1 Internal consultation has been undertaken and the response was prepared by Planning Strategy. The draft consultation response was circulated internally for further comment before submission to the CLG.

## 5. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 5.1 The cost of preparing the council's response consists of officers' time and has been met from existing Planning revenue budgets. In 2010-11 there were 113 applications relating to change of use, which realised income of £37,855; if the government does introduce measures reducing the number of change of use applications, this may affect this level of income for the future

*Finance Officer Consulted: Karen Brookshaw Date: 16/08/11*

### Legal Implications:

- 5.2 The legislative background to the Report is set out in paragraph 3.2 and 3.8 (points 1 and 3) above. It is not considered that any human rights implications arise from the Report.
- 5.3 The Review is being jointly undertaken by DCLG and BIS and any proposal for changes to legislation will be subject to further consultation. If such changes are enacted in addition to the impact on the city's planning system the council would need to consider its model forms of draft property documents and the impact on its property portfolio.

*Lawyer Consulted: Bob Bruce Date: 26/08/11*

### Equalities Implications:

- 5.4 The Government consultation document and the council's response take into account equalities issues. A key concern is that the abolition or wholesale liberalisation of the Use Classes Order will undermine plan making for sufficient land for both affordable housing and jobs. Concern also arises that if the Use Class Order is abolished, unregulated interchangeable uses will by-pass the democratic decision making process and raise significant amenity issues.

### Sustainability Implications:

- 5.5 Sustainability considerations are central to the planning system and form part of the response. Concerns arise over poor funding for necessary infrastructure such as transport provision and affordable housing. Deviation from the plan-led system could lead to concentrations of uses in inappropriate locations giving rise to an increase in road traffic. Where the change of use application process is bypassed, land banking is likely to allow for uplift in value. Consequently, sites for housing and business will be in short supply resulting in out commuting and inequality in housing choice and small to medium sized commercial space. In addition, the cycle of fitting out and refurbishing as premises perpetually change from use to use is environmentally unsustainable and can have an amenity impact on neighbouring uses.

Crime & Disorder Implications:

- 5.6 Transient businesses are likely to experience some of the same effects as a population in residential areas and lead to the physical degradation of high streets and business estates as businesses refrain from investing in structures and infrastructure due to the continual turnover of premises. There will be fewer mechanisms to gain Secure by Design practices.

Risk and Opportunity Management Implications:

- 5.7 None identified

Public Health Implications:

- 5.8 None identified

Corporate / Citywide Implications:

- 5.9 If national amendments are introduced to the change of use system there will be corporate and citywide implications. The details of which will depend on what amendments are introduced and the conditions/mitigation measures put in place. The Council's response highlights the main impacts of any further proposals made as a result of the consultation outcomes.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 None required.

**7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 To gain formal approval and endorsement of the council's response to the Government consultation seeking views on how change of use is handled in the planning system. Whilst the response has been sent in order to meet the consultation deadline of 1<sup>st</sup> September 2011, this was on the understanding it was to be subject to approval and endorsement at Cabinet Members Meeting.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Expanded response
2. Extract from RTPI News relating to deregulating permitted development July 2011
3. Extract from Meanwhile Space ([www.meanwhitespace.com](http://www.meanwhitespace.com)) regarding the use of empty buildings
4. Policy Exchange research note March 2011 relating to reform of the Use Classes Order

### **Documents in Members' Rooms**

None

### **Background Documents**

1. CLG consultation Issues paper. How change of use is handled in the planning system – tell us what you think
2. Town and Country Planning (Use Classes) Order 1987 (as amended)
3. Town and Country Planning (General Permitted Development) Order 1995 (as amended)