



Llywodraeth Cymru
Welsh Government

The Categorisation of Uses and Management of Change:

A planning review



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EXECUTIVE SUMMARY

The Use Classes Order and Permitted Development, together with tools of flexible control such as Local Development Orders and Article 4 Directions, are central to how the planning system creates proportionate controls and freedoms to enable an effective balance between state intervention and management, and opportunity and freedom.

This research explored whether any changes to the Use Classes Order and the associated Permitted Development rights are required and desirable in Wales to ensure that the system is fit for purpose as a regulatory tool modelled upon the impact based approach and proportionality principle. This research sits within a wider context of review and reform in Wales: the Welsh Planning Act represents the cornerstone of a comprehensive re-evaluation of planning governance, legislation, processes and principles.

This research provides recommendations to support the effective revision of the Use Classes Order and Permitted Development rights and their associated area and system based adaption tools. This research seeks to support the positive planning agenda in Wales through the analysis of the Use Classes Order and the Permitted Development Rights and the presentation of potential opportunities for change derived from need and impact.

In total, 17 recommendations are made by this research. These range from strategic matters to specific legislative change. The work is focused upon the specific arrangements associated with the Use Classes Order and the Permitted Development rights associated, but the iterative approach employed in this work has inevitably also led to wider discussion, analysis and recommendation.

A clear view exists that the system in place is fundamentally sound and that significant change is not required or desired. This research presents a series of targeted recommendations intended to support a considered reform of the Use Classes Order and associated Permitted Development, together with suggestions for wider work and further research to support long term enhancement of the system.

The recommendations of this report are provided in detail in Chapter 7, and are presented individually at the beginning of each section within the analysis chapter (5).

In summary, the key recommendations of this work are:

- National changes to the UCO and PD rights are limited and driven by identified need within Wales
- Greater flexibility pertaining to the UCO and their associated PD rights is realised and supported at the local scale.

- The UCO and PD rights be seen in context and further work concerning the management of land use be undertaken within a wider positive framework of review considering other systems of control and financial systems
- Class A be revised to include new uses. Bookmakers and payday loan shops moved into separate use class. Takeaways to become new use class (A5). Public Houses be considered against a series of options for changes
- Class B is renamed but otherwise retained as currently arranged
- Class C be revised to create a new use class for Houses in Multiple Occupation.
- Class D is unchanged, but casino developments in Wales monitored for potential future change with a view to the identification of casinos as a Sui Generis use if the need arises based upon identifiable impact issues.
- Further research is undertaken into planning and waste
- The Welsh Government and local authorities work together to enhance clarity, consistency, information provision, support, guidance and consistency for interactions with non-professionals/clients.

1. INTRODUCTION

1.1 In June 2012 the Independent Advisory Group presented a report to the Welsh Government titled 'Towards a Welsh Planning Act: Ensuring the Planning System Delivers'. One of the recommendations of this report is that there is scope for the Town and Country Planning (General Permitted Development Order) 1995 (GPDO) to be relaxed. The motivation for this recommendation is to ensure that the planning system in Wales is operating effectively on the principle of a proportionate approach to state intervention scaled on the basis of impact and justifiable involvement in the management of the built and natural environment. This recommendation sits within a wider context of review and reform in Wales: the Welsh Planning Act represents the cornerstone of a comprehensive re-evaluation of planning governance, legislation, processes and principles.

1.2 This research was undertaken within this background but without any prescribed intent beyond supporting a re-evaluation of the UCO and its use in Wales.

1.3 This research provides insight and recommendations associated with two intrinsically linked aspects of the planning system that underpin state intervention through the planning system at both the national and local scales of government:

- I. The Use Classes Order (UCO) is how the planning system organises uses of land and buildings into groups to allow for their management. This research explores whether the UCO is fit for purpose in Wales;
- II. Permitted Development (PD) rights are the planning permissions confirmed by national government for minor development matters through a Development Order operating under the principles of proportionate intervention. This research considers whether the PD rights directly associated with the UCO are appropriate and fit for purpose.

1.4 The Use Classes Order and Permitted Development are central to how the planning systems creates proportionate controls and freedoms to enable an effective balance between state intervention and management, and opportunity and freedom.

1.5 This research explores whether any changes to the UCO and GPDO are required and desirable to ensure it remains fit for purpose as a regulatory tool modelled upon the impact based approach and proportionality principle. A key aspect of this was to consider the current and potential use of tools that deliver flexibility within the system in association with the UCO and PD rights systems. Of particular note in this context is the national use of the Prior Approval 'streamlined' decision making process, as well as the local application of restrictive (Article 4 Directions) and more flexible (Local Development Orders) area based management tools for PD rights.

1.6 This research provides recommendations to support the effective revision of the UCO and PD rights and their associated area and system based adaption tools.

This research seeks to support the positive planning agenda in Wales through the analysis of the UCO and the GPDO and the presentation of potential opportunities for change derived from need and impact.

1.7 This report makes recommendations for change based upon an iterative research process and the resultant identification of *need* for change following an exploration of the effectiveness of the system as currently in operation in Wales.

2. LITERATURE REVIEW

Background literature review

2.1 This chapter provides the backdrop for this study of the Use Classes Order in Wales by reviewing literature relevant to the topic. It is not intended to be comprehensive: that is, it does not cover all possible sources of information on and comment about the UCO, but instead picks out key documents and material relevant to this review

2.2 Despite being a key tool for the management of land use change (Cullingworth and Nadin et al, 2015), it is worth noting that there is relatively little empirical analysis of and comment on the UCO, including notably sparse coverage within academic journals and debate. This applies to the UCO in general and Wales' version in particular.

2.3 Relevant literature is largely restricted to:

- Planning and legal text books which have a descriptive and operational focus;
- A small number of impact studies commissioned by public bodies;
- Consultation responses that have accompanied proposed changes in legislation; and
- A small number of academic journal articles reflecting upon the purpose and development of the UCO as a regulatory tool.

2.4 A notable exception to the general paucity of material is a substantial press archive relating to the perceived effectiveness or otherwise of particular aspects of the UCO's operation – an archive that has grown exponentially in England with the most recent changes to permitted development rights. We have not sought to cover press comment and analysis in any detail.

2.5 This chapter is structured as follows:

- A presentation of the context and proportionality principle;
- A brief background on the history and evolution of the UCO;
- Chronology and development of the UCO leading up to the 1987 UCO;
- Studies of impact of the 1987 UCO; and
- An overview of relevant matters from the other countries of the United Kingdom.

2.6 Core themes arising out of the literature review are that:

- Proportionality is a core concept underpinning the planning system and change should be undertaken within this context;
- The UCO in Wales has been the subject to relatively little change since 1987, despite quite substantial changes occurring in England to the GDPO in particular;

2.7 There are three clear tensions within the literature:

- I. The first is the tension between those who perceive the UCO and the associated GDPO (deferring freedoms) as a tool of regulation who want to introduce less flexibility of movement and fewer permitted development rights, and others who perceive the UCO as a deregulatory tool, removing the need to submit planning applications where the land use impact of change is considered to be the same or less than the existing use. On the whole, most recent changes brought in by Governments have tended towards the latter:

"Intervention in the development process by the local planning authority is justified on the grounds that it is in the public interest. However, the UCO and the GDPO are intended to be deregulatory mechanisms that work by lessening the regulatory requirements of the planning system. They work on the basis of a balance to be struck between market freedoms and the need for control of certain types of activity. By allowing such deregulation, the resources available for the operation of the planning system are able to be deployed efficiently to achieve the greatest benefit" (DLTR, 2002, p4);

- II. The second is the tension about the level of flexibility to local circumstances allowed by the UCO, with most commentators perceiving the 'one size fits all' approach characteristic of the UCO to be inadequate in some contexts and there are varying views about the practicality and utility of Local Development Orders as a means of tailoring to local contexts;
 - III. The third is the tension around the extent to which the Use Classes Order and GDPO do or should stray beyond the management of land use change and begin to intervene in the regulation of social activity perhaps best / or most appropriately managed in other ways. Debate about the handling of casinos, Bookmakers and pay day loans shops is particularly illustrative of this;
- Since its inception, changes to the UCO and associated PD rights have been justified to achieve wider planning objectives. Any major change to the social, environmental and economic policy context may require resultant updates to the UCO, and the UCO should be regularly reviewed to ensure it delivers Government planning policies most effectively;
 - Earlier reviews of the 1987 UCO – ostensibly focussed on its impact in England – picked out a number of issues which appear still very relevant to Wales today including: permitted development within use classes resulting in negative traffic and environmental impacts, the proliferation

of fast food take-aways, and concerns about classification within the B use class;

- Consultations on changes to the UCO in England have generally revealed a lack of desire for substantial change, with the order perceived as largely fit-for-purpose, subject to minor changes; and
- Recent legislative changes in England – largely presented as a relaxation of planning laws around permitted development - have received a mixed reaction, with many people articulating negative impacts particularly on business viability and the protection of employment uses.

The Proportionality Principle

2.8 The UCO and its associated PD rights sit within a wider planning construct. A planning system represents, from a first principles perspective, state intervention in the market.

2.9 The evolution of state intervention, and the broad acceptance of the justification for state intervention, was driven by the necessity of responding to events and circumstances that required addressing and that private arrangements either could not, or would not, respond to adequately alone (Gilg 2005). The necessity of state intervention has been based upon a series of drivers, ranging from public health and safety through to resource management and spatial management of place and space.

2.10 The state ultimately intervenes in the public interest with motivations that include social justice, whilst still acting in a way that is mindful of private rights and interests. As noted by Cullingworth and Nadin et al (2015), the urban growth witnessed during the later 19th and early 20th Century and the associated environmental, health and social challenges that resulted ultimately led to an appreciation and wide acceptance of the necessity of the state interfering in the market and private property rights in the public interest and with regard to social justice.

Context

2.11 The scope of the planning system extends to all matters that constitute 'development'. This is a wide scope, with 'development' defined by the Town and Country Planning Act 1990 as:

'The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'

Development is therefore statutorily defined and includes two aspects; operational development (physical change) and material changes of use.

2.12 To enable the management of the *use* of land and buildings, the Town and Country Planning (Use Classes) Order 1987 (UCO) (as amended) groups and defines types of activity. The UCO is key to what constitutes ‘development’ given how this covers ‘material’ changes of use. The UCO is how the planning system groups together uses into classes; simply put, changing the use of buildings or land within their own class is not development and is therefore out of the scope of control of the system, moving between classes is development and is managed in some shape or form. The placing of uses within classes is therefore important for two reasons; firstly it defines what is, and what is not, ‘development’. In doing this, the UCO defines the very scope and reach of the planning system. Secondly it provides definition of uses, giving clarity and enabling management.

2.13 The General Permitted Development Order (GPDO) works to provide for permitted changes of use where this is appropriate in the context of the impact based approach and proportionality principle underpinning the regulatory approach to planning. Permitted Development is essentially development that requires planning permission but that has this permission by virtue of a Development Order (The General Permitted Development Order); PD is therefore development for which planning permission has already been granted by the state in advance, subject to limitations and conditions.

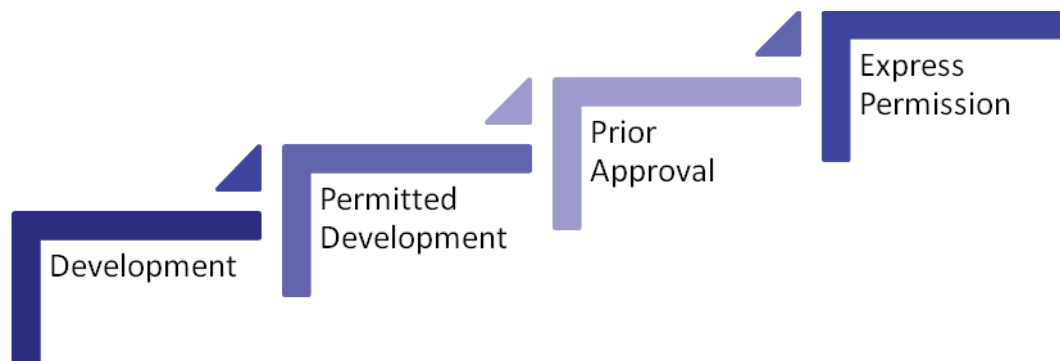
2.14 Development, the UCO and PD rights all operate within a wider framework that attempts to enable proportionate intervention by the state, delivering management, control, opportunity and freedom.

The proportionality framework

2.15 The Welsh planning system is underpinned by two important principles; subsidiarity and proportionality. Proportionality is directly associated with necessity; the state acts where it is legitimate and appropriate for it do so. This requires definition and clarity to ensure a scope can be defined. However a rigid and singular framework for planning is inappropriate; the system must in itself be proportionate to enable state intervention and oversight where this is desirable, but also structured such that flexibility and freedom is provided where no justification for involvement exists.

2.16 The manner in which proportionality is realised within the Welsh planning system from the perspective of control over development is via a hierarchy modelled on the basis of increased state involvement being enabled in scenarios where adverse impact/harm could occur, but freedoms provided where acceptable impacts are anticipated. This system is delivered in the context of a discretionary, as opposed to a codified, model of decision making and development management.

Diagram 1: The proportionality hierarchy



(Sheppard, 2015)

2.17 Figure 1 above demonstrates how the nature of the planning system discussed in the context section above is translated into basic steps which act to realise the proportionality principle underlining the planning system.

2.18 The first step requires a determination as to whether ‘development’ has taken place. By defining ‘development’, which includes the design and classifications within the UCO, a basic parameter is created with the identification of matters which fall under the control of the planning system, and those that do not.

2.19 Permitted Development, with which Prior Approval is also associated, then represents the key tool of variable control within the Welsh planning system for matters that are considered as being development.

2.20 Prior Approval is effectively a ‘catch’ on certain Permitted Development rights: usually more significant forms of minor development. The Permitted Development rights exist within the Prior Approval model, but intention to undertake development requires a Prior Approval notification to the Local Planning Authority (LPA). The LPA are then able to review the proposal against specified and limited criteria and determine whether to approve the scheme or refuse it. The Prior Approval scheme is therefore something of a middle ground between Permitted Development rights, where the LPA have no ability to influence subject to adherence to the requirements and condition, and express permission. Prior Approval is also considered to be associated with a priority of some form: the nature of the process is such that its management is necessarily prioritised by the Local Planning Authority. Within the context of proportionality, the use of Prior Approval must therefore be justified.

2.21 Express planning permission is where the LPA effectively have full discretion over the decision through the determination of a formal planning application.

2.22 Subsidiarity is achieved through the delegation of powers to local government and Community Councils from the national scale of governance. From the perspective of this study, tools such as Local Development Orders (LDOs) and Article 4 Directions are key considerations offering the potential to increase or reduce the scope of PD rights.

2.23 This research is underpinned by the fundamental importance of preserving and enhancing the proportionality and subsidiarity associated with the planning system in Wales; enabling state intervention where necessary and appropriate, but providing definition, flexibility and freedom where this can be delivered.

Origins of the Use Classes Order

2.24 Home (1992) has produced perhaps the most detailed history of the early evolution of the use classes order, drawing on the archive files of the ministries responsible for town planning in order to understand “...its changing aims since it was introduced under the 1947 Town and Country Planning Act” (1992, 187).

2.25 According to Home, two practices that accompanied the Industrial Revolution underpin the concept of a use class – the specialisation of building functions and the spatial segregation of different land uses. Examples of specialised buildings include the purpose-built office and the factory which replaced “...unregulated workshops and home-working with centralised, controlled workspaces” (1992, 188).

2.26 According to Home, the UCO had another further purpose: ‘the assessment of development charge, part of the taxation of betterment value under the post war planning system’ (1992, p191). He goes on to state that ‘this was main reason why the use classes were more numerous than the building use groups in the advisory handbook. Any permission for change of use might attract a development charge’ (ibid).

2.27 As a natural consequence, work and home were more clearly spatially separated and the state began to play a role in providing new regulated public spaces, such as municipal parks: this was considered to be an important principle for managing space, place and society. They were translated by The Ministry of Health, which was responsible for town planning prior to World War Two, into early zoning practices:

“Between 1922 and 1939, the Ministry of Health published a series of so-called ‘Model Clauses’ to assist local authorities in preparing town planning schemes among which were planning standards for ‘character zones’ (later called use zones). Early Model Clauses recommended only four such zones (residential, special industrial, general industrial or business, and undetermined) ... These categories of building types were identified in each

zone: those which could be erected without consent, those which needed consent, and those which were excluded”
(ibid, 188).

2.28 The Ministry of Town Planning was created in 1943 and sought to review the Model Clauses, creating *“reconstituted use groups which were incorporated into the Ministry’s handbook on central area redevelopment published in 1947”* (ibid, 189). Home states of the advice:

“the handbook recommended a system of thirteen ‘building use groups’ intended to cover all forms of development required in a town,’ which could be allocated into eight different use zones. These building use groups were derived from a longer list of over two hundred ‘common types of building’... Use zoning charts showed three categories of uses: primary allocations (P), non-conforming as ‘contrary to good planning’ (X), and acceptable or not according to the ‘scale and exact location of the proposed development”
(ibid).

2.29 The zoning approach advocated in the handbook was to go on to guide the post-war local development plan making process, though more flexible approaches to planning and plan making emerged from the 1960s onwards. It also merits mention that the planning system that emerged following World War Two represented a key step in the evolution from a codified zoned system into the planned discretionary system in place today.

2.30 The Use Classes Order as it is understood today was first given statutory force in 1948 under the 1947 Town and Country Planning Act. In this, the number of building use groups was expanded from the previous arrangement of 13 to a new total of 22.

2.31 As a statutory instrument, Booth explains the role of the Use Classes Order in the context of the 1947 Town and Country Planning Act, stating:

“secondary legislation under the Act also had a significant place in the control of development.... the second statutory instrument was the Use Classes Order whose aim was to categorise generic uses such that change within a given class would not be considered ‘material’ and would not, therefore, constitute development... The Use Classes Order was the direct answer to administrators’ concern to be able to identify a change of use”
(2003, 103).

2.32 Definition was therefore key: the UCO enable the definition of uses and in doing so was part of the very definition of what constituted development or not. By 1950, a new UCO was issued which amalgamated some of the original use classes, reducing the number from 22 back down to 18. The accompanying circular (Circular 94/50 (The Town and Country Planning [Use Classes] Order) 1950)) explained that

the changes “would allow a wider range of uses to take place without involving development for the purposes of the Act” (Home, 1992, p191).

2.33 As Home goes on to state, the UCO was then to undergo only minor modifications until its first major restructuring in the late 1980s. This was despite the fact that the development charge, which had originally partly informed the categorisation of uses, was scrapped in 1952.

2.34 The changes that did emerge in the late 1980s were significant because they represented an overt attempt to enable a new balance of proportionality; the UCO was adapted specifically to create new freedoms. Booth notes the intention to actively pursue deregulation in the late 1980s, stating: “Class B1 was a significant extension of the general principle embodied in the order. The original intention had been to define the generic similarities between uses and clear lines of demarcation from other uses. B1, on the other hand, deliberately broadened the scope of the class to make it a genuinely deregulatory measure, not an aid to definition” (2003, 138).

2.35 From the changes associated with the changes of the late 1980s the role and importance of the UCO within the proportionality hierarchy is clear: it has value in defining the scope and form of state intervention to a significant extent, a role reinforced and magnified through the associated PD rights.

Recent chronology of development and changes to the UCO and GDPO

Change pre-devolution (1999)

2.36 There have been four versions of the UCO since the advent of the modern town planning system, which applied to both England and Wales, including:

- The Town and Country Planning (Use Classes) Order 1948
- The Town and Country Planning (Use Classes) Order 1950
- The Town and Country Planning (Use Classes) Order 1972
- The Town and Country Planning (Use Classes) Order 1987 (as amended)

2.37 Up until 1999, all of the amendments made to the 1987 UCO applied to both England and Wales. Of particular significance, included the following changes and clarifications:

- 1991 – Dry cleaning shops were included within A1 (shops) as distinct from launderettes which remained sui generis
- 1992 – Special Industrial Use Class B3 was removed
- 1994 – Hostels were removed from the C1 residential use class and became sui generis
- 1995 - Special Industrial Use Classes B4 to B7 were removed

2.38 Similarly, there have been various iterations of the General Permitted Development Order applying to both England and Wales as follows:

- The Town and Country Planning General Development Order 1948
- The Town and Country Planning General Development Order 1959
- The Town and Country Planning General Development Order 1963
- The Town and Country Planning General Development Order 1973
- The Town and Country Planning General Development Order 1977
- The Town and Country Planning General Development Order 1988
- The Town and Country Planning (General Permitted Development) Order 1995

Comment on the 1987 UCO

2.39 As the original 1987 UCO remains in place in Wales it is worth reflecting upon the drivers that led to its introduction and its impact. As Thomas states: *“From the first Use Classes Order in 1948 until the 1987 revision, the UCO ha(d) undergone only minor revisions, which were consolidated in the 1972 version”* (1997, 76).

2.40 Views as to the drivers for the change tend to emphasise the then Conservative Government’s desire to *“reduce bureaucratic burdens on business”* (Home, 1992, 192), although it is also clear that changes in society and technology were also important. Of the drivers, Booth states:

‘The government had suspected that control over changes of use was hampering the activities of developers who would otherwise be able to contribute to the economic development of the country. Michael Heseltine, the first Conservative Secretary of State for the Environment, had set up the Property Advisory Group (PAG) within the Department of the Environment as a means of broadening the advice he received, and the group was called on to report. Some of the work they did was a necessary modernization of categories of use that had a clear parentage in eighteenth and nineteenth century prohibition of tripe boilers and tallow chandlers. The establishment of a new food and drink class, to cover restaurants, snack bars, cafes and pubs was another useful change that recognised the changing nature of eating and drinking’ (2003, 137).

2.41 The Planning Advisory Group (PAG) tasked with the review which preceded the revised 1987 UCO noted the need to balance flexibility with proper checks on detrimental impacts, stating in their report:

“the DOE asked that the PAG, through a Sub-Group, should carry out a wide ranging and fundamental review of the UCO ... ‘with the object of modernising and recasting it, taking into account on the one hand the need for flexibility in the use of land and buildings and on the other the environmental and other public interests which are the proper concern of planning control’” (PAG, 1986, 1).

This is an important point to highlight since it reinforces the underlining need to ensure that the system is based upon proportionality; flexibility and freedoms being provided in a manner that does not lead to unacceptable impacts.

2.42 The system which subsequently emerged did represent a relatively significant revision to the framework of management associated with the UCO. As Home observes: *“The Government in 1986 modified some of the PAG recommendations and a substantially redesigned UCO was issued in 1987, with an accompanying circular”* (1992, 187). The most significant amendments included:

- A new broader business class that included offices and R&D, laboratories, high tech light industry – B1(a, b and c); and
- A new food and drink class combining shops selling food and drink for consumption on the premises with hot food take away establishments.

In addition, greater freedoms for changes of use were introduced between use classes, e.g. from B2 (general industry) to B1 (Office and light industry).

2.43 One of the main studies about the impact of the 1987 UCO was commissioned by the then Department of Environment in 1991 and carried out by consultants Wooton Jeffreys and Bernard Thorpe, named *‘An examination of the effects of the Use Classes Order 1987 and the General Development Order 1988,’*. Referenced and discussed by Bell, (1992) it concluded that the new UCO:

- generally achieved the aim of reducing intervention of planning control in the use of land and property;
- did not lead to amenity changes of significance;
- lead to some traffic and employment implications and environmental consequences due to increased pressure for release of land;
- disrupted local planning policies; and
- did not result in the anticipated effect of reducing local authority workloads – increased staff time had gone into negotiating conditions and agreements and in revising policies in local plans adopted prior to the changes (1992, 24).

2.44 In terms of the impact of specific use classes, the report concluded that the new B1 use class had led to both positive and negative impacts. In terms of the positive, it noted, *‘increased efficiency and choice in the use of space; cleaner uses, greater investment which in turn led to improvements in the environment and the absence of adverse impacts on amenity,’* (ibid, p23). In terms of the negative, it concluded that the changes led to *‘increase in traffic, displacement of manufacturing jobs pressures on specialised activities; damage to the character of mixed use areas, and in the long term, reduced opportunity to take account of local circumstances in planning policy and practice,’* (ibid).

2.45 The review did highlight some areas of concern. Most significant perhaps was in terms of A3 (food and drink) where it was noted that *‘the number of conversions from public houses, restaurants and cafes to hot food takeaways grew’* (ibid). In

association with this it was highlighted that local concerns existed around impacts. In addition, the report also noted that concerns had been raised around the loss of public houses due to the new PD rights that allowed change from A3 to A2. Subsequently, it was stated it was difficult to resist changes from A2 to B1. These are interesting points because of the ongoing significance of these concerns within the context of this piece of research.

2.46 Despite the concerns expressed in the research reviewing the 1987 Order, it did not recommend any changes should take place. It is interesting to note that the consultants commented that *“the changes have generally been beneficial ... it was considered too early to know the full effects of the new legislation”* (ibid, p24). Although the validity of the comment above is of note, evidence was collated by other stakeholders during the immediate period following introduction and this merits brief presentation. Of particular significance is a piece of research undertaken by a collective of interest groups comprising the London Boroughs Association, the Association of London Authorities and the London Planning Advisory Committee. This work reported that 31 out of 33 local planning authorities were experiencing problems relating to the 1987 UCO and 1988 General Development Order (GDO). Bell (1992) notes that most of the problems were associated with the B1 use class, together with the A3 use wherein hot food takeaways were again highlighted as a particularly vexed issue. They went on to note that the most common impacts relating to the changes were:

- adverse impact on the character of the area;
- traffic generation and parking congestion;
- changes within B1 and B2 to B1 resulting in ‘changes in the nature of employment opportunities available to local residents,’ and loss of specialised/traditional industry’; and
- Changes to hot food take-away create amenity problems such as noise, litter and smell in addition to traffic impacts (ibid).

Changes post-devolution (1999)

2.47 With planning powers being devolved to the Welsh Government from 1999, the 1987 UCO’s of England and Wales have since evolved separately.

2.48 Since devolution, Wales has introduced only one notable amendment to the 1987 UCO through the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002, which clarified that B8 (Storage & Distribution) Use Class did not include buildings or land for the storage of, or as a distribution centre for, radioactive material or radioactive waste.

2.49 Since devolution in 1999 permitted development rights in Wales have evolved separately to England with relatively few amendments being made by the Welsh Government to The Town and Country Planning (General Permitted Development) Order 1995. Most of the amendments in Wales do not relate to change of use, however in 2014 an amendment was made to the GDPO 1995 which

raised the threshold for existing permitted changes to and from B8 (storage and distribution) from 235 sqm to 500 sqm.

Around the UK

England

2.50 A far greater number of amendments to the UCO were taken forward in England than in Wales. Of particular significance in England have been:

- 2005 - Disaggregation of former A3 Use Class (Food & Drink) into A3 (Restaurants & Cafes), A4 (Drinking establishments) and A5 (Hot food takeaways) Use classes;
- 2006 – Removal of casinos from D2 Use Class (Assembly and Leisure) to become sui generis;
- 2010 - Various changes and clarifications to the Residential Use Class, most notably a new category C4 (Houses of multiple occupation).

2.51 Of the above changes, the A3 changes are interesting given that in some respects this was a reversion to the historic separation of different food and drink uses. Cullingworth et al (2015) explain that a review by the DTLR in 2002 had identified the food and drink uses in Class A as being particularly troublesome. This supported the earlier findings of the DoE research undertaken by Wooton Jeffreys and Bernard Thorpe in 1991. The disaggregation of the A3 use class was a reaction to the various amenity problems associated particularly with public houses and hot food takeaways (see also Lever 2005) and a separate use class offered the potential for greater control over potentially damaging uses.

2.52 The fundamental safeguard built into the new A4 and A5 use classes was a lack of PD rights to change to these classes and no permitted change from A5 to A4, although permitted changes were created to A1, A2 or A3. This reflects the generally acknowledged hierarchy of harm resulting from A Class Uses, whereby the uses at the top of the UCO produce less harm than those further down. This harm is manifest in two distinct ways, the impacts upon the (residential) amenity of a neighbourhood and the fragmentation of the high street and retail offer in particular. More recent changes in England have changed this model somewhat though, and have arguably compromised the effectiveness of the system overall from the perspective of effective spatial management of space and place.

2.53 The amended UCO of 1987 in England also sought to clarify uses that had *“developed as a result of technological and market changes,”* (ODPM, 2005, p2) including internet cafes (A1) and retail warehouse clubs (sui generis) as well provide certainty over other uses, e.g. explicitly stating that nightclubs belonged to no use class. An additional change was the removal of permitted development rights from Motor vehicle showrooms to change to A1 uses.

2.54 The removal of casinos from the D2 use class was preceded by a consultation in which it was stated that the then Office for the Deputy Prime Minister had noted there was general support for the reclassification of casinos as there was a desire to *“prevent the development of a new breed of casinos ‘through the back door’ i.e. via conversions from other Class D2 Uses,”* (ODPM, 2005, p9). A number of additional reasons in support of the changes were cited including: to control proliferation (in the longer term); to reflect the uniqueness of casinos as a planning land use following the Gambling Act; and, to derive effective controls to mitigate against adverse planning impacts (ibid).

2.55 A significant change in England was seen in 2010 with the identification of Houses in Multiple Occupation (HMO) as a distinct use class. The 2010 changes to the UCO saw the splitting of the C3 (dwellinghouses) use class to create an additional C4 class for small houses in multiple occupation. These were defined as *“small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities,”* (DCLG, 2010, 2). Whereas, large houses in multiple occupation – those with more than six people sharing – are still unclassified by the Use Classes order and are therefore considered to be ‘sui generis,’ (ibid, 6). It should be noted that in England, as in Wales, HMOs are a distinct form of residential accommodation that can require licensing and are subject to particular controls outside of the planning system.

2.56 The amendment to the UCO was followed by a further amendment creating permitted development rights from C4 to C3 uses:

“The general effect of these changes is to allow changes of use between dwellinghouses and houses in multiple occupation to take place without the need for an application for planning permission, unless a local authority has specifically identified an area in which planning applications will be required” (ibid, 1)

2.57 Of the need and rationale for the changes, it was noted:

“A high concentration of shared homes can sometimes cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community. So changes to legislation will give councils the freedom to choose areas where landlords must submit a planning application to rent their properties to unrelated tenants (i.e. houses in multiple occupation). This will enable high concentrations of houses in multiple occupation to be controlled where local authorities decide there is a problem, but will prevent landlords across the country being driven from the rental market by high costs and red tape,” (ibid, 1).

2.58 Prior to the implementation of the new use class, Jones (2010) noted:

“What is obvious, from the thrust of the circular, is that the Government have sought to impose controls upon houses shared by students. The proliferation

of shared housing for students within certain parts of the country has undoubtedly created tensions with the settled community ... In areas which have a high proportion of student housing, I would expect local authorities to seek to restrict further changes of use from C3 to the new Use Class C4” .

2.59 In 2011 an Article 4 Direction was implemented in Bristol covering 4 areas close to one of the city’s universities (and a further outlying area). These directions removed the permitted change of use from C3 to C4. In 2012 a further 2 directions were introduced with one covering a further area in proximity to the university. The majority of these directions, given their geographic locations, support Jones’s above interpretation.

2.60 The use of Article 4 Directions to control the PD change from C3 to C4 underline the tensions, perceived and actual, that can be created within a community resulting from the proliferation of shared houses, particularly student houses. Such complaints relate not only to the impacts on the physical environment of an area, such as the increase in domestic waste and traffic generation, but the impacts on the social make up of a community in terms of its mix of tenure and community cohesion. This issue exposes key questions about the extent to which the UCO and associated PD rights stray beyond land use impact into social responsibility, and whether the operation of the UCO benefits some people in society more than others.

2.61 The arrangements in England for HMOs are arguably a good example of a proportionate response in some respects: HMOs in themselves may not be a concern in a given area, but a high concentration may cause issues. To create a use class distinct for small HMOs creates the *potential* for this form of residential property to be controlled above and beyond that possible through licensing and other controls. However to require express planning permission in all circumstances could be considered over-regulation given that the issue is generally considered to be confined to areas of over-concentration. It is therefore the case that although it may appear perverse to create a distinct class only to then provide it with Permitted Development rights to allow for freedom of movement between C3 and C4, local authorities have the power to impose area based Article 4 Directions which can remove this right of movement. This creates the opportunity for a proportionate response in areas where problems exist. Elsewhere, freedom remains and other legislation can ensure basic standards and qualities.

2.62 In England there have been several wider changes to the General Permitted Development Order 1995, culminating in a new consolidated order in 2015.

2.63 Amendments brought about under the Coalition government in England (2010-2015) and subsequent Conservative Government (2015 >) have focussed on increasing flexibilities within the system. This has been based upon a range of drivers, including: supporting the Government’s policy on free schools by giving PD rights for change of use for school development; attempting to stimulate economic growth through the reuse of existing buildings by increasing PD rights, and address

housing supply through by increasing PD rights (see CLG 2010, CLG 2011, CLG 2013). Consultation on these proposed changes advised that:

“Change of use should be handled in the planning system and that the Use Classes Order remained fit for purpose and an effective tool” (CLG 2013, 8).

2.64 These main changes are summarised below:

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

- Raised the threshold for permitted changes of use between B1/B2 and B8, and B2/B8 to B1 from 235sqm to 500 sqm
- Introduced time-limited permitted development rights for office to residential conversions subject to a prior approval process with some exemptions. This was initially time limit up to 30th May 2016 but in October 2015 it was confirmed not only that this arrangement was to be made permanent, but also that it was to be expanded to include the ‘light industry’ category from within the B1 Use Class
- Introduced permitted development rights to allow certain buildings including offices (B1a), hotels (C1), residential institutions (C2) and non-residential institutions (D2) to change to state-funded schools subject to a prior approval process
- Introduced wide-ranging permitted development rights for agricultural buildings allowing change to uses of up to 500sqm of floorspace falling within class A1, A2, A3, B1, B8, C1 or D2. Changes of use over 150sqm subject to a prior approval process
- Introduced time-limited permitted development rights allowing changes of use of up to 150sqm of floorspace from and to any of the following use classes A1, A2, A3, A4, A5, B1, D1 and D2.

The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014

- Extended permitted development rights for A1 to A2 deposit taker uses, e.g. banks, building societies and credit unions
- Extended permitted development rights to allow A1 and A2 uses to become C3 residential uses
- Extended the permitted development afforded to state-funded schools to registered nurseries
- Increased the flexibilities afforded to agricultural buildings created in the 2013 amendment to include changes of use to schools, nurseries and residential uses subject to prior approval and other restrictions.

The Town and Country Planning (General Permitted Development) (England) Order 2015

- Allows the conversion of retail premises to restaurants / cafes subject to a prior approval process (Class C)
- Extends the existing permitted development to convert a shop to a deposit-taker to other uses falling within A2
- Allows the conversion of retail premises to D2 uses subject to a prior approval process
- Allows for the conversion of casinos or amusement arcades to dwelling houses
- Introduced a time-limited permitted development right to convert up to 500sqm of B8 use to residential use (Class N)

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015

- Clarified permitted development rights from A4 to A1, A2 and A3, noting that these rights do not extend to buildings that have been registered and/or approved as Assets of Community Value (under the provisions of the Localism Act 2011).

2.65 The changes introduced in England have created a new re-regulated context in association with the UCO, with more extensive PD rights and a significant expansion of the use of the Prior Approval system. Some of these changes have been very controversial; in the context of this research, some areas of change in England are discussed further in the Analysis chapter of this report (5).

Scotland

2.66 Scotland in some respects mirrors Wales and England, certainly conceptually the UCO and PD model is the same. The execution of the principle varies slightly however, particularly with the use of a different naming approach for the classes. The core legislation in Scotland is:

- The Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended)
- The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended)

Shown in a chart here:

<http://www.knightfrank.co.uk/resources/commercial/brochure/use-classes-scotland---planning.pdf>

2.67 The Scottish planning system has undergone similar changes in its respective UCO and permitted development rights regime in parallel to England and Wales prior to devolution.

2.68 Much like in England and Wales, the amendments leading to the formation of larger business and retail grouping was subject to scrutiny and comment. Scottish research noted that *“the Business Class emerged as the key concern, with lesser concerns being the retail classes”* (Brand 1994, pii,). For the Business Class, it concluded that the ‘new’ broader use class had:

- Given flexibility to employers in terms of choice of location and change of use between industry and office;
- Reduced the number of change of use applications handled by LPA’s;
- Increased the number of out of centre consents being implemented and decreased the implementation of consents in city centres;
- A net beneficial environmental effect, in terms of environmental quality, but there is some concern over traffic impact; and
- Not had a perceptible impact on fostering enterprise.

2.69 In terms of the changes to the Retail Classes, it concluded that:

- The vitality of shopping centres may be adversely affected by permitted development for change of use between Class 3 (food and drink) and Class 2 (financial, professional and other services);
- The environmental and amenity of shopping centres may be adversely affected by the inclusion of both restaurants and hot food takeaways within Class 3, and also by the permitted development for change of use from car showroom to Class 1 (shops); and
- There is a concern that the viability of shopping centres may be affected by the permitted development for change of use from car showroom to Class 1 (shops).

2.70 Overarching points made by the study included:

“The most telling finding is that the prevailing economic conditions are a much greater influence on market activity than are changes in legislation ... in terms of fostering enterprise and employment, the evidence indicated that the provisions of the UCO were but one, and possibly, a minor contribution. As far as the provision of industrial development is concerned, other government policies and incentives have a greater significance, but the economy is the greatest determinant” (Brand, 1994, piii).

2.71 It is of note perhaps that Scotland now mirrors England in relation to the division of the A3 use class as still found in Wales in the sense that public houses and takeaways have now been disaggregated, albeit using the ‘Sui Generis’ approach rather than the creation of new use classes.

Northern Ireland

2.72 The variations present in the Northern Ireland system are more marked.

2.73 The system has recently been consolidated and is based upon the following core legislation:

- The Planning (General Permitted Development) Order (Northern Ireland) 2015
- The Planning (Use Classes) Order (Northern Ireland) 2015

2.74 The extensive use of 'Sui Generis' in Northern Ireland is of particular note, including: amusement arcade or centre, or a funfair; betting office; funeral undertaker; hostel where a significant element of care is provided; hotel; house in multiple occupation; sale of fuel for motor vehicles; sale or display for sale of motor vehicles; sale of food or drink for consumption on the premises or of hot food for consumption off the premises; scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles; swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations including those involving motorised vehicles or firearms; taxi business or business for the hire of motor vehicles; for or in connection with public worship or religious instruction; for the carrying out of any prescribed process which requires an authorisation under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997(7) or for the operation of any installation or mobile plant which requires a permit under regulation 9 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(8); waste management facility for the collection, transport, treatment, recovery, recycling, transfer and disposal of waste (as defined in Council Directive 2008/98/EC)(9).

2.75 Of the above list it is perhaps most significant that the A3 class uses found in Wales are all Sui Generis uses in Northern Ireland. This extensive use of the Sui Generis model is relatively unique amongst the nations of the UK, although all nations do utilise this approach and England has used it more 'creatively' recently. Sui Generis is based on the core principle that the use is removed from any class and their associated PD allowances, thereby creating the potential for comprehensive control of uses which typically have unique characteristics which merit particular consideration through express planning permission applications. To become a Sui Generis use requires express planning permission, and for such a use to become anything else similarly requires express permission. Sui Generis uses can technically have PD uses associated with them, as demonstrated in England recently, though the logic and merits of this are questionable given the core purpose of Sui Generis and the arguably preferable solution of creating new use classes which can then be associated with permitted development rights within a more coherent and legible system.

2.76 The UCO arrangements for Northern Ireland can be found here:
http://www.legislation.gov.uk/nisr/2015/40/pdfs/nisr_20150040_en.pdf.

2.77 One point worth highlighting is that the Class B uses have been logically renumbered: England and Wales maintain B1/B2/B8 naming despite B3, 4, 5, 6, and

7 being removed; this creates a more logical structural approach in Northern Ireland with enhanced logic and coherency.

Flexibility

2.78 Flexibility is key to the creation of an effective proportionality hierarchy. Different contexts demand different responses. In some scenarios the sensitivity of an area necessitates greater control. Similarly, in other areas, the context may allow greater flexibility. From the perspective of PD rights, the former is provided in Wales through the application of an Article 4 Direction, the latter through the application of a Local Development Order (LDO). Mention is also appropriate of Enterprise Zones (EZ); although not specifically planning tools, planning can play an important role in their operations through the use of an associated LDO. This research does explore the use of EZs, but discussion focuses more on the LDO tool with which they are associated.

2.79 From the perspective of introducing flexibility into the process, this is enabled through the use of the Prior Approval decision making process - an interim system between express planning permission and 'pure' permitted development rights.

2.80 These systems are all long established within Wales. This research will review their application and use in Wales. It merits highlighting here though that research has recently been undertaken in Wales concerning the use of LDOs; this is summarised below.

Local Development Orders: Impacts and Good Practice - Prepared by Peter Brett Associates for the Welsh Government (2014)

Whilst LDO's have been promoted by both the Welsh and UK governments "*as an important tool to streamline the planning system and encourage growth and regeneration in priority areas*" (p6), their take-up by Welsh LPA's has been low.

This report commissioned by the Welsh Government and published in 2014, highlights:

- How LDO's have been promoted by both the Welsh and UK governments through research, programmes, guidance and legislation;
- Previous research into LDO's; and
- The benefits and impacts of LDO's through 4 case studies
- Practical advice for LPA's as to best practice in setting up LDO's.

The ability of Welsh and English LPA's to establish Local Development Orders outside of their local development plan has been long-standing, having first been introduced into the Welsh and English planning systems through the Planning & Compulsory Purchase Act 2004. However, their take-up has been far from immediate, despite the

Killian Pretty Review¹ (2008) suggesting *“that LDOs could help remove nearly 40% of minor non-residential developments that are assessed as standard through full planning applications, saving over £30 million per year in administrative burdens,”* (p2).

The report details Welsh Government efforts across a number of fronts to increase the take-up of LDOs – including a consultation in 2010 aimed at uncovering the reasons the lack of take-up of LDO’s amongst Welsh LPAs.

The consultation uncovered a number of concerns amongst LPAs previously cited by stakeholders in earlier studies (The Killian Pretty Review and a later study commissioned by PAS into ‘Stakeholder views and Practice Issues’). These included:

- Local authorities who adopt LDOs lose income from planning fees
- They also incur costs in preparation and administration of LDOs, at a time when authorities are especially short of money
- LDOs take time to prepare and adopt – possibly causing more delay than planning applications would
- LDOs could add to the complexity of the planning system
- They could lead to a democratic deficit, as the public would not have a say over development and planning authorities would lose control
- There is not enough experience to learn from (p5).

Despite putting further support in place to overcome these barriers, including guidance in the form of a circular¹ and funding for their set-up, by 2014 no LDOs had been developed within Wales.

The report parallels this experience with that of England, where, in 2011, it was made a requirement that LDO’s be prepared to support the UK Government’s Enterprise Zone programme. At the time of writing, the report state that ‘47 LDOs had been adopted across England, of which 38 were in EZs and nine in areas outside EZs,’ (p6). Whilst the Enterprise Zone programme covers Wales, there is no formal requirement for Enterprise Zones to include LDOs.

The report goes on to highlight four English case studies which provide practical information as to the costs and timeframes involved in the preparation of the LDOs as well as findings in relation to user benefits, local economic development, democracy and control, workloads and complexity and local authority finances.

Since the time of writing, Newport City Council has since established the first Welsh LDO in August 2015. The LDO focuses on the regeneration of Newport City Centre through wider permitted change of uses – further details of the LDO are provided in the table below.

Newport City Centre LDO

Area	21 hectares of land in Newport city centre.
Aim	To increase occupancy levels and commercial activity in the city centre.
Grants permission for	Wider change of use rights for basement, ground and upper floor units differentiated within the primary and secondary retail areas, café quarter and flood zones within the wider LDO area.
Limitations	Temporary 3 year lifetime, does not apply to new retail and leisure development Friars Walk, restrictions apply for highly vulnerable uses (C1, C3 and D2) in flood risk zones.
Conditions	Various conditions apply to secure amenity including space standards, noise assessments and acoustic insulation. Contributions are also sought to mitigate impact conditions, e.g. s106/CIL.
Measures of success	<ul style="list-style-type: none"> • The number of vacant ground-floor units has decreased; • Average annual footfall has increased; • Ten or more vacant units above commercial premises have been brought back into use; • Ten or more new dwellings have been created through the LDO process.

Sources:

Local Development Orders: Impacts and Good Practice, Final Report:
<http://gov.wales/topics/planning/planningresearch/publishedresearch/local-development-plans-good-practice/?lang=en>

Information on Newport LDO:

<http://www.newport.gov.uk/en/Planning-Housing/Planning/Local-Development-Order.aspx>

<http://www.newport.gov.uk/documents/Planning-Documents/Local-Development-Order/Newport-City-Centre-Local-Development-Order-FINAL-DRAFT-August-2015.pdf>

2.81 LDOs, Article 4 Directions and Prior Approval are all valid tools for enabling flexibility within the planning system.

Moving Forward

2.82 It is of note from the discussion above that a feature that marks England out, in distinct contrast to the rest of the UK, is that change to the UCO and PD rights has been undertaken in a piecemeal manner over a significant extended period of time. Change has also been undertaken that has led to strong criticism and concern.

2.83 Wales is in an important contained period of review in relation to the planning system. The Planning (Wales) Act 2015 is of particular note, but wider changes to local government structures, governance and planning policy are also significant.

2.84 From the perspective change management, this *impact based* research, responding to *need*, aims support a coherent period of change in Wales through presenting a comprehensive and single review of the UCO and their associated PD rights in Wales.

3. METHODOLOGY

Background and approach

3.1 The project was predicated upon a principle of developing a response to identified *need* for change. The methodology was based upon:

- an initial phase of issue identification through secondary research;
- a second – empirical research - phase comprising a questionnaire followed by targeted and inclusive qualitative analysis through a series of individual and group interviews and workshops; and
- a third phase of analysis and scrutiny.

3.2 In order to establish the need for any change to the UCO in Wales, an assessment of impact needed to be carried out. The assessment had two key aspects:

- The first was the assessment of the impact of the UCO and their associated PD rights as currently specified;
- The second was the assessment of the likely impact of any proposed changes conceived as having the potential to address any challenges identified up by the first stage.

3.3 Both the first and the second aspects of this work needed to disaggregate the two elements of the UCO – the categorisation of uses, and the permitted development (PD) associated with the categorisation of uses.

3.4 The project initially involved the creation of an impact and proportionality framework upon which the analysis of change could be based. This stage involved the design of an analysis matrix to allow for effective comparison based upon environmental consideration and any potential wider considerations of impact. This was informed by a robust literature review of the historical establishment and evolution of the UCO and their PD rights, together with current theory and discourse concerning the system in place in Wales, along with those of England, Scotland and Northern Ireland for comparison. This literature review drew on academic, professional and governmental sources.

3.5 With the mechanism for analysis formed and a foundation of secondary evidence laid, the research then identified perceived and substantiated issues associated with the current UCO and Part 3 of the GPDO in Wales from the perspective of, for example, potential excessive state intervention, ineffective management of environmental harm, and inefficient resource application. This was completed through primary research which involved:

- a. An initial questionnaire to capture views of stakeholders. This stage was undertaken initially through a qualitative and quantitative data collection process using the 'SurveyMonkey' system. The questionnaire was circulated to all Local Authorities (LA) in the Wales, addressed to the Chief Planning Officer. The

circulation included a request for onward distribution to other officers and Members. In addition to the LA distribution, all planning consultancies identified by the RTPI as active in Wales were contacted. Using the Law Society database, legal firms with an identified specialism in planning were contacted. One Voice Wales were contacted to enable representation from Community Councils. Finally, infrastructure providers, implementation bodies, interest groups and professional bodies were contacted.

b. Following the analysis of the questionnaire, targeted interviews and workshops were completed to allow for a comprehensive analysis of the existing system in place and potential options for reform. In total, we completed the following:

- 4 x Group workshops attended by a cross-section of stakeholders (Bangor, Wrexham, Carmarthen and Cardiff)
- 1 x Group workshop (professional body)
- 2 x Group interview workshops (private consultancies)
- 16 x Individual interviews (mix of public / private / and other)

3.6 This research was based upon the principle that the initial evidence base, specifically the secondary research materials (presented in the Literature Review) and the primary research results from the questionnaire, would inform the later stages of the work. The interviews and workshops were therefore specifically designed in response to the first phase research, meaning it was based upon responding to identified issues and options. The research was therefore responsive and driven by the emerging research evidence, rather than being predicated with any particular motivation or desired outcome. The workshops and interview allowed for new matters to be raised, but importantly also for emerging themes and views to be presented, discussed and considered.

3.7 The 'SurveyMonkey' questionnaire questions and frameworks for both the interviews and workshops can be found in the appendix.

3.8 Following the primary research, the research team examined research evidence, evaluating the extant system along with the identified options for changes to the UCO and Part 3 of the GPDO. The analysis is underpinned by the social, environmental and economic impacts of the possible changes. This included the potential use of geographically specific tools, such as Local Development Orders. The matrix was used to support the analysis.

Analysis matrix

3.9 A matrix approach to assessing impact was developed to support this project. This method has a number of key benefits: firstly, it allows impacts to be assessed comprehensively through the identification of a number of criteria relevant to deducing impact; secondly, it is systematic and rigorous because each element of the UCO – both current and proposed – is analysed according to the same set of criteria; and, thirdly, it is intended to provide a clear interpretative tool by visually

representing findings through a traffic light system of impact (green – positive impact, amber – neutral impact, red – negative impact), supported by appropriate text base summaries and observations to assist understanding.

Matrix criteria

3.10 Developing the right set of criteria for assessing impact, and criteria that are sufficiently comprehensive are critical to its effectiveness as a tool. The matrix developed has been sub-divided into four overarching themes as follows:

A. Strategic Objectives

3.11 The UCO and associated PD rights is a key regulatory tool of the planning system. Any regulatory tool must be fit for purpose in the context of contemporary policy objectives. It follows, therefore, that each element of the UCO needs to be considered against the current objective and intentions of the Welsh Government. Five core strategic objectives of 'Building sustainable communities', 'Promoting a sustainable economy', 'Valuing our environment', 'achieving sustainable accessibility', and 'Respecting distinctiveness' were used as the basis of the strategic analysis framework. The analysis picked up both strategic and local impact in relation to these objectives, e.g. considering the policy objective of 'valuing our environment' enabled consideration of broad issues around for example the classification of agricultural land as well as local issues around environmental amenity associated with particular use classifications.

B. Spatial Variations

3.12 In Wales there are clear spatial areas, each with a distinct set of planning issues and priorities. It is possible, therefore, that the impact / functionality of the UCO has particular geographical manifestations and / or could be amended to enable particular issues within these spatial areas to be addressed, e.g. the regeneration of rural coastal towns in North East Wales may require particular regulatory/deregulatory responses, and likewise supporting diversification of the agricultural sector in Central Wales. Adding a geographical element to the assessment framework prompted attention to geographical observations and furthers our understanding of the limitations and possibilities of the UCO in assisting development in particular parts of Wales.

C. System Considerations

3.13 One outcome of regulation through the UCO and associated PD rights is the administrative impact it has on local authorities in operating this part of the planning system. The assessment framework provided an opportunity to explore five particular elements: applications, revenue, timescale, resources, and committee/delegation.

3.14 These system considerations needed to be considered as a whole, e.g. planning applications provide income for local authorities to enable the processing and determination of the applications submitted: it follows therefore that removal or addition of something as PD has financial implications for a local authority, but at the same time, addition of PD has the potential to reduce applications and therefore the resources in staff/committee time required to assess them.

3.15 Where appropriate, wider system considerations are also drawn into the analysis. The planning activity occurring outside of the local authority's own activities, for example the work of planning consultancies and demands upon applicants, is also a valid consideration.

D. Proportionality Test

3.16 Any regulation – that is about balancing the need for governments and local authorities for control, with the needs of end users in responding to market needs – needs to be proportional. In brief, this means proportionate to the perceived issue or problem and not achievable by any other less onerous means. In practice, assessments of proportionality can involve complex cost benefit analysis, usually carried out by policy makers on proposing regulatory change. Proportionality was included in this assessment framework to record any overarching observations, focussed primarily on any proposed changes to the UCO.

Matrix use

3.17 The use of the matrix was on ongoing iterative process, supporting the population of the pages with information and data from the empirical research as it unfolded. This was undertaken as follows:

- Stage 1 – trial use of the matrix with information from documentary sources / team knowledge;
- Stage 2 – outcomes of the quantitative survey data, interviews and focus groups inputted;
- Stage 3 – interpretation of findings and assessment of proposed changes.

3.18 The matrix created was ultimately not one with a modelled scoring approach or defined weighting. The actual assessment of the current provisions and potential changes are rarely quantifiable and it was assessed that attempts to do so within the context of this research would lead to numerical values that would be neither accurate nor helpful. Instead, the matrix represents professional assessment and judgement of implication and impact based upon the primary and secondary research inputs. Moreover, a scoring model associated with the actual determined implications and impact was assessed to be an equally problematic proposition given the particular significance of pertinent matters; ultimately there is a need to rationally *interpret* the results. For example, a single positive outcome, or indeed a single negative impact, could impact disproportionately compared to other measurements given the significance of the matter. Similarly, a broadly neutral outcome could still lead to a recommendation for change based on a small number

of positive changes given their assessed significance. No robust numerical scoring model was found to be effective nor helpful in this context. As with all planning decision making, professional judgement and assessment are key. The matrix therefore utilises a simple traffic light scoring model which is judged based upon an interpretation by the research team of the primary and secondary research undertaken (Green: Positive scenario/change; Amber: Neutral; Red: Problematic scenario/change). The matrices were then ultimately interpreted by the research team through a series of discussion and debate sessions from which agreed recommendations were formed (Green: Positive change; Amber: Monitor; Red: Do not pursue).

3.19 The matrix therefore represents the key analysis tool associated with this research; it was the mechanism to enable the research team to interpret the diverse primary and secondary research inputs and create a judgement based outcome. This report represents a distilled and digestible presentation of the use of the matrices within this research project as an assessment tool.

Final Output

3.20 The output of the above process is this report comprising:

1. an executive summary;
2. recommendations that can be used by the Welsh Government;
3. a presentation of the matrix analysis for determining impact; and
4. discussion and analysis, including an identification of the perceived and substantiated issues and a consideration of analysis of the options for change and their implications.

3.21 Following the presentation of the questionnaire results, the report presents an assimilated discussion and analysis on a class by class basis; it is important to note that this section does not identify or disaggregate the origins of the materials that have informed the discourse, rather it is the assimilated representation of all of the research inputs (literature, questionnaire results, interviews, workshops, research team analysis process) and the subsequent analysis of materials by the research team through the use of the analysis matrix and associated discussion.

4. QUESTIONNAIRE RESULTS AND DISCUSSION

4.1 This section of the report presents the findings of the questionnaire.

Headline messages

- 70% of respondents believe that the UCO would benefit from some revisions to ensure it reflects contemporary circumstances.
- 56% of respondents feel that the UCO is not accessible and easy to understand for non-professionals.
- Views are divergent between those who wish to see fewer changes of use as permitted development (more control of impact) and those who like to see less regulation.
- Of all the use classes, the greatest desire for change is to the A3 use classes to allow greater control over restaurants, bars and fast food take-aways.
- Other notable areas of concern included Bookmakers and 'pay day loan' units, Houses in Multiple Occupation (HMO), and Public Houses.
- Respondents requested a strong desire for greater clarity about, and guidance on, what constitutes a particular use within each class.
- Divergence between the English and Welsh systems is perceived as having created confusion for applicants.

Overview comments

4.2 Many respondents used the opportunity to express overarching opinions in relation to the UCO and the associated permitted development rights between uses. These comments covered a wide range of views and opinion, from amongst which a few overview themes can be identified:

- I. There was a general sense that the UCO is working well and is reasonably effective at managing change, but whilst there was no appetite for wholesale change the need for some judicious amendments was a widespread view:

"The UCO in principle is working well. With the noted revisions, it would be more up to date with modern uses of land and buildings"
(Planning policy, public sector).

*“The existing UCO has a lot of merit - it provides a high degree of flexibility to landowners and it is not overly complicated by having too many use classes. However there are anomalies and problems with it”
(Public sector, development management).*

- II. The social, cultural and economic climate around the UCO order has changed considerably since it was last reviewed in Wales, and the UCO therefore needs to be up-dated to reflect contemporary society and associated land use issues:

*“The UCO is not fit for purpose in managing the social and cultural impact of changes of use”
(Third sector).*

*“The social, economic, environmental and cultural climate has changed significantly since the introduction of the 1987 UCO and various uses within this have changed with unforeseen consequences that have had and continue to have significant impacts on the surrounding area”
(Development management, public sector).*

- III. Several respondents perceived the UCO and GDPO to be a top-down regulatory tools which work well in most circumstances, but expressed the desire for more opportunities for greater local control, with the potential greater use of LDOs and article 4 directions mentioned in this context:

*“It allows for a standardised approach to land use classification across Wales. But on the negative side, it is a top-down tool that doesn't always reflect local considerations”
(Planning policy, public sector).*

*“Less burden yet more clever ways of doing things are needed. Why not supplement the UCO with a locationally specific deregulation that goes further than the UCO in particular areas through a LDO or an Enterprise Zone?”
(Private sector consultant)*

- IV. There was a clear tension between those who were keen to use the opportunity of a review to decrease the regulatory burden on business and households, and others who were in favour of reducing permitted development rights to be able to better control for the potential impacts of development. These tension were mainly, although not exclusively, split between those in the private sector (seeking less regulation) and those in the public sector (seeking more control):

“Public confidence in the planning system is not high in my view. I think rather than expanding rights, more attention should be focussed on addressing current issues and tightening up processes. This would help

simplify a complicated process and build public confidence that the system is open and fair”
(Planning enforcement, public sector).

“We are in favour of PD rights which save on having to out in complicated and expensive Planning applications for relatively simple proposals.”
(Private sector consultant)

“I believe that we need to refine it much in the manner that England has by introducing additional classes but at the same time also building in greater flexibility in terms of permitted changes”
(Senior management, public sector).

- V. There was some concern about the overall purpose of the UCO, with some respondents expressing the view that some (elected members in particular) had the potential to see its influence extending beyond managing land use and viability and vitality, into the social arena. Some questioned the appropriate role of the land use planning system in this respect.

Purpose of the Questionnaire / Survey Design

4.3 The purpose of the survey element of this review was to provide a simple and relatively quick way (from the point of the respondents) of yielding information from a variety of organisations engaged in some way with the UCO and their associated PD rights in Wales in practice, or the implications of its use. Its focus was on the current effectiveness of the UCO as a way of managing land use change in Wales and any desired amendments. In research sequencing terms, the headline results – particularly in relation to proposed changes – were followed up in more-depth through one to one interviews and focus groups to test their wider validity and practicality.

4.4 The survey was divided into a number of sections and these are reviewed in turn below. The survey questions themselves are appended to this report at Appendix 9.1.

4.5 Organisations and individuals were invited to complete the questionnaire using the online survey tool ‘SurveyMonkey’. This tool enables respondents to not only complete the multiple choice questions for numerical analysis, but also to add further information and comment giving any reasons for or detail related to their answers. Some of these comments are included in this chapter to provide further richness to the material presented. Comments are generally only included where they reflect the opinion of more than one respondent, or are attributed as an ‘outlier’ view. Whilst comments are anonymised, organisational background and role are given.

Response rate, organisational background and frequency of use

4.6 The questionnaire survey was distributed to 224 organisations and individuals with appropriate onward distribution encouraged. A response rate can therefore not be provided with adequate accuracy.

4.7 Responses were sought from a wide range of organisations to seek to ensure a variety of views on the operation and effectiveness of the UCO. Public sector organisations included all local authorities and national parks in Wales (both officers and elected members) as well as other relevant public bodies including health, infrastructure and emergency service providers. Private sector bodies included planning consultancies and architectural practices. Views from a range of voluntary and third sector organisations were also sought, including business representing bodies and professional bodies.

4.8 102 questionnaires were completed providing a very robust evidence base. Table 1 shows the spread of the response rate across organisations with the majority – over 50% - coming from the public sector. Importantly however, good representation was seen from across sectors.

Public sector - Unitary Authority	55
Public sector - National Park Authority	5
Private sector	20
Legal sector	3
Elected Member / Councillor	3
Professional body	3
Education	1
'Third' sector	9
Other	7

Table 1: Questionnaire respondents by organisational type¹

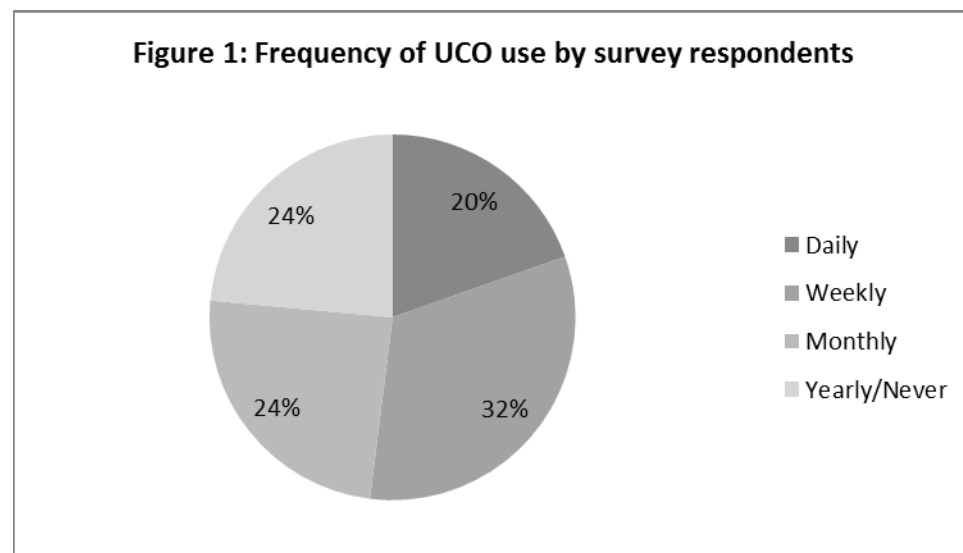
4.9 Respondents were also asked to describe their position within their organisation. The majority of respondents were from within the planning field, either in development management (37), planning policy (17), enforcement (4) or senior

¹ Respondents were asked what kind of organisation they considered themselves to work in. The total of 206 indicates that some respondents selected more than one option, e.g. elected member and public sector

management (10). Those outside of planning reported their roles to be in legal services (2), education (1), the political sphere as elected members (4), or other (25) which included amongst them roles in ecology, economic development, asset management and architecture.

4.10 Respondents did not consistently complete every question. The numerical information given in this chapter does not, therefore, always reflect the overall response rate of 102. Where the response rate for a particular question was substantially below the overall response, this is highlighted in the text.

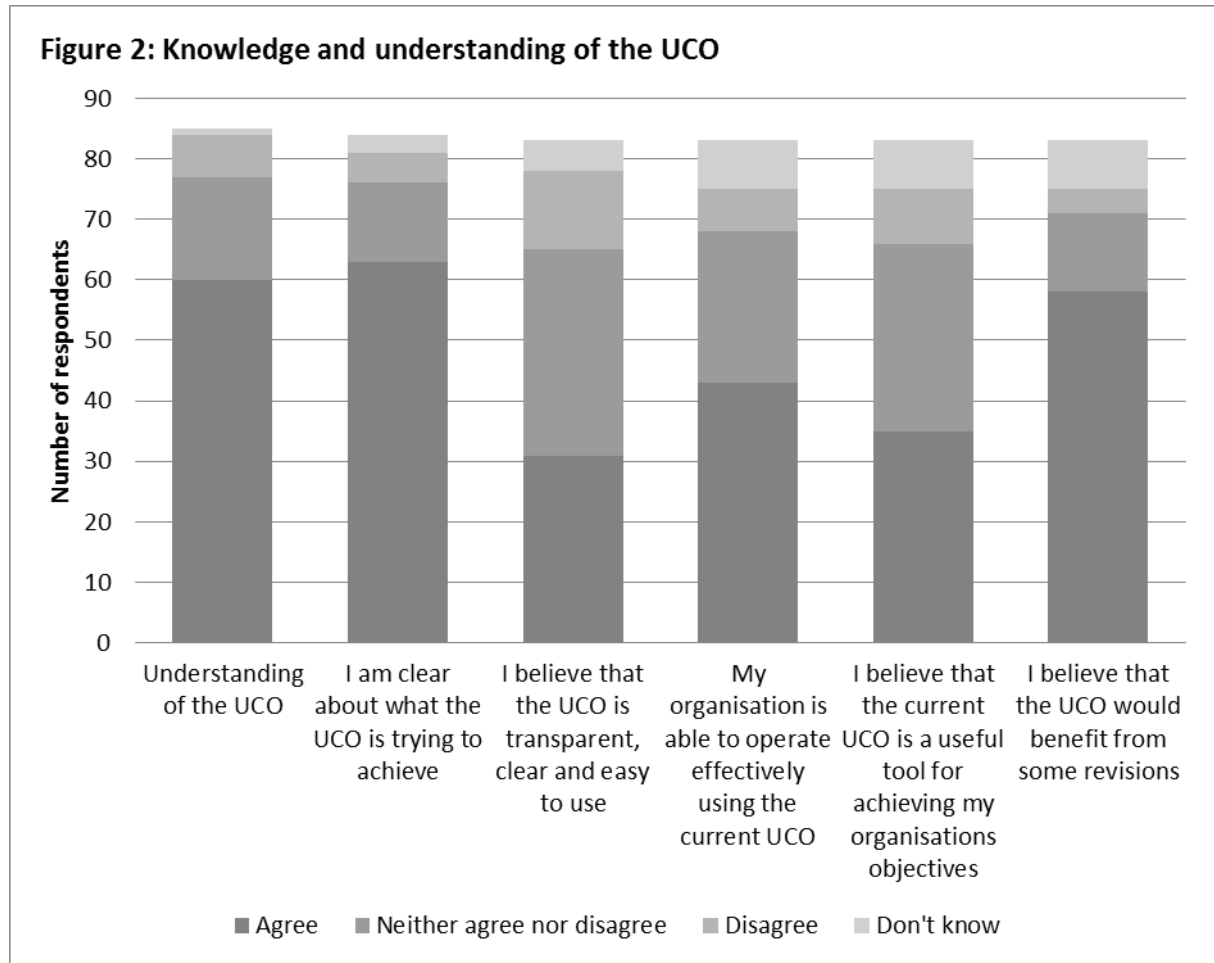
4.11 Respondents were asked how often they concerned themselves with the Use Classes Order in Wales and the associated Permitted Development rights. Figure 1 below shows that responses were evenly spread across the four possible options.



Knowledge and understanding of the Use Classes Order

4.12 Respondents were initially asked to review their own knowledge and understanding of the use classes order by reflecting on how they felt about the following statements:

- I have a good understanding of the UCO
- I am clear about what the UCO is trying to achieve
- I believe that the UCO is transparent, clear and easy to use
- My organisation is able to operate effectively using the current UCO
- I believe that the current UCO is a useful tool for achieving my organisations objectives
- I believe that the current UCO would benefit from some revisions



4.13 The response rate to this set of question varied averaging 85 out of the 102 total.

4.14 Figure 2 shows that whilst the majority of respondents had a good understanding of the UCO, and were clear about what that the order is trying to achieve, the level of agreement dropped markedly when considering transparency and ease of use (*with 37% agreeing*), the ability of organisations to operate effectively using the UCO (*with 52% agreeing*), and the utility of the UCO as a tool for achieving organisational objectives (*with 42% agreeing*). Critically, 70% of respondents felt that the UCO would benefit from some revisions.

4.15 Additional comments varied from the emphatic:

“The UCO is outdated and impossible for the public to understand. Even the informed public” (Policy background, retired).

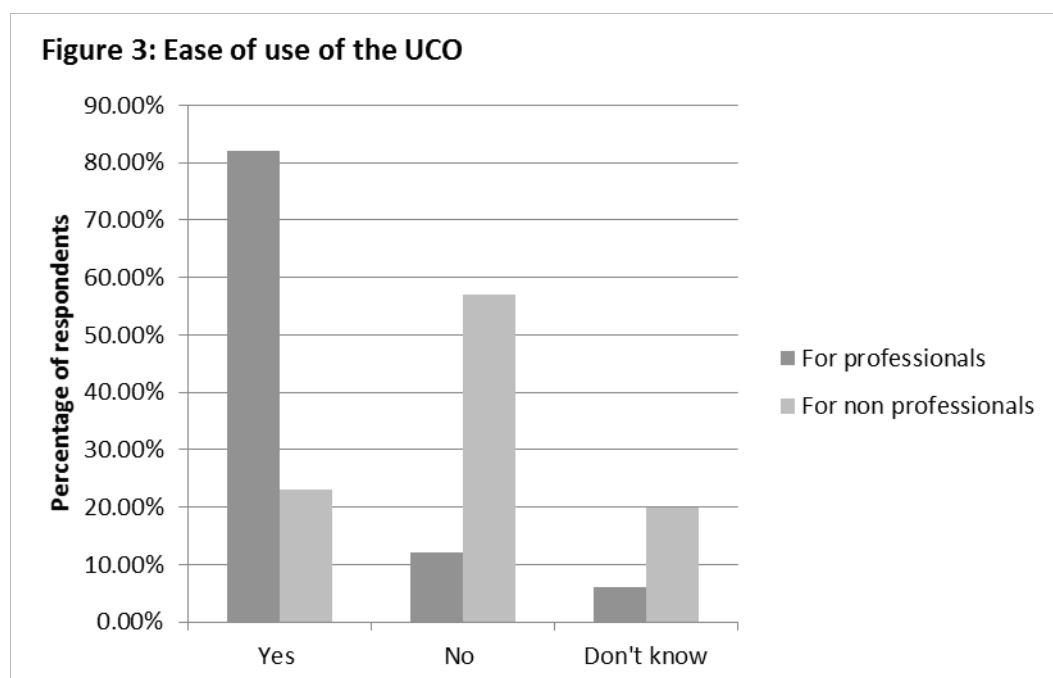
to:

*“The UCO is fairly clear but can be difficult to use in practice”
(Legal services, private sector).*

and;

*“It is easy to use, and well understood. Other than splitting A3 to A5, I don't think there would be any benefit in its revision, just leading to further complexity and mis-understanding”
(Development management, public sector).*

4.16 Respondents were also asked for their views on the accessibility and ease of understanding of the UCO for both professionals and non-professionals. 67 out of the 102 respondents answered this question. Figure 3 indicates a marked difference of perception between ease of use for professionals and non-professionals.



4.17 There were three recurring themes amongst those who made comments about the UCO being inaccessible to non-professionals:

- the differences between the English and Welsh orders are hard to understand;
- there would some real benefits to a plain-Welsh/English guide to the UCO to enhance the understanding of the lay reader; and
- whilst the high level use classes are relatively easy to understand, the subtleties of categorisation within use classes is more difficult to understand for non-professionals.

4.18 Comments included:

*“There is a contradiction between the Welsh and English UCO and it is difficult for non-professionals to understand the uses that are not in any class (sui generis) and the permitted changes between uses”
(Development Management, Local Authority).*

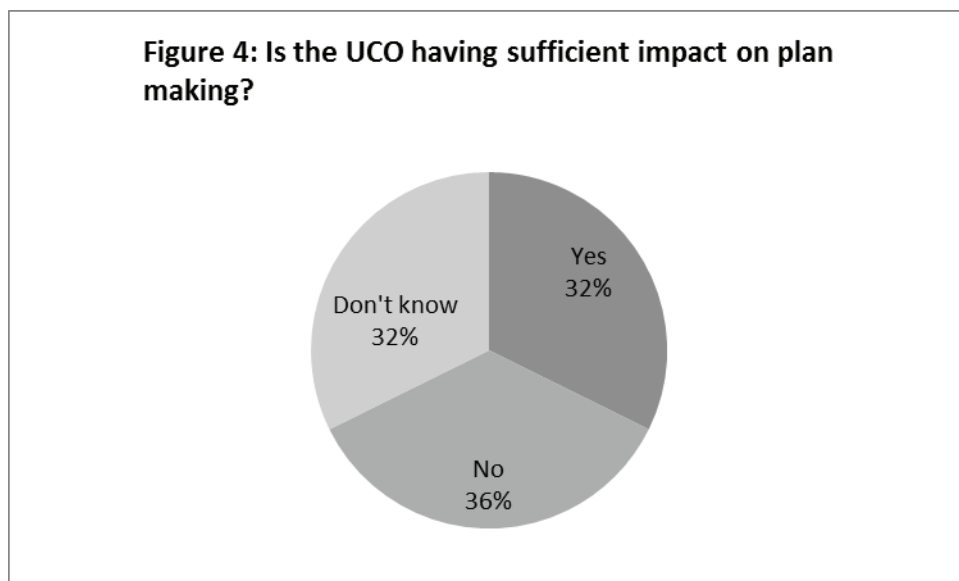
*“Professionals are generally au fait with the UCO because they use it regularly. Non-planning professionals (in my experience) tend to have a rudimentary knowledge, use it less frequently and often not from the source document and English use classes are regularly given. They also tend to group the categories together without understanding the finer distinction between the various classes (e.g. between the B1, B2 and B8 categories)”
(Development Management, Local Authority).*

*“It may not always be clear to non-professionals that certain uses fall outside of the existing permitted use of a building or site and that planning permission is required. It is also not always clear to non-professionals why some uses fall within one use class and others in a different use class”
(Development Management, Local Authority).*

Impact on Plan Making

4.19 Respondents were asked whether they feel that the UCO, particularly the permitted changes and their potential impacts, is given sufficient consideration during the plan making process from the perspective of the potential future evolution of uses? 65 respondents answered this question.

4.20 Opinion on this was evenly spread is indicated in figure 4 below.



4.21 Additional comments on the relationship to plan-making were very varied. Respondents were of the view that whilst plans will be made with the UCO “in the

back of the mind” (given the inevitable consideration of the balance of uses), the UCO is largely a development management tool with less of an impact on forward planning:

“Policy planners are not always well-versed in the intricacies of the UCO and GPDO: ‘DM policies’ can therefore result which might not be particularly well-crafted. A plan should, at its heart, be about managing the use of land, particularly major changes of use, and so this is certainly a deficiency of the current setup”
(Senior management, public sector).

“In my experience this finer detail of the UCO is less well understood by policy planners than development managers who are engaged in the detail all the time”
(Planning policy, private sector).

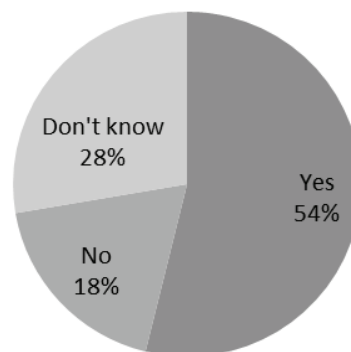
“Policy planners are not always well-versed in the intricacies of the UCO and GPDO: ‘DM policies’ can therefore result which might not be particularly well-crafted. A plan should, at its heart, be about managing the use of land, particularly major changes of use, and so this is certainly a deficiency of the current setup”
(Planning policy, public sector).

Impact on decision making

4.22 Respondents were asked “do you feel that the UCO, particularly the permitted changes and their potential impacts, is given sufficient consideration during the planning application decision making process from the perspective of the potential future evolution of uses? 65 people answered this question, of which 54% responded ‘yes’ as indicated in figure 5.

4.23

Figure 5: Is the UCO having sufficient impact on decision making?



There were few additional comments specifically on this question, but the following relevant observations were made:

“Officers are becoming more aware of, and anticipating different uses when considering current applications, especially in light of advice contained in Section 5.71 of Circular 16-2014, that conditions could not apply to future uses authorised by the UCO/ GPDO. This has resulted in the need to consider restrictive conditions to ensure future uses are properly controlled”
(Planning policy, private sector).

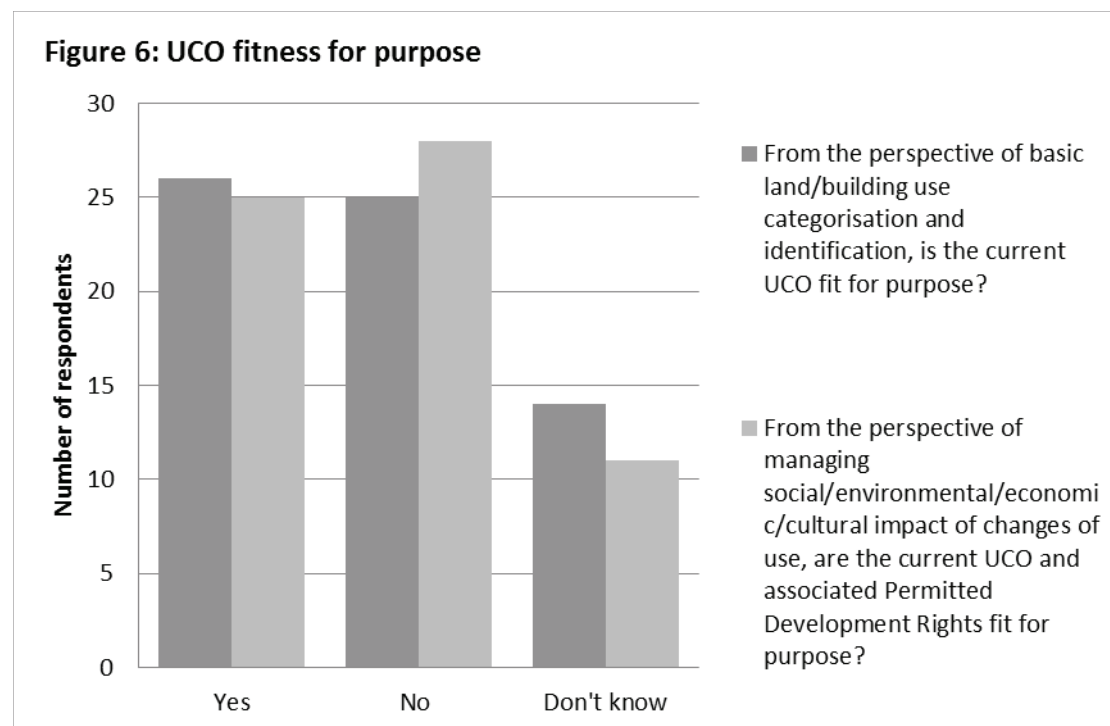
“Change of use applications by definition are subject to increased regulation (instead of being PD, if use is changed in the right order), so when impacts are considered, these are often about negative impacts, rather than potential positive impacts. Changes should not preclude future changes that can bring about positive outcomes”
(Development management, public sector).

Fitness for purpose and desire for change

“The existing UCO has a lot of merit - it provides a high degree of flexibility to landowners and it is not overly complicated by having too many use classes. However there are anomalies and problems with it ... Given that the current UCO is almost 30 years old. Land uses evolve over time as do the way businesses operate, so it would also be useful to review it to ensure that it is up to date and reflects more land use trends/issues”
(Development management, public sector).

“The social, economic, environmental and cultural climate has changed significantly since the introduction of the 1987 UCO and various uses within this have changed with unforeseen consequences that have had and continue to have significant impacts on the surrounding area”
(Development management, public sector).

4.24 Respondents were asked two overarching questions about fitness for purpose of the UCO. The first question related to the effectiveness of the UCO for land use categorisation and identification, and the second related to whether the UCO and associated PD rights are fit for purpose from the perspective of managing social/environmental/economic/cultural impact of changes of use. 65, and 64 respondents answered these questions respectively.



4.25 Figure 6 clearly shows a split of opinion between those considering the UCO to be fit for purpose and these disagreeing. Some respondents made observations about particular categories of use – and these are covered in the next section on individual use classes. More general comments from those considering the UCO to *not* be fit for purpose could be grouped in accordance with the following themes:

- Uses have evolved since the UCO was last updated and the UCO needs to better reflect current trends/working hours/land use issues;
- Some permitted changes do not allow for assessment of impact, e.g. in relation to climate change and the UCO permits changes of use with very different characteristics, particularly in terms of the effects on road traffic generation;
- Different categories could do with better definition, or re-naming to reflect modern terminology; and
- A more general desire for greater flexibility:

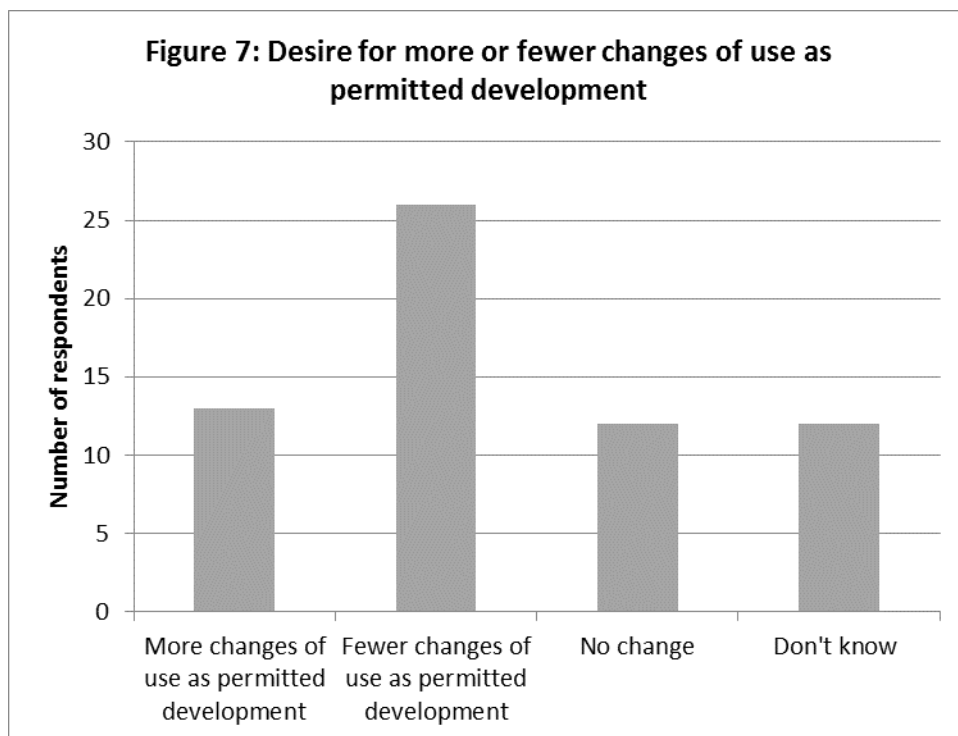
“We feel the planning system needs to be as flexible as possible to achieve a sustainable flexible rural economy”
(Surveyor, private sector).

“We are in favour of PD rights which save on having to deal with complicated and expensive Planning applications for relatively simple proposals”.
(private sector)

“There are many instances where permitted development for change of use could be extended - within town centres it would be beneficial to have a far more liberal change of use regime than in other areas. The same could be said

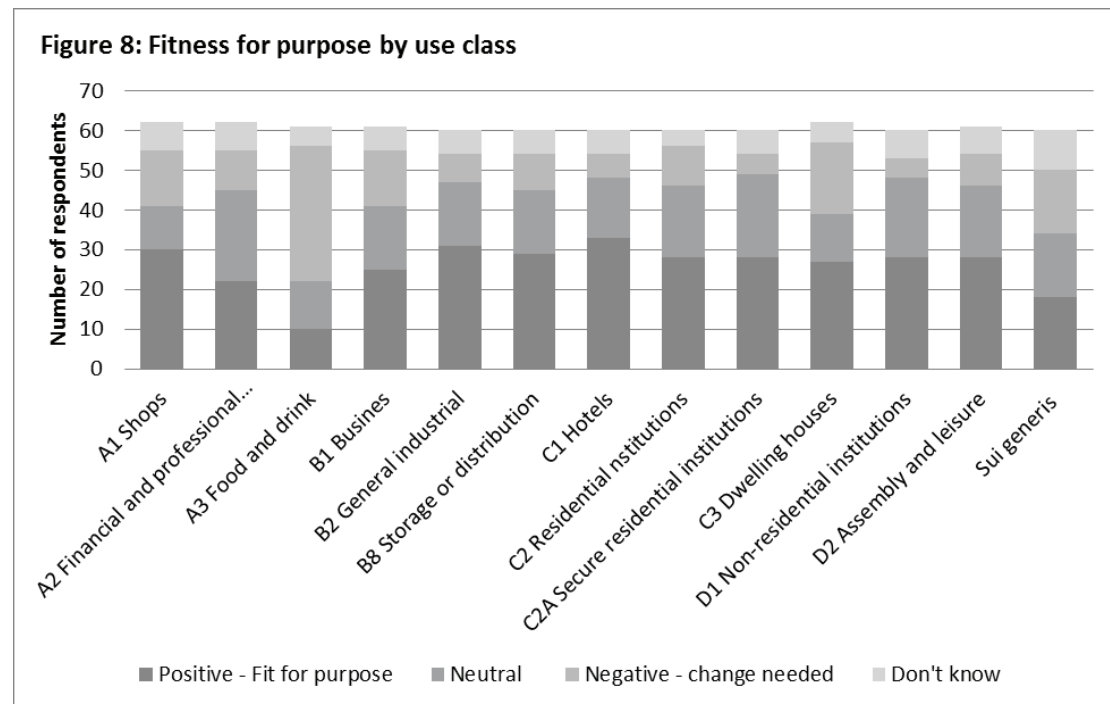
for industrial estates for example. However the UCO and associated permitted development rights are written to provide a national minimum in terms of flexibility. It would be difficult to extend permitted development rights across the board because it may result in inappropriate development taking place” (Development management, public sector).

4.26 Respondents were then asked to consider whether on balance they would like to see revisions to the UCO to make more/fewer changes of use permitted development. Of the 63 respondents to this question, the majority (41%) wished to see fewer changes of use as permitted development. No additional comments were made on this question.



Individual categories of use

4.27 Respondents were asked to give their views on the fitness for purpose of each class within the order. An average of 60 respondents answered this question.



4.28 Figure 8 illustrates that the following use classes had the highest percentage of respondents considering them *not* fit for purpose where 'change is needed':

- A3 (56%)
- B1 (30%)
- C3 (29%)
- Sui generis (27%) *NB not a use class.*
- A1 (23%)

4.29 A range of comments were made in relation to each of the use classes. Those comments made by more than one respondent are summarised in the table below, and in order of frequency mentioned in relation to each use class.

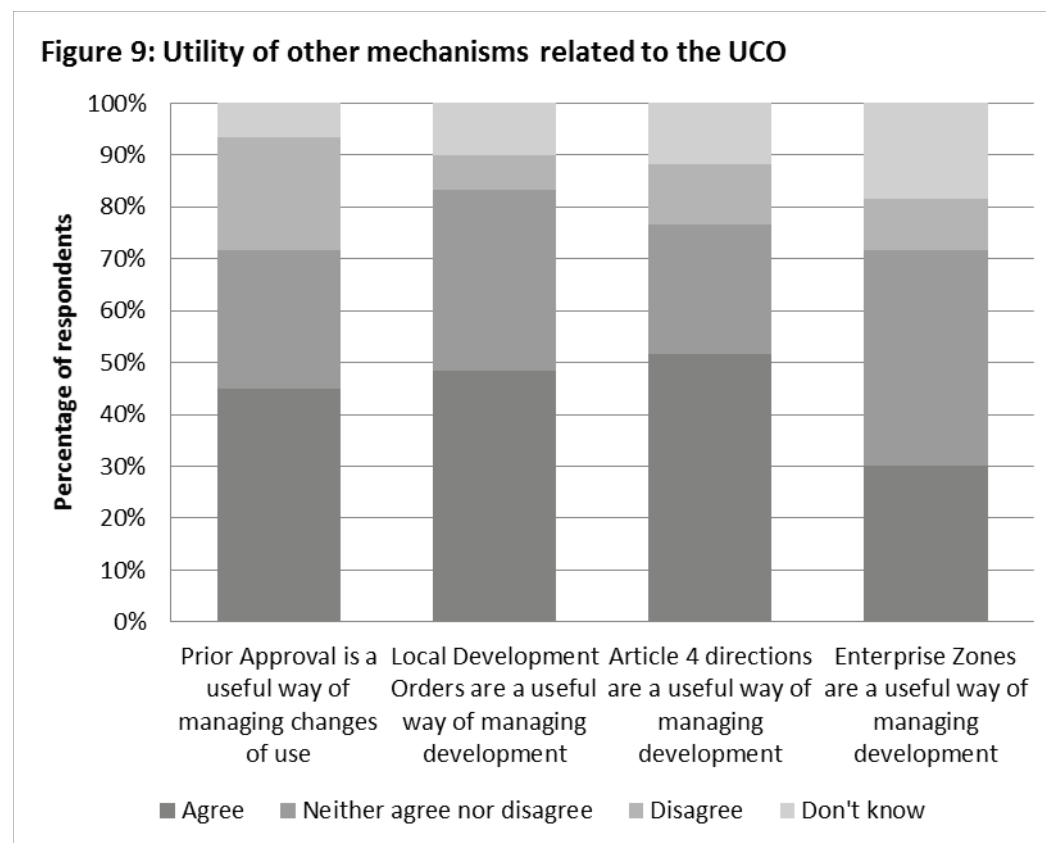
Part of UCO	Comments made by more than one respondent
General	<p>The main uses are clear, but the ability to switch from uses is less clear, and not obvious to lay users (in particular) as to the reasons why.</p> <p>Updating of terminology to reflect current language about and understanding of uses.</p> <p>Greater definition of what constitutes a particular use both for professional and non-professionals.</p> <p>Changes that allow greater diversification within the rural economy in particular.</p> <p>More uses categorised as sui-generis.</p>
A1	<p>Greater clarity is needed on what constitutes a shop.</p>
A2	<p>Removal of Bookmakers / bookmakers from A2 into sui-generis.</p> <p>Update of what is and is not appropriate for A2 is needed.</p>
A3	<p>A3 is too wide ranging - there are a lot of different uses within it with different impacts on place, character and the aspirations of communities.</p> <p>Creation of a separate use class for restaurants/cafes, take-aways and public houses.</p> <p>Specific support for sub-division of A3, into A4 and A5 as in England: A3 - Restaurants and Cafes; A4 - Drinking establishments; and A5 - Hot Food Takeaway.</p> <p>Removal of PD rights from an A3 pub to A1.</p> <p>Need for more coordination between the UCO and licensing regimes.</p>
B1	<p>Use class fine, but possibly too broad.</p> <p>Greater definition and specificity needed as to of when a light industrial use become a general industrial use.</p> <p>Concern about light industrial and offices being in the same category – but with very different impacts, particularly in terms of traffic. Desire for light industry to be separated out given possible impact caused from say a change from an office, and possible “creep” into B2.</p> <p>The uses are not specific enough and are outdated (e.g. terms</p>

	such as high-tech)
B2	N/A
B8	Storage and distribution activity is much more varied as a result of an increase in internet shopping and local distribution activities. B8 is currently primarily about warehousing and this needs to be reviewed. Removal of PD from B8 to B2.
C1	Greater clarity needed with the C use class overall between C3, apart-hotels, C1 uses, retirement villages (without care) and student accommodation.
C2	The boundary between C2 and C3 is blurred
C3	Greater clarity of uses within C3. Removal of HMOs for up to 6 people, with a new class created. Review of the role, impact and classification of HMO Different use class for holiday homes The boundary between C2 and C3 is blurred
D1	N/A
D2	N/A
Sui-generis	Sui Generis- Removal of PD rights car sales to A1 retail. Addition of tattoo parlour [already are Sui Generis] Addition of Bookmakers / book makers Addition of pubs to sui-generis with no PD rights.

Table 2: Comments relating to individual use classes

Other mechanisms affecting permitted development

4.30 Respondents were asked for their views on the effectiveness of other mechanisms related to the operation of the Use Classes Order. Specifically, they were asked whether prior approval, local development orders, article 4 directions and enterprise zones are a useful way of managing development. 60 respondents answered this question, and the results are illustrated in the graph below



4.31 This graph shows that views on the four mechanisms were reasonably evenly distributed, with the only marked difference being the increased ambivalence towards enterprise zones, and the slight increased positivity towards Article 4 Directions. It is striking that none of the 4 mechanisms were seen extremely positively as mechanisms for managing development alongside the UCO, but this may reflect lack of experience in or knowledge of the use of some of these mechanisms as one respondent observed:

“Having never utilised or been involved with any situations whereby these mechanisms have been utilised with regards to the UCO, it is difficult to comment” (Development management, public sector).

4.32 Table 3 below summarises additional comments made in relation to each of the four mechanisms, where the comments were made by more than one participant.

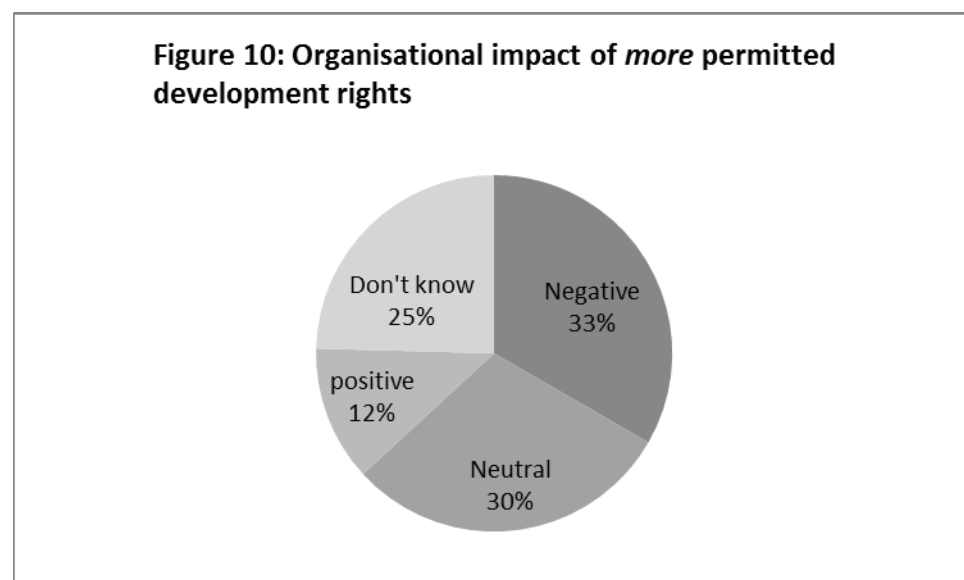
Mechanism	Repeated comments
Prior Approval	<p>It would be useful to have the ability to attach conditions to prior approval applications.</p> <p>Scepticism about the process involving less resources for local authorities, and does not bring a fee income.</p> <p>Concern that prior approval is confusing for people engaged in the planning system who struggle to understand the difference between this and the requirement for a planning application.</p>
Local Development Orders	<p>In favour of the use of LDOs – uncertain as to why they have not been more widely used.</p> <p>Call for wider use of LDOs: <i>“LPAs should be encouraged to roll out LDOs following adoption of an LDP, to support changes sought by the plan, particularly for allocated sites and designated areas (e.g. town centres)”</i> (Planning policy, public sector).</p> <p>It would be useful to have some standardised templates for LDOs – this would increase their utility as local authorities do not have the resources / experience to prepare them from scratch.</p> <p>LDO's provide certainty and flexibility in appropriate locations enabling appropriate development to thrive without having to trouble the planning process.</p> <p>Concern that LDO and EZ designation cut across other legislative obligations and this can get overlooked.</p>
Article 4 Directions	<p>Seen as having a real value in conservation areas, and in circumstances where greater control is needed for sound reasons.</p> <p>Concern that use of article 4 directions in rural areas further restrict rural business viability.</p> <p>Article 4 direction process is onerous – could simplification lead to wider use?</p> <p>Information about them is not well used.</p> <p>Article 4 directions are effective at controlling operational</p>

	development, but less so changes of use.
Enterprise Zones	Not always perceived as a tool for managing development.
	Concern that LDO and EZ designation cut across other legislative obligations and this can get overlooked.

Table 3: Views on the mechanisms related to the UCO.

Organisational implications

4.33 Respondents were asked for their views on the organisational implications of both *more* and *fewer* changes of use as permitted development. Considering firstly the implications of *more* changes of use, the results are shown in the chart below:



4.34 Of the 57 respondents that answered this question, views were more likely to be negative (33%) or neutral (30%) about potential organisational implications. Supporting comments were indicative of some uncertainty with more PD rights not necessarily being associated with a reduced resource burden on local authorities:

"It's very difficult to say/ anticipate the likely consequences. More PD changes may result in less planning applications/ fees but then it may also reduce workload and the unnecessary burden on the LPA. Conversely, it may raise more issues from an enforcement perspective with regards to amenity issues that need to be investigated and the LPA subsequently have no control over. It may also raise more general enquiries/ contact in terms of members of the public and professionals seeking clarification on the various amendments.

Whilst the intention behind the legislation is to reduce burden and allow straightforward changes which would have little practical impact, this is not always the case, as can be seen from changes from car sales establishments

to mini-supermarkets which result in increased noise, disturbance and traffic in the surrounding area”

(Development management, public sector).

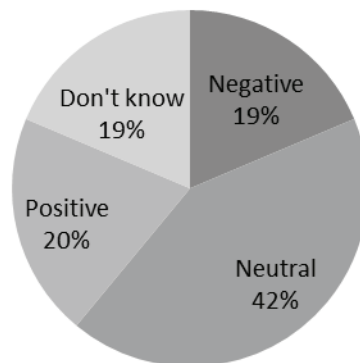
“Third parties complain bitterly about changes of use that affect them but they have no ability to get involved in decisions on, therefore this leads to more complaints and negative press for the LPA. Whilst it could mean fewer planning applications it could have many adverse impacts which cannot be controlled if permitted development”

(Development management, public sector).

4.35 Respondents from the private sector noted that increased PD rights would result in reduced fee income for consultancies, but also welcomed the greater flexibility more PD rights would give to the private sector more generally.

4.36 In contrast, respondents were more likely to be neutral (42%) about the impact of *fewer* changes of use on their organisations as indicated in the chart below.

Figure 11: Organisational impact of more permitted development rights



4.37 The related comments reflected the balance of opinion between those who accepted that whilst fewer PD rights would result in an increased number of applications to and therefore workload on local authorities this would also result in an increased fee income:

“This would effectively result in more planning applications which would result in more work for the LPA (albeit with an associated fee). Contentious changes may result in applications being reported to Planning Committee and resulting in possible overturns and subsequent appeal. Whilst this is the more cautionary approach to ensure that all issues are properly assessed, this

somewhat goes against the grain of the UCO/ PD regime. It is important to ensure that the changes permitted are carefully considered so that they are managed"

(Development management, public sector).

4.38 Respondent comments were often caveated with the need to know more about the potential extent of any changes, and, on balance, views were predicated on the need for applications to be focussed on things that *"really need to be considered by local authorities"* and not non-controversial issues that should really be permitted development.

4.39 Any increased regulatory burden received greater criticism for those in the private sector:

"This surely has consequences e.g. increased regulation, but also more resources needed in LPAs - which isn't going to happen. Less burden yet more clever ways of doing things are needed. Why not supplement the UCO with a locationally specific deregulation that goes further than the UCO in particular areas through a LDO or an Enterprise Zone?"

(Planning policy, private sector).

Perception of UCO changes elsewhere

4.40 The last question to respondents focussed on the desirability or otherwise of changes to the UCO that have occurred in other countries, notably England, Scotland, or Northern Ireland, being replicated in Wales.

4.41 Comments on this question were relatively limited, but included a handful of comments in support of:

- removal of Bookmakers and pay day loan stores from A2;
- removal of permitted development rights for pubs listed as Assets of Community Value;
- hot food takeaways being taken out of class A3; and
- PD rights in regard to residential use of redundant farm buildings, under a Class M (although one respondent expressed concern about this element).

4.42 Some respondents were concerned about the potential adverse effects of PD rights from offices to housing (in terms of small business and jobs):

"No need to go down the English route of allowing temporary changes of use or a change of use from Offices to flats as most office buildings are not suitable for residential conversion".

"I would not want to see a permitted change to residential from office use in an area where the economy is already struggling so badly".

4.43 One respondent also made some observations about the planning system in New Zealand:

“I spent some time working in New Zealand, which uses land use zoning to control development. What was good about that system was that the LPA was wholly responsible for determining what should, and should not be, permitted development in particular zones. It focussed minds! In my opinion that was highly effective in terms of regulating land uses - but it did not work so well in terms of managing built form. Similar problems appear to be arising in England in terms of the Prior Approval regime for resi extensions etc - the lesson maybe being that blunt, top-down tools aren't great for managing built form. But in my view there is much potential for LPAs to use LDOs to manage land uses (based on a national categorisation), and to complement the LDP and the GPDO”
(Planning policy, public sector).

5. ANALYSIS

5.1 Introduction

5.1.1 This section of the report presents an assimilated discussion and analysis on the various 'elements' that constituted this research. Each class has an associated matrix spreadsheet to support interpretation.

5.1.2 The analysis contains the following:

- 5.2 Conceptual robustness and strategic discussion
- 5.3 Class A
- 5.4 Class B
- 5.5 Class C
- 5.6 Class D
- 5.7 Sui Generis
- 5.8 Agriculture
- 5.9 Waste
- 5.10 Flexibility
- 5.11 Non-Legislative matters

5.1.3 As highlighted in the methodology, it is important to note that this section does not identify or disaggregate the origins of the materials that have informed the thinking, rather it is the assimilated representation of all of the research inputs (literature, questionnaire results, interviews, workshops, research team analysis process) and the subsequent analysis of materials by the research team. It does not explicitly reference the matrices, rather it is the outcome of their analysis and interpretation

5.2 Conceptual robustness and strategic discussion

Strategic Recommendations

1. National changes to the UCO and PD rights are limited and driven by identified need within Wales
2. Greater flexibility pertaining to the UCO and their associated PD rights is realised and supported at the *local* scale.
3. The UCO and PD rights be seen in context and further work concerning the management of land use be undertaken within a wider positive framework of review considering other systems of control and financial systems

Conceptual robustness

5.2.1 Before the mechanics of the system can be explored in detail, it is first appropriate to consider whether the system in question is fundamentally sound. Failure to do this would potentially lead the revision of a system which was, for Wales, not considered fit for purpose in the first instance.

5.2.2 From the perspective of first principles, the proportionality hierarchy presented in the Literature Review was considered essentially sound by all parties, and agreement was found that the basic model of categorisation of uses in a class based system as currently utilised was effective. Similarly, the provision of flexibility through allowed rights was overwhelmingly considered appropriate to support a proportionate approach. Conceptually therefore, the system is considered to be robust and a sound basis upon which to proceed with.

5.2.3 In relation to the individual 'steps' within the hierarchy, the area of greatest diversity of opinion concerned the use of the Prior Approval system. Views on the use of the Prior Approval system are discussed in more detail later in this report (5.10) but at a basic level there appears to be general support for the *appropriate* use of Prior Approval. That said there equally appears to be limited support for the significant expansion of the use of this mechanism. A key point made that appeared to resonate with the majority was that given Prior Approval effectively represents the national prioritisation of a given form of development, to use the system more widely necessitates a new national priority. It is certainly the case that the roll-out observed in England was significantly criticised by the majority of participants and the justification for many of the new uses of Prior Approval questioned. It is recommended that any further use of this tool should be targeted to matters meriting national prioritisation.

5.2.4 Concerning the use of PD rights, all participants appeared to recognise the value of their use to enable proportionality within the system. A small number of participants expressed a desire to see significant deregulation and a considerable

expansion of the PD arrangements to support freedom and flexibility and a greater emphasis upon market forces, but this was a minority view and the majority view was for minor changes responding to specific needs in Wales. It is of note therefore that in addition to the support shown for the fundamental structural approach of the UCO and associated PD rights, it is also the case that the majority of participants in this research considered that only necessary revision, and not significant change, was desirable at this stage.

5.2.5 On the basis of the research undertaken, the system in place currently, from a first principles perspective, is therefore considered sound and a robust basis upon which to evolve.

Strategic matters

5.2.6 An important aspect of this research was to consider the role of the UCO and the associated PD rights more strategically. The system does not exist in isolation and neither does it operate only at a single scale of governance. There are therefore key questions concerning the relationship between the UCO and planning policy, together with how the UCO should be managed and flexibility enabled. This is directly linked into the subsidiarity principle and the scale at which functions and decision making provisions should be available and utilised.

5.2.7 Interestingly, the role of the UCO and PD rights in delivering strategic objectives raised a mix response. While their potential in creating flexibility to support business growth etc. was recognised, the relatively limited importance of these mechanisms was also commonly highlighted compared to, for example, the policy context and wider measures to stimulate growth based around financial measures/incentives, training and skills development etc. A linked view raised by a significant number of participants is the need for planning to be seen in context, that is to say that planning is only one system involved in the management of the built and natural environment. The importance of tools such as Environmental Health, Licensing, Building Control etc. was stressed by many, as was the role of taxation policy in realising change.

5.2.8 The importance of not seeing the UCO in isolation in the context of how the planning system manages use types was also highlighted by a number of participants. Planning policy plays an important part in the management and distribution of uses; land allocation against use is a key element of the plan-led system, and key management tools, such as the management of retail areas, is based upon policy measures. During this research a clear view present amongst LPA officers appeared to be that planning policy was an effective mechanism to manage change and this should not be compromised through inappropriate PD changes. For example, the use of Primary and Secondary Frontages within retail areas can be effective management tool, but equally one which becomes undermined where PD rights allow for changes to the contrary. Moreover, this research identified a positive and constructive attitude to the use of planning policy as a key tool in the management of uses; for example the use of planning policy to actively support

managed shrinkage or oversized retail areas, and the use of policy to identify areas where greater flexibility will be supported by the LPA. As a general point therefore, it is suggested that the use of planning policy is not overlooked when considering the UCO and their PD rights; a positive planning policy construct can enable the desired change in a very targeted manner. The UCO and their PD rights should be considered *alongside* planning policy not in isolation.

5.2.9 Related to the inter-related nature of planning, a further issue identified by some participants in this research was the challenge of the *perception* of planning and the nature of the planning system and application process. It was suggested that planning is often seen as a barrier and that the need for express planning permission is often associated directly with that perception. The need for a planning application is not in itself an obstacle, but it was suggested that this association is present for some. A key element of this is the Development Management approach and the culture, behaviour and actions of *all* actors working within the planning system. The planning process can be a positive and constructive and enabling system. Although strictly beyond the scope of this research, it is suggested that it may be that opportunities exist for the Welsh Government, in partnership with the public and private sectors, to emphasise the positive, constructive and enabling role of planning in society and ensure that a positive, enabling and flexible Development Management context is actually in place.

5.2.10 Turning to the question of scales of governance and where change should be enabled, the general view identified through this research appears to be that flexibility should be enabled at the local scale i.e. through action by local government. The majority view appeared to be that a more rigid national context should be retained, with flexibility realised locally, rather than a flexible national construct. It should be noted however that the counter point made to this by a number of participants is that some local authorities are perhaps not as positive and constructive in their actions as they arguably could be. It is the case though, that different areas of Wales are distinct in their strengths, opportunities and challenges. Given this, flexibility should be enacted at the local scale to respond to the unique context of the area. The recommendation of this report is that it should be for the local authority to apply measures and act to enable flexibility where this is desirable, alongside further support and encouragement for their use by Welsh Government, including consideration of the Wales specific area based tool. This is discussed in more detail in 5.10 in relation to specific planning tools.

5.2.11 Overall, the research points to strategic change nationally through only small scale, and targeted change to specific aspects of the UCO and PD rights, together with flexibility pertaining to the UCO and their associated PD rights realised and supported at the *local* scale. This should be sat within a positive planning policy and Development Management construct.

5.3 Class A

Recommendations:

1. The Welsh Government supports the creation of further guidance concerning clarification matters
2. Beauty salons (including nail parlours) reclassified as A1
3. Bookmakers and payday loan uses be placed into a new use class (A4) and be provided with PD rights to A2/1
4. Takeaways be placed into a new use class (A5) and be provided with PD rights to A3/2/1
5. Car showroom lose current PD rights, remaining in Sui Generis
6. Public Houses:
 - i. If no ACV system is in place, the Public Houses are located within their own use class with no PD rights. This will afford protection to properties, albeit in a manner that is potentially over-regulating when considered against the extent of the issue spatially.
 - ii. If ACV system is introduced in Wales, a new use class is created called 'Assets of Community Value'. This would be linked to the boundaries of the ACV legislation, rather than a distinct UCO group. This would be a use class without an associated PD rights. This would not only allow for Public Houses to be identified and protected, but potentially also other assets considered to be significant and identified in the ACV legislation, such as restaurants or village shops.
 - iii. If ACV system is introduced in Wales but option 2 is not desired, a new use class be created for Public Houses and linked to the ACV legislation as found in England.

Clarification

5.3.1 There was a desire for greater clarification of the difference between A1 retail and A3 cafe uses, as on the ground, some premises which operate as a cafe, do so under an A1 permission. Furthermore, mixed A1/A3 uses can create confusion as to whether subsequent change of use applications are needed, if changes to the mix are sought. This appeared to be a matter where clarification, rather than structural change was desired. In most cases a pragmatic view was present and the desirability of coffee shops being within central high street locations was noted.

Classification Changes

5.3.2 49% of respondents felt that the A1 retail use class was fit for purpose, a relatively high figure within the overall survey. Nonetheless, around a quarter of respondents felt that the class required some change. Participants felt that there was a need for review of the uses that fall within A1 to reflect the modern high street and the types of shops it requires to be healthy and vibrant.

5.3.3 Some respondents, for instance, expressed the desire to see any use class which would bring footfall to town centres classified as an A1 use, e.g. estate agents, which fall within A2 presently. This extended for some to the creation of an amalgamated class for A1 and A2, though the implications of this were of concern in relation to the vitality and viability of core retail areas and the loss of space management of such locations. Such a change would have significant ramifications for use management, including through planning policy tools. It is suggested on balance that this would represent excessive deregulation; instead, a more targeted response is suggested based upon specific uses identified through this research as meriting change in relation to the A1 and A2 groupings.

5.3.4 There was a general feeling that the classification of some retail uses was somewhat arbitrary, specifically, participants could see no reason why a use like a beauty salon would fall within the A2 use class or be considered *Sui Generis* while a hairdresser would sit within A1. This would appear to be an area where reclassification is appropriate; beauty salons (including nail parlours) are increasingly common in town centres and with active frontages do not appear significantly different in character to hairdressers, which are already A1. It is further suggested that such uses are part of modern town centre usage; beauty uses siting alongside retail and café culture. With a requirement to be formed with an active window display, it is recommended that beauty salons be reclassified.

5.3.5 Charity shops were identified by a small number of participants as being a use falling within A1 that was detrimental to the health of the high street. However, it is important to note that planning sees use *type* only, not the end user. A 'charity shop' is still a retail use, and a valid component within a town centre location as much as any other; it would be inappropriate to discriminate based upon the end user within a use type. It is also the case that the market will influence end users and their location within a centre.

5.3.6 36% of respondents felt that the A2 class was fit for purpose, although only 16% stated that they felt change was required. In the workshops and survey responses, reasons were expanded on to a limited extent with some participants expressing that the category was too broad on one hand and on the other, that the uses covered within the category should be revised to create coherence.

5.3.7 Bookmakers and pay-day loan companies (providers of short term credit at high rates of interest) were particular uses falling within the A2 class that were singled out by some respondents as not being desirable A2 uses which should be reclassified. The basis of this was a mix of micro and macro matters; a moral

question does exist in association with these uses, and research also points to significant concerns linked to public health and inequalities in health, other issues concerning the nature of the unit frontage, hours of operation and noise/disturbance were also raised at the unit level.

5.3.8 It is recognised that other uses within A2, for example banks, may have some similar characteristics at the unit level such as non-display frontages; it is the macro health considerations that merit a review of these use types. Particularly important is the special manifestations and concentrations of these uses; these uses were also highlighted as being particularly problematic when concentrated together, a view supported by wider evidence concerning health (Ben Cave Associates, 2014). Although it is recognised as a complex issue, the research by Ben Cave Associates states that:

“The scientific literature is clear that gambling may be harmful for some but not for everyone and that the credit which is provided by payday loan companies is useful for some but may have harmful consequences for others. The scientific literature indicates that adverse effects manifest themselves at the more extreme end of the spectrum in the forms of problem gambling and the accumulation of debt which is unsecured and unmanageable. This is important for public health which seeks to reduce inequalities in health.”
(ibid, pg.1)

5.3.8 The impact of such uses is therefore not universal, but there is evidence that in some instances the impact on public health are very real as a result of these two uses types; planning operates to balance the public and private interests and in association with social justice meaning planning and health are intrinsically linked. Whilst moral judgements are a part of the debate for some, the clear issue here that merits consideration is the management of use types which have an adverse impact upon public health and health inequalities in some instances. While not *the* driver for planning, health is *a* driver, and one that justifies consideration where it manifests itself with spatial planning implications.

5.3.9 In the context of the above a key question is whether planning is the appropriate tool to pursue change. In the case of pay-day loan companies a key consideration is the Financial Conduct Authority (FCA); whilst this is an important body from the perspective of regulation of the *sector*, their aims are focused upon the ensuring financial industry is run with integrity and fairness, rather than considering physical access to the legitimate services on offer through the spatial manifestation of the sector. Given the significance of over-concentrations of the unit types in relation to their impact, this is a key consideration.

5.3.10 Turning to Bookmakers, these require licenses and are covered by the Licensing Act 2003. This legislation is significant in the context of this research because licenses do consider unit locations; licenses are issued/reviewed on the basis of the following prescribed objectives:

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm

Although this is a significant range, and includes matters associated with health and wellbeing, it is of note that public health is not an objective, indeed the '*Evaluation of the Impact of the Licensing Act 2003*' specifically states:

"Public health is not a licensing objective under the 2003 Act."
(DCMS, 2008, pg.29)

5.3.11 In the case of both pay-day loans and Bookmakers other legislation and powers do exist that play an important part in managing the impact of these uses. They are not complete however from the perspective of impact management and a holistic response is suggested as desirable in this instance. It is through partnership working that best effect can be realised and given the limitations of both the FCA and the Licensing Act 2003 it is suggested that an opportunity exists for the planning system to play a more meaningful and proactive role in the management of these use types given their recognised impacts in certain circumstances and concentrations.

5.3.12 These two distinct use types are assessed together in this piece of research as they are elsewhere in other extant research; while the nature of their challenge may vary, for both it is a matter of public health associated with debt and/or problem gambling. This in turn differentiates these uses from, for example, pawnbrokers in the various manifestations that these are now realised in; whilst these unit types may have a certain stigma associated with them, they do not appear to have the same public health concerns associated with them and they did not present themselves in the primary research in the same manner, extent, nor to the same degree of concern.

5.3.13 Although pawnbrokers are associated with debt, they do operate in a different way; not only are some transactions based upon sales only, rather than loans, but also where loans are the basis of the transaction '*you can expect to pay a pawnbroker a rate of interest that is more than a high street bank loan, but often a lot less than a payday lender*' (The Money Advice Service, 2015). It is further the case that the implications of a failure to repay a debt is either a renegotiation or, significantly, the loss of the item to clear the debt. The implications of a failure to repay is therefore not necessarily a further financial penalty, rather an exit opportunity exists. It is therefore considered appropriate to consider Bookmakers and pay-day loan companies together, and distinct to other nominally similar uses even where these do have some similar implications of concern in some cases.

5.3.14 The management of pay-day loan uses and Bookmakers is an interesting area of discussion: on the one hand the very origins of planning are grounded in health and a need to respond to the challenges resulting from the industrial revolution,

such as pollution, poor housing, and disease, but it is equally the case that planning is not necessarily the most effective tool to manage any given situation. Does planning represent an effective tool for the management of such uses to address concerns associated with any overconcentration? It is also the case that, as discussed earlier in this report, planning policy represents an important and powerful tool in the spatial management of place; given this, the specific role of the UCO and any associated PD rights is an important consideration.

5.3.15 A further key question here is whether an application for a change of use to a betting shop or payday loan would be refused, and if so on what grounds? There would potentially be limited situations where planning policy exists currently and evidence available that could support the refusal of a single unit.

5.3.16 Although planning policy can be an effective spatial management tool, the current UCO arrangements arguably have enabled over-concentrations of these use types to occur due to the lack of differentiation from other A2 uses. It is suggested that to provide a robust management tool, revisions to the UCO are appropriate.

5.3.17 The creation of a new use class for payday loan and betting shop uses would create the *potential* for such uses to be controlled in circumstances where planning policy and evidence are in play to substantiate control. Accepting this, it is then appropriate to consider a proportionate response: class A2 uses currently have PD allowances to move to A1. Given this, it would seem unreasonable to not provide any new use class associated with payday loans and Bookmakers with the PD allowances to support a move to A2 and A1.

5.3.18 In relation to a move from other uses to payday loan and betting shop uses however, it is suggested that this should not be provided. It is recognised that the use of Article 4 Directions could enable a more targeted and proportionate model in some respects if PD allowances were provided, but retail and commercial areas are dynamic spaces and can be geographically complex and/or fragmented. It is also potentially challenging to first identify and then respond to the emergence of over-concentrations of such units through the application of such a tool. The value of Article 4 Directions is recognised (see 5.5), but in this instance it is considered that it would be a difficult tool to implement with the desired effect. Whilst raising questions about proportionality, a restrictive model of PD will make spatial management a matter led by policy on an area and unit basis; local authorities can generate their own bespoke arrangements that are fit for the dynamics their own specific areas. A less proportionate response is considered justified on this basis.

5.3.19 The A3 use class fared least well amongst the retail classes in terms of being fit for purpose with only 17% of survey respondents agreeing that this was the case. Over half (56%) felt that the class needed to be changed in some way. Again, the workshops and interviews gave substance to these figures with a widespread view that the class was too broad, encompassing uses with greatly different impacts. This was felt to raise amenity issues, for instance, around noise and refuse. It was also felt that bars could change the character of public spaces, making them unpleasant

places to be raising public disorder and social issues. Some respondents raised the point that the broad nature of the class also undermined not only local planning policy but also broader visions and aspirations for the regeneration of areas involving restaurant uses, as it can be difficult to ensure that a restaurant is not subsequently changed to a take-away under the existing regime. As such, it was felt by many that separation of some of the uses which fall within A3 would be a beneficial change. This was not a view shared by all respondents however, with some stating that uses falling within the A3 could be controlled through means other than reforming the use class.

5.3.20 The two areas of greatest concern appeared to be associated with takeaways and Public Houses.

5.3.21 The discussion surrounding Public Houses has a number of elements to it. In the first instance it is of note that clarification and definition are important to the UCO model; differentiating between uses is important but in relation to the A3 uses it is sometimes difficult to differentiate between a Public House, a restaurant, a bar, and a licensed café. Given this, disaggregating the A3 use class into separate grouping carries with it the challenge of how uses are then subsequently categorised. This research also points to a lack of universal overt concern concerning the loss of Public Houses to other uses; it appears to be an issue of greatest concern amongst rural and some suburban contexts. The response to the issue should therefore be proportionate given this context.

5.3.22 In relation to takeaways, it is the public health factor that is perhaps most of note, but alongside this sits significant concern for some around amenity concerns linked to the impact upon vitality and viability of the centres and the over-concentration of this use type associated with, noise, refuse and emissions. In relationship to public houses, the most significant concern appears to be focused around the loss of such uses, not only to others within the use class, but also through the PD rights associated with the current Class 3 use which allows movement to class A1 or A2. This is discussed further within the PD rights sections of this section below.

5.3.23 Takeaways were singled out by many as being detrimental to the health of high streets and town centres with limited opening hours catering to a traditional night-time drinking economy, when compared with restaurants that would have a day-long presence and appeal to a wider market, driving footfall and vibrancy. The creation of 'dead' frontages during the daytime is an issue in this regards. It was also raised that takeaways could lead to vacant upper floors due to the noise, odour and nuisance issues they could cause for potential residents. Wider concerns were expressed in relation to matters such as vehicle movements and litter which were considered by a number of participants in this research to be a more significant problem compared to other A3 uses.

5.3.24 Health is a further important consideration: there is now significant evidence to suggest that the availability and concentration of fast food outlets influence food choice decisions and then health. Research undertaken by the Centre for Diet and

Activity Research, a UK Clinical Research Collaboration Public Health Research Centre of Excellence found that there is a positive correlation between exposure to fast food outlets and consumption, body weight and obesity (Burgoine et al. 2014).

5.3.25 Although other legislation can control matters such as noise and fumes, these are relatively narrow controls and they have limited impact upon spatial distribution and concentration of uses. It is suggested that the planning system is a valid tool to manage the distribution of fast food takeaways, and furthermore that the evidence now exists to support such action, particular in relation to the health implications. The creation of a new use class for fast food takeaways would offer the potential for such uses to be controlled. This is a recommendation of this research.

Permitted Development changes

5.3.26 In terms of the existing permitted development rights for A1, some respondents felt that the ability to create a single flat above a ground floor unit was useful, whilst others felt this right should be removed. Others felt that the existing PD rights was restrictive and should be liberalised in order to promote regeneration, vibrancy and vitality, particularly in town centres suffering from vacancy.

5.3.27 One area of concern that was raised concerns car showrooms. It was noted that the existing PD rights that allows for car showrooms to be changed to A1 units could detrimental as this may lead to 'new' retail uses being located in unsustainable and inappropriate locations, e.g. small supermarkets. A car showroom entering the A1 retail market could disrupt and undermine the supply and spatial management of retail space.

5.3.28 It is also recognised that an alternative retail use could have different impact implications to a car showroom use; in some instances a more intensive use, such as a small super market perhaps, could lead to additional vehicle movements, more extensive delivery movements, noise and disturbance. Such variation of impact will vary significantly between retail use types of course, but the potential for a significant variation does exist in this instance given the nature and size of these units and as such it is a valid cause for consideration.

5.3.29 Given this, it is considered appropriate that the PD rights afforded to car showrooms in Wales should be removed, allowing such units to be appropriately managed when they become available on the market.

5.3.30 Some participants involved in this research advocated a more liberal regime, similar perhaps to England, which would allow A1 uses to move to A2 and A3 uses as well as change to C3 and D2 (subject to prior approval). The argument for this is that it may stimulate regeneration, entrepreneurship and city centre living. Whilst there is potential opportunity in creating such flexibility, the cost is the effective loss of spatial management ability for local authorities, undermining town centre strategies and compromising policy approaches. Support for a change such as this was quite limited in this research and it is suggested that such flexibility and freedom be

pursued only where appropriate; a Local Development Order could create such a context within a geographically defined area, supporting a more flexible approach where this is appropriate and desirable.

5.3.31 In relation to the A2 use class, few comments were received beyond those associated with Bookmakers and payday loans, which is discussed above.

5.3.32 Many comments were received in respect of the existing PD rights for A3 uses. Of those that were positive about the existing regime, it was felt that change to A2 and A1 were to be welcomed as this allowing for diversity and dynamism in town centres. Most comments, however, focused on the unintended consequences of the existing PD rights. Public Houses were raised by several participants as being at threat of change of uses made through the existing PD rights and for that reason were seen as not being fully valued for the community and social role they can play. The detrimental impact on rural communities of the loss of public houses to other uses, where fewer options may be available for common meeting places, were also highlighted.

5.3.33 One response option would be to create a use class or identify them as Sui Generis. This response is challenged by the two factors discussed above, namely the definition of the use in a manner that is specific, measurable and realistic, and secondly the universal introduction of a restriction in a scenario where the issue does not necessarily appear to be universal. In the case of the later point, an argument could be made for the creation of a new class with PD rights to A3/2/1 with the position that Article 4 Directions would allow for protection. Such a position is considered flawed however given both the isolated and small site scale and, as importantly, such an approach would require local authorities to identify premises meriting protection in advance; not only would this be very challenging, it would also point towards the need for an Assets of Community Value (ACV) process to support the identification of 'valued' premises. In such a scenario the ACV model allows for direct intervention into PD rights; an arrangement clearly preferable to the potentially extensive use of Article 4 Directions.

5.3.34 An alternative response would be to consider the use of an Assets of Community Value model. In England, Public Houses are within a distinct use class but they have associated with them the Assets of Community Value legislation; the linkage here is that where a Public House is identified as an Asset of Community Value (ACV) it loses its PD rights, specifically the right to move to an A3/2/1 use class. This has the significant advantage of being a proportionate response; where a community values a Public House as an asset it gains protection, including through the loss of PD rights. The challenge however is determining that the establishment in question is a Public House in the first place. The ASV system is not in place in Wales and it is beyond the scope of this research to consider the introduction of such legislation. However, from the particular perspective of the Public House discussion, such a model has clear advantages.

5.3.35 The following recommendation options are suggested pertaining to the Public House issue:

- I. If no ACV system is in place, the Public Houses are located within their own use class with no PD rights. This will afford protection to properties, albeit in a manner that is potentially over-regulating when considered against the extent of the issue spatially.
- II. If ACV system is introduced in Wales, a new use class is created called 'Assets of Community Value'. This would be linked to the boundaries of the ACV legislation, rather than a distinct UCO group. This would be a use class without an associated PD rights. This would not only allow for Public Houses to be identified and protected, but potentially also other assets considered to be significant and identified in the ACV legislation, such as restaurants or village shops.
- III. If ACV system is introduced in Wales but option 2 is not desired, a new use class be created for Public Houses and linked to the ACV legislation as found in England.

5.3.36 Of the suggested options, the second is considered to be the most attractive; this will allow for a more innovative ACV model that would potentially protect uses beyond just Public Houses.

5.4 Class B

Recommendations

1. The Welsh Government supports the creation of further guidance concerning clarification matters
2. B Class renamed as follows:
 - B1 Business
 - B2 General Industry
 - B3 Storage or Distribution

5.4.1 The B Use Class covers uses which play an important role in the economic strength of the country. Many of the operations carried out under this class can also have significant impacts upon the amenity of the residents of an area as well as the built and natural environment. Consequently, it is a use class which has very little Permitted Development movement between uses in Wales.

Clarification

5.4.2 Use Class B1 was considered by 24% of respondents to the survey to be not fit for purpose. The workshops expanded on this concern, which centred primarily on 2 main issues: the division of offices at A2 and B1 and a lack of clarity over the definition light industrial uses and how these are differentiated from general industrial uses at class B2.

5.4.3 Class B1 iii (light industrial) was the subject of much debate within the workshops with particular concern expressed over scope and how to define this use given the seemingly similar uses that are permissible under B2: General Industrial “Industrial processes not falling within Class B1”. The principal issue appears to be - when does a light industrial use become a general industrial use? The overwhelming consensus was that the dividing line between light industrial and general industrial uses is poorly defined and that this creates difficulty in the minds of developers, local planning authorities and all other users and interested parties in the planning system.

5.4.4 Clearly, the intention of separate use classes for light industrial and general industrial uses relates to their potential to create different and potentially significant environmental impacts. However, the Use Classes Order fails to frame each use with appropriate robustness. What little guidance has been issued also fails to provide a sufficient definition, instead relying upon a test of fact and degree to be employed. Essentially, a B1 use must be capable of being undertaken in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. While this position points to the issues to be considered, the level of harm that may be caused by any number of different operations will vary according to location. Such an approach fails to provide confidence for either developer or concerned resident and is likely to result in LPA resources being required to resolve any issues. Considered within a development

management approach to planning this is less than positive or pro-active. Notwithstanding this, Land Use Gazetteers and existing legislation and guidance can provide clear guidance and it is suggested that moving forward efforts are focused upon enabling *consistency* in interpretation and understanding across Wales.

5.4.5 The B1 use class is in fact subdivided between Class ii office use and Class iii, light industrial uses. That there is no class i compounds the current numbering anomaly within the B Use Class, wherein the 3 existing classes are numbered B1, B2 and B8. While this may appear a harmless anachronism from a time when the B Use Class was much larger, it does nothing to de-mystify the Use Classes Order or the planning system in general. Consequently, any future changes to the B Use Class must seriously consider introducing a more sensible and logical numbering sequence. It is recommended that as a result of this review the 'B' class be renumbered B1 / 2 / 3.

Classification changes

5.4.6 B1 Class ii contains offices not falling within class A2. The distinguishing feature between B1 Class ii offices and A2 is that under the latter services are provided principally to visiting members of the public. A2 offices will often be associated with an 'active' frontage that can include a shop window, for example Estate Agents. They may also be relatively small scale professional premises such as those housing solicitor firms or financial advisors offices. B1 Class ii offices are typically much larger premises where the service provided is not principally for visiting members. These offices include headquarter type premises and purpose built office buildings for the administrative support of a company.

5.4.7 A suggestion that arose from the research was for B2 Class ii office use to be amalgamated with A2. The driver behind this proposal appears to be that both offer 'office use'. However, the key differential here is one of scale and location. A2 premises are likely to be considerably smaller and traditionally have had a presence on both the high street and town centres within usage behaviours that are in sync with such a location. This issue of scale and geography is acknowledged by the PD right to convert from A2 to A1 (retail) where a ground floor display window is present. A2 units will generally have more dynamic usage; even where no shop front is present a bank, for example, will have regular use of the entrance by members of the public and will 'feel' like they are part of a vibrant town centre location. Having an 'active' frontage, both in usage and form, is clearly desirable in town centre type locations: the dynamics of the area of informed by the sense of 'life' present, a sense that is impacted upon by the nature of the ground floor frontages. The introduction of B2 Class ii uses into a town centre context, where the service provided is not principally for visiting public and there is not a dynamic usage is likely to result in 'dead spaces' and fragmentation of the retail offer, compromising and undermining the vitality of the area.

5.4.8 A further proposal from this research was the disaggregation of B1 into two separate classes; one for offices, the other for light industry, high tech industry etc.

The justification for this was based upon the principles of sustainable development; office uses are, for example, often associated with higher vehicle movements due to a higher employer ratio against floor area. This is a valid point, but it is also the case that local authority approaches to parking standards typically consider the B1 use class as a single group and this research did not generally identify this matter as one of concern. The environmental implications of the uses contained within class B1 will vary, but this research did not identify a strong argument for disaggregation, or indeed any clear evidence of a significant issue pertaining to this matter. Related to this, it was also highlighted that the scope of B1 uses often exist within a single premise and disaggregation could be challenging. It was suggested that the B1 uses, whilst potentially generating different environmental impacts, are generally compatible and tend to sit comfortably next to each other.

5.4.9 A proposal arising from the workshops was for a general industrial class incorporating both light and general industrial uses, to be created. It is suggested that such a proposal may result in inappropriate development given the different amenity and environmental implications associated with these two use classes. While it is acknowledged that spatial concerns could be remedied through the use of Article 4 Directions, the Use Classes Order itself needs to be robust enough to resolve these factors if it is to be a worthwhile development tool.

5.4.10 A further workshop proposal was for the inclusion of some waste processes (currently all waste uses are Sui Generis) within B2 or B1 Class iii (Light Industrial). This suggestion was made on the basis that new and in-development waste processes are resulting in much less significant impacts than traditional waste uses. Consequently, a re-classification of some waste uses as an industrial process may be appropriate. Further discussion of this matter can be found in section 5.8 of this chapter. It is suggested that there may be some scope for this proposal, but it could bring waste uses closer to sensitive areas such as residential neighbourhoods and as such it would need detailed consideration. It is suggested that the nature of these activities demand a specific piece of further research before further action is taken.

5.4.11 Turning to the B8 use class, this includes wholesale warehouses, distribution centres and repositories. No fundamental issues were raised concerning this use classification, though there was some discussion concerning the emergence of the 'click and collect' phenomenon, which arguably represents a micro form of B8 usage. Discussion arose at the workshops around the actual classification of 'click and collect' services. This is a new development within the retail sector characterised by some supermarkets and large retailers providing areas, sometimes within their car park, for customers to collect shopping that they have previously ordered on-line. There can be little doubt that 'click and collect' facilities provided within the premises of a supermarket are ancillary to that business and so do not constitute a separate use. However, it was reported to the research team that some online businesses are now providing self-contained and unmanned units, akin to lockers, often within the high street wherefrom customers may collect on-line orders. Whether such a development will result in harm to the traditional high street it is too early to tell, certainly there was a pragmatic attitude to this new emergence in the

workshops and interviews undertaken. Pertinently, what this example does is to illustrate how seemingly simple changes or new ideas can impact upon the Use Classes Order. During the workshops much debate was had as to how stand-alone 'click and collect' units could be classified: is it a distribution or retail use or does it require its own separate use class? At this point there does not seem to be a distinct issue associated with this new concept such that a particular response is demanded, however this may be something that, within the wider implications new technology within retail, storage and distribution, will merit a response in the future.

Permitted Development rights

5.4.12 The PD right that exists for the B1 class is to B8 (Wholesale Warehouse, Distribution Centres and Repositories) but only up to 500 square metres. This limitation acknowledges the environmental impacts that can result from the uses in B8, particularly in relation to [large] vehicle movements. Consequently by limiting the size of premises which can be converted to B8 under PD the UCO has within it an integrated measure of control; that is anything larger than 500 square metres, a relatively small premises, requires the rigour of assessment under a full planning application.

5.4.13 The PD rights for B8 to B1 is similarly up to 500 square metres only. This restricts the loss of large premises to other use types, which is essential in order to maintain a strategic handle on the supply and control of warehousing, distribution and repositories. Again, the wider use impacts and implications are valid here also. The PD rights that exist for B2 uses are for a change of use to B1 and B8 (up to 500 square metres).

5.4.14 The 'allowance' for changes of use between classes as presented above is 500sq m, this was increased from 235sq m in 2014 in Wales; there was discussion within the workshops and interviews about the current level, and the desirability of introducing a higher rate in Wales. Such a change would be a balance between providing additional freedoms and flexibility and additional issues associated with undesirable environmental and amenity impacts. The strongest view in relation to this matter was that the potential risks outweighed any potential opportunities created. This research identified no clear desire or need for any further increase in this already increased allowance.

5.4.15 One final area which was presented for discussion was the potential introduction of PD rights for change of use from B1 to C3, as introduced in England:

Tensions in England

The introduction of permitted development rights for the conversion of office to residential use is a good example of a change that has split opinion and, in some

cases, led to questions about the extent to which the planning system is actually being fundamentally compromised and undermined by the revisions being introduced.

Case study: Permitted development rights for the conversion of office to residential

As a result of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 it became PD, subject to Prior Approval, to convert office buildings to residential use. This was time limited initially, but in October 2015 made permanent and indeed expanded to include 'Light Industrial' from the B1 use class, alongside offices. In respect of the Prior Approval model, it remains necessary to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to the acceptability of the proposal upon the following limited criteria:

- (a) transport and highways impacts
- (b) contamination risks on the site
- (c) flooding risks on the site.

Local Planning Authorities were given the opportunity to exempt themselves from the amendment where concerns existed that such rights would lead to either the loss of a nationally significant area of economic activity or substantial adverse economic consequences at the local authority level not offset by the positive benefits the new right would bring. It was also a requirement that the office building was vacant prior to the point of the new amendment being introduced to ensure that buildings with a viable use were not inappropriately lost. The amendment also does not apply to protected heritage assets (Listed Buildings and Scheduled Monuments). In practice, only a handful of authorities – in London and the South East have been granted exemption.

A report from planning consultancy Nathaniel Lichfield and Partners (NLP) in May 2015 noted that the change had led to some positive effects in some areas; some poor quality office space has been removed and replaced with much needed residential accommodation for example, and removing office space from the market has driven up rental values to the extent that new office development that was otherwise stalled where becoming viable again (NLP, 2015). These changes can therefore be seen as positive in some respects; there is surplus office space supply in some areas that has been put to a new use, a surplus of lower grade office space also does exist in some areas which merits a viable reuse, and there is a national housing shortage.

The issues associated with this particular change are arguably significant however:

1. In some cases new arrangements appear to be placing undesirable pressure on the office market. The NLP report highlights problems in areas with an office

space shortage with the fastest decline in the availability of office space since 1998 having been witnessed with the potential to lead to a supply crunch and unsustainable rising rental levels (NLP, 2015).

2. Conversions of office buildings to residential use that utilise the Permitted Development arrangements are only required to provide for planning gain through the Community Infrastructure Levy. Whereas a conversion pursued through the traditional planning application process could be required to make financial contributions towards onsite needs and provide affordable housing through 'Section 106 Agreements', this is not the case through Permitted Development rights. The absence of 'Section 106' based planning gain means important resources are not provided to the local planning authority to support physical and social infrastructure provisions on site., and affordable housing delivery is compromised.
3. The quality of the residential accommodation provided is not subject to scrutiny in the way it would be through express planning permission. Essentially it is only through Building Regulations that the environment is moderated. Hopkirk (2015) notes that Architects have expressed concern over the changes introduced, noting that *"any concern for quality appeared to have been ditched in favour of speeding up development"*. Hopkirk goes on to quote Park, head of housing research at Levitt Bernstein who stated that the office to residential allowances had resulted in *"terrible"* homes, including flats of 14sq m.
4. Local Authorities effectively lose the ability to spatial manage their authority areas with office and residential supply becoming dynamic and outside of their management systems in some respects.

It is suggested that the result of this is new model is that not only is the change of use less open to scrutiny in the first instance from the perspective of the suitability of the location for the introduction of new residential accommodation, it also lacks some of the planning gain resources to mitigate resulting impacts and provide affordable housing. This issue becomes magnified when development is theoretically possible in areas where social and physical infrastructure is inadequate to accommodate further residential development: a scenario entirely possible through the current arrangements (Sheppard and Askew 2015).

5.4.16 Some participants in this research were of the strong view that the positive implications of the B1 to C3 allowances were significant for housing delivery and supporting the reinvigoration of the office sector. The majority view identified by this research however was that the B1 to C3 arrangements in England were not desirable for introduction into Wales for the reasons highlighted above.

5.4.17 Ultimately this research did not identify any advantageous PD changes in association with the B Class.

5.5 Class C

Recommendations

1. The Welsh Government supports the creation of further guidance concerning clarification matters
2. Introduction of Class C4 Houses in Multiple Occupation with associated Permitted Development rights from and to C3 residential.

Clarification

5.5.1 The differentiation of C2 and C3 was raised as a matter which could cause clarification challenges for local authorities. This was raised in the context of definition in part, with the associated implications upon planning gain contributions determined by said differentiation. It is also the case that the two classes do cover a somewhat amorphous form of residential use types; certainly there is a spectrum from care/nursing to independent/communal living and at some point a line must be drawn between these forms of residential accommodation.

Classification changes

5.5.2 Related to the above clarification matter, the idea of an 'interim' category of residential use type is a theoretical option here; a challenge though is still in the definitions associated with such divisions, but more importantly is the question of the value of such a change. The increasingly complex nature of residential accommodation types for the elderly is of note but there was not a strong voice for change, nor was there a suggestion of a significant issue in association with this differentiation challenge beyond the question of planning gain and affordable housing provisions/contributions. This particular question is not one that would be resolved through a new use class for 'interim' forms of housing for the elderly; the fundamental issue here is one of clarification of use type. It would appear that there is some scope for further clarification of the boundaries between C2 and C3, but no change is proposed to the groupings.

5.5.3 Other questions exist in association with the C Class uses, but these were limited in the traction they achieved in this research. Long term occupation of C1 use does properties occur and exploration of the differentiation of such a form of occupation is an option, but no evidence of note was identified to suggest a need for this nor was any specific adverse impact identified to drive such a change. It is likely that efforts to re-categorise would create issues of definition too.

5.5.4 Combining C1 and C2 is also a possible option theoretically and this was presented in the research, but the evidence did not identify justification for this or any gains that would be achieved. Indeed the different impact implications of the use types found in these classes is of note and such a combination would likely cause spatial and amenity impact issues as result of unmanageable changes.

5.5.5 Broadly, Classes C1 and C2 (including C2a) were not highlighted in this research as being problematic or limiting in their current form, nor were any significant options for change presented beyond the discussion presented above. Based upon the evidence of this research these classes appear to be fundamentally sound.

5.5.6 Concerning C3, a particular issue identified by some was the impact of second homes and holiday homes. Such uses were not considered to be problematic in all instances, indeed their value was highlighted by some, and nor was there a strong or consistent call for a planning response from the primary research undertaken, but it was a notable issue for some in some circumstances. The implications of an over-concentration of such uses is of note, with adverse housing affordability and availability impacts of particular concern in some instances. It was the case, however, that the majority view of the participants of this research appeared to be that the UCO element of the planning system was potentially not the appropriate mechanism to tackle this issue, or at the very least not the sole response required, and that difficulties would exist with any UCO response; the challenge of definition was of particular note here, as was the complexity of the issue and varying degrees to which impacts (positive and negative) are realised in different locations.

5.5.7 From the perspective of definition, it is sometimes difficult to identify, based upon usage, when a property could reasonably and with certainty be identified absolutely as either in holiday home or second home use. One consideration here is that second homes and holiday homes are often one and the same, or may be interchangeable to different degrees each year. What actually constitutes a second home or holiday home is a further matter for debate. The sliding scale from primary residence to 'pure' holiday home or second home is a difficult one to give clarity or absolutes to; it is of note perhaps that a regular concern expressed throughout this review was that of the challenges caused by challenging definition and clarity of uses. This would be a very real issue for any UCO based response. Linked to this is the ability to effectively identify, and then manage, such property types through the planning system; this will be significantly more challenging than other forms of accommodation in some cases. Elements of this debate also linked into discourses surrounding affordable homes availability, affordability and availability of homes more generally, and policy concerning the Welsh language.

5.5.8 Options for a response to the challenge where it was considered to exist vary significantly and range from financial (taxation) to legal (occupation parameters). Planning is a potential mechanism to support a state response to this matter, but a change to the UCO generated only limited support due to the aforementioned issues

and the potential challenges with the creation of a system that was difficult to both implement, maintain and manage.

5.5.9 It is suggested that from the perspective of the wider housing debate in Wales there is a present discourse here with discernible implications in some circumstances. Although the research team identified some potential benefits and opportunities associated with a UCO change for second homes and/or holiday homes, given the challenges associated with this and the limited drive for UCO led change from the participants of this research it is suggested that UCO change should not be pursued at this time, nor in isolation of wider change if it is seen as having potential in the future.

5.5.10 The research undertaken stimulated a significant response concerning one overriding debate in the context of Class C; the management of Houses in Multiple Occupation (HMO). In parallel with this research, a further consultation exercise has been carried out concerning HMOs. This is the consultation document associated with this work: <http://gov.wales/docs/desh/consultation/150803-further-secondary-legislation-for-development-management-en.pdf>. Notwithstanding this, the discourse concerning HMOs had a very high profile within this research and the decision was taken to maintain an independent review of this matter within this research project, with the outcomes based upon the research associated with this work only. The HMO discussion in this work is included for completeness, though it is recognised that the Welsh Government intentions may not correspond with the analysis and recommendations of this work.

5.5.11 An HMO is a distinct form of residential accommodation where 3 or more unrelated tenants occupy a single property and share, for example, a kitchen, bathroom; or toilets. Currently in Wales, HMOs with 6 or fewer persons are C3 residential; more than 6 persons is Sui Generis. The key debate therefore concerns whether there is merit and justification in creating a new form of use class arrangement for HMOs generally, or for small HMOs particularly (3 to 6 persons). C3 was identified as the third most significant use class (29%) from the perspective of not being fit for purpose, with the HMO debate being the core driver for this figure.

5.5.12 The discourse associated with HMOs is complex and a diverse range of matters are involved in the debate. It is of note that no single voice or opinion was identified by this research and this study did not universally identify HMOs as an issue or matter demanding a response from planning instruments.

5.5.13 A key question which was debated concerned the extent to which planning had responsibility for managing HMOs; there was suggestion that HMOs can cause amenity impacts in some situations, but the universal nature of these were questioned and it was suggested that other legislative controls exist to manage the impact of this form of housing. The positive value of HMOs within the housing sector is of note too.

5.5.14 On balance a majority view was that an over-concentration of HMOs in any given area can prove challenging given the implications upon infrastructure, character and amenities of an area, and the cumulative impacts of matters such as waste receptacle numbers and storage. There was also recognition that other regulatory controls have limited influence on, particularly, spatial distribution and are not able to provide holistic management of impact in the way that the planning system can support.

5.5.15 Given the pre-eminence of the HMO debate within the Class C debate and this research more generally, and the general recognition that in instances of over-concentration adverse impacts can occur, it is concluded that there is an issue here that merits a response by the Welsh Government.

5.5.16 It is suggested that larger HMOs (more than 6 persons), which have the potential to have a greater environmental and amenity, should remain Sui Generis without associated PD rights to ensure their effective management.

5.5.17 For smaller HMOs (3 to 6 persons), two options are suggested to exist as a response to the challenges that exist in some areas:

- I. The creation of a new Use Class
- II. The depositing of HMOs into Sui Generis.

5.5.18 Of these options it is suggested that the creation of a new use class (C4) is desirable for small HMOs (3 to 6 persons). This is a more appropriate arrangement given the desirability of providing this use type with PD rights; it is considered that the Sui Generis model in Wales should retain its integrity and not become confused through the introduction of further PD rights associated with uses identified as Sui Generis.

Permitted Development rights

5.5.19 Concerning PD rights, the only debate of note identified by this research concerned the options associated with the HMO use type, and options for the provision of PD rights in association within any intention to create a distinct use type, if indeed any PD rights should be provided.

5.5.20 The importance of a proportionate response is key here; HMOs do not appear to be an issue universally and as such an over-reaction and over-regulation should be avoided. It is suggested that this supports the creation of a new class as noted above given this offers the best opportunities for management; this will allow for the distinct identification of small HMOs (3 to 6 persons) and support the provision of associated Permitted Development rights for changes of use between residential (C3) and HMO, and back again. In turn, Article 4 directions may then be used in the instances where challenges do exist to remove the PD allowance and enable a more restrictive context wherein a local authority has greater spatial

planning management abilities. The spatial manifestation of HMOs would appear to support Article 4 Directions as a viable and effective management tool. This is considered to be a reasonable and proportionate response to this matter.

5.6 Class D

Recommendations

1. The Welsh Government to monitor casino developments with a view to the identification of casinos as a Sui Generis use *if* the need arises based upon identifiable impact issues

Clarification

5.6.1 No issues of clarification were raised through this research.

Classification changes

5.6.2 Discussion concerning the D class was limited primarily to the inclusion of casinos within the D2 class and whether this was appropriate. Amusement arcades/centres are already Sui Generis, whereas casinos sit in the D2 use class. The main debate therefore concerned whether casinos should be similarly classified as Sui Generis.

5.6.3 There was some considerable discussion concerning the casino debate which, as with Bookmakers and payday lending uses, was partly focused upon the reality of impacts and the extent to which any change would be motivated by moral determinants, rather than amenity impacts/nuisance. As with the A2 linked debate, views were split on this matter to a great extent.

5.6.4 This research is suggesting change be undertaken pursuant to the discourse surrounding Bookmakers and payday lenders, however in this case two elements were present; firstly evidence of an issue in certain circumstances, and secondly evidence of there being an issue actually present in Wales. It is suggested that the case surrounding casinos is somewhat different. To consider this further, a reflection on the situation in England merits exploration.

Casinos in England: Case Study

There is evidence that casinos can, in some situations, cause challenges. In England casino uses have been reclassified as Sui Generis. This followed the Gambling Act 2005, which was introduced in England and Wales. The consultation paper that led to this change noted presents the following case for change:

“Our review indicated that the current land use impacts of the casino industry are minimal. Casinos are all located in tightly defined urban areas, all require

membership, a twenty four hour 'cooling off' period after joining, and are generally relatively small and well run. There are no anti-social problems associated with alcohol in casinos. As a result, there are few examples of adverse land use impacts arising from casinos. Equally, there are few examples of positive land use benefits arising from casinos.

In the current regulatory system, and given there are few signs of either positive or negative land use impacts, the setting of casinos with the D2 use is thought appropriate. The impact of casinos under the new regulatory environment envisaged by the Gambling Act is however considered to be potentially very different with the new casinos becoming a unique type of development.

For example, our review into the likely nature of the new casinos highlighted a number of additional land use impacts. To begin with, they are likely to be very much larger than has been permitted before. This growth in scale, and the greater number of visitors, is seen as increasing the likelihood of land-use impacts. In addition, the Gambling Act enables casinos to operate as part of much larger, mixed use, leisure destination – particularly in the case of regional casinos. In such a case, the full impact of a casino will not just arise from the casino itself, but from a variety of other ancillary uses – such as restaurant, leisure complex, entertainment venue, and/or hotel.

Our review has highlighted the potential for additional land use impact arising from casino development under the terms of the Gambling Act. This is because individually the new regional casinos will be much larger than has been permitted before. Associated with the question of scale is how casinos will fit with other land uses.

Our review has highlighted concern over the proliferation of casinos. Given the current constraints within the Gambling Act, this concern has been addressed in the short term. However, if the Government moves to further deregulation once the impact of the first casinos has been identified the potential for proliferation would rear up again.

Our review identified a belief that the new casino legislation would result in the proliferation of casinos and limited control over the gambling offer. It was also felt that this proliferation could undermine the potential for capturing regeneration benefits as businesses would simply convert an existing D2 use.

The positive regeneration benefits of all casinos, not just regional casinos, is recognised, as is the incentive to maximise the opportunity to capture them. One way to capture these benefits is via the planning system using Section 106 agreements. (In brief, these are binding agreements between councils and developers required to secure planning permission. They could take the form of, for example, infrastructure elements built as a part of the development; they can also be monetary.) Another way, possibly via competitive bidding, would be to promise regeneration benefits as part of a large scheme. However, whichever mechanism is followed, this could be undermined if individual operators were able to convert from a Class D2 use to a

casino without the need to secure planning permission for a change of use. Simply put, if casino developers were able to operate without promising regeneration benefits, there would be little obvious incentive for promising them. It should be added, however, that the process of conversion itself (converting a cinema to a casino, for example), if it involves building works that affect more than just the interior of the building, may amount to a development requiring planning consent. This would be the case, even if the resulting development is within the same use class.

The proliferation of casinos in town centres – by the conversion of existing D2 uses – could also have a detrimental effect on the town centre with planners not having any powers to mitigate against such risks. Within town centres, the impact of casino development will depend on the scale and size of a particular site, and on the ability of the town centre to absorb the effects of casino development. If the centre has spare capacity, such as car parking or suitable public transport, there is likely to be fewer adverse effects. However, if the location already has a paucity of such facilities, the adverse impact will be greater as those facilities will be ‘stretched’. Although, conversely, casino activity could improve efficiency and/or profitability of these services – by, for example, increased (late evening) use of car parks, increased patronage of night-buses etc – so that limited capability is increased to meet the new demand.

In terms of the impacts of casinos on public amenity, these could include increased noise, alcohol-induced anti-social behaviour, litter, and visual amenity. However, in the ODPM review of casinos, it was argued that although casinos could be open for 24 hours, this meant that there were no concentrated times for public entry or exit; people will be more inclined to drift in and out, although there was some concern that casinos might be prime candidates for ‘follow-on’ trade – that is, those who had been to cinemas, nightclubs or football matches might look to a casino as the next stop.

Overall, however, whilst the overall view was that amenity impacts of individual casinos would not be significant – indeed, some stated that casinos had a ‘civilizing’ effect on the local community in encouraging older age groups to visit town centres – it was felt that the impact on amenity would make itself felt if there was a number or combination of casinos within a particular area.

Our review identified concerns over the possible loss of D2 uses if the UCO remains unchanged and there is a significant increase in the number of casinos. It was felt that this could have a knock on effect for the character of town centres throughout Britain. This loss of other D2 uses could be contrary to many planning policies currently in place. Such D2 conversions could change the nature of the town centre with many established uses potentially disappearing – such as cinemas, bowling alleys and bingo halls. In the longer term this could undermine town centre vitality.

It is therefore the Government view that there is a case to change the use classes order in relation to casinos in order to counter proliferation; to enable the

management of adverse impacts; to enable the capture of regeneration benefits for all casinos; to account for the uniqueness of casinos and to dispel uncertainty.”
(ODPM, 2005, pg. 7 - 9)

5.6.5 In consideration of the English case study, a key point emerges; the concerns associated with casinos were primarily associated with their proliferation and concentration as a result of the Gambling Act 2005. Unlike amusement centres/arcades, which are Sui Generis, individual casinos are not assessed to have adverse environmental and amenity impacts in themselves to merit a response.

5.6.6 Casinos exist online and the ‘mobile’ casino is also present (‘pop up’ casinos for events etc). Concerning the UCO however, land based gambling casinos are the focus for this research, there appears to be only 5 such premises:

- I. Gala Casino Cardiff
- II. Rainbow Casino Cardiff
- III. Grosvenor Casino (Atlantic Wharf) Cardiff
- IV. Les Croupiers Casino, Cardiff
- V. Grosvenor Casino Swansea

5.6.7 The limited number of units actually in this use type is of note in this instance, and the amenity implications of such uses was disputed by the participants of this research based upon a limited number of actual experiences with such uses. Only Cardiff and Swansea appear to have ‘genuine’ casino premises, and only one appears to be present in Swansea. In relation to the presence of 4 premises in Cardiff, this research identified no particular or specific evidence to suggest existing issues were directly associated with these businesses, nor were any particular concerns about over-concentration or proliferation raised. It is of note that casinos are also subject to licensing.

5.6.8 The response position concerning casinos was diverse; some suggested a separate use class or Sui Generis categorization was required, others pointed to licensing and the limitations on the remit of the planning system and suggested no change is actually required in Wales given the lack of any actually identified issue.

5.6.9 The most common view at this point appears to be that at present, in Wales, there is no clearly identifiable impact/issue associated with casinos against which a change would be responding to. There is a moral question here, and there is an opportunity to pre-empt theoretically possible future challenges, but it is considered that for a planning response to be pursued an evidence based approach is necessary and in this research no evidence of an actual adverse impact, or an anticipated impact, was presented in association with casinos.

5.6.10 It is suggested that this is a matter for the Welsh Government to monitor with a view to the identification of casinos as a Sui Generis use *if* the need arises.

5.6.11 The only other discussion of note raised concerned places of worship (D1). Here it was suggested during this research that these buildings may be in limited use and the change from this to a potentially high intensity activity such as a nursery could cause issues from the perspective of, for example, car parking and waste production. The contrary position to this was the favourable flexibility that exists currently to allow these buildings to be effectively reused. Similarly, the varied nature of places of worship was highlighted and the point raised that it is inappropriate to generalize to create an issue to respond to. Finally, the other protections available, most significantly perhaps the Listed Building controls, will ensure that any architecturally or historically interesting property is afforded adequate protection. On balance, although there may be some scenarios where minor issues result, no significant issue is considered to exist and no change is considered to be required in relation to places of worship.

Permitted Development

5.6.12 No changes were proposed in this research to Class D PD rights arrangements

5.7 Sui Generis

Recommendations

1. The Welsh Government considers renaming 'Sui Generis' as, for example, 'Unclassified' or 'Unique Uses'

5.7.1 The use of Sui Generis was discussed conceptually. The majority view appears to be that such an approach is with merit for uses with particular characteristics that require particular consideration.

5.7.2 It was stressed by many that the Sui Generis model should not be overused however, and the excessive use of PD rights in association with the Sui Generis model was not seen as constructive. This is due to the lack of clarity, robustness and coherency resulting from the application of this model in such a manner.

5.7.3 Sui Generis is a Latin phrase meaning of its own kind, in a class by itself, or unique. A common view presented during this research was that the title 'Sui Generis' is unhelpful in the context of knowledge and understanding, but no inspirational alternatives of note have been recorded thus far beyond 'Unclassified' or 'Unique Uses'.

5.7.4 It is suggested that persons using the UCO regularly will understand the Sui Generis model; for those unfamiliar with the UCO 'Sui Generis' is arguably no less intelligible than 'unclassified' or indeed the wider terminology associated with the UCO from the perspective of understanding the *implications* of the words.

5.7.5 There was little appetite for a revision identified by this research, but it is perhaps likely the case that a 'plain English/Welsh' word choice would support greater understanding given it will have a 'common' definition and interpretation which has validity in the context of its use in planning.

5.7.6 On balance, a 'plain English/Welsh' word choice could be helpful to a limited extent to help clarify the Sui Generis model.

5.8 Agriculture

5.8.1 The use of land and related buildings for agriculture or forestry is stated in the Town and Country Planning Act (1990) as not constituting development. New agricultural buildings are development and these currently benefit from extensive Prior Approval. There are, however, no PD allowances for change of use under Part 3 of the GPDO associated with agricultural buildings.

5.8.2 During this research the matter of agricultural buildings was raised. This was in the context of the desirability of Wales adopting an arrangement similar to that found in England where extensive PD rights are associated with buildings in agricultural use.

5.8.3 In England agricultural Change of use PD rights currently provide for 3 distinct allowances within The Town and Country Planning (General Permitted Development) (England) Order 2015

(http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf):

- Class R - Development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Use Classes Order.
- Class S - Development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to use as a state-funded school or a registered nursery.
- Class Q - Development consisting of—
 - (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
 - (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

5.8.4 These provisions are subject to both conditions and Prior Approval arrangements which limit the extent of change possible, and the circumstances where such changes cannot take place. Nevertheless, it is notable that this is a very flexible construct.

5.8.5 Of the above provisions, Class Q has understandably been the most significant and controversial

Case Study: Agriculture to Residential PD rights in England

The procedure introduced for the change of use of agricultural buildings to dwellinghouses is effectively a two-step process. Firstly, the proposal must comply with a number of limitations set out under the relevant part of the GPDO. Secondly, the developer must apply to the local planning authority for a determination as to whether prior approval of the authority would be required as to a number of issues.

The conditions, which include the Prior Approval arrangements, are specified as follows:

(1) Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(a) transport and highways impacts of the development, .

(b) noise impacts of the development, .

(c) contamination risks on the site, .

(d) flooding risks on the site, .

(e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, and

(f) the design or external appearance of the building,

(2) Where the development proposed is development under Class Q(a) only, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (e) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(3) Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.

The government has provided advice (via Planning Practice Guidance, Paragraph: 101) to support this arrangement:

<http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/permitted-development-rights-for-the-change-of-use-of-agricultural-buildings/>).

The arrangements have raised concerns about complexity. The complexity of the agricultural to residential change of use was highlighted as one of the primary reasons why, by the beginning of the 2015, more than half of all applications under

the GPDO were refused (<http://www.planningresource.co.uk/article/1330471/barn-storm-why-councils-refused-half-agricultural-to-residential-permitted-development>).

Reporting at the turn of the year Geoghegan (2015) opined *“consultants blame councils and councils blame applicants for the high refusal rate on barn conversion. But they agree that new criteria are unclear”* (ibid). What this highlights is how problematic it has been in attempting to draft legislation that can express in simple terms what is a clearly a difficult and fundamental change in development rights.

As Geoghegan suggests, the blame for who is at fault is being shared among the players concerned with making applications under this permitted development right. One consultant is quoted as stating *“Its clearly unpopular with authorities and they appear to have striven to find ways to resist the applications”* (ibid). At the same time the head of planning at Stroud District Council has argued that the fault lies with greedy or confused applicants who have not read the criteria correctly or had received poor advice (ibid). This demonstrates both the controversial nature of the permitted development right but also its divisiveness.

One of the more controversial issues arising from this permitted change of use relates to the issue of sustainability. Paragraph 55 of the NPPF is the principle reference to sustainable development in rural areas. Under this it is stated

“Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- 1. The essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- 2. Where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- 3. Where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- 4. The exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - a) Be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - b) Reflect the highest standards in architecture;*
 - c) Significantly enhance its immediate setting; and*
 - d) Be sensitive to the defining characteristics of the local area.”*

(NPPF, 2012)

The above principles guide local planning authorities (in association with their own local plans) in determining the suitability of isolated residential development in rural areas. Yet, the guidance provided in relation to the change of use permitted by Class Q is clear that *“The permitted development right does not apply a test in relation to sustainability of location”* (Planning Practice Guidance). While this is understandable, given that the nature of agricultural businesses mean that they generally located within open countryside, such an approach does appear to fly in

the face of the ministerial foreword of the NPPF (2012) in which sustainability is defined as *“ensuring that better lives for ourselves don’t mean worse lives for future generations”*.

Given the isolation and remoteness of many farms development which introduces additional residential dwellings are unlikely to be considered sustainable in the ‘normal’ understanding of the context. That is, they are likely to be far removed from local services and facilities and would require the use of a private motor vehicle as an absolute necessity.

While an argument could be made that some of the essential requirements under paragraph 55 of the NPPF could be met by change of uses permitted under Class Q of the GPDO, the NPPF must be considered as a whole. The principle of sustainable development therefore underlies the entire planning system and development which may satisfy one part of the NPPF must still comply with others.

Further concerns regarding Class Q change of uses relate the limitations associated with the prevention of conversion of buildings in current active use, as well as the longer implications upon the locations; once residential units have been established on site the land upon which they sit, and any associated curtilage, would be lost to the future operation of an agricultural business.

Finally, with regards to the intrinsic beauty and heritage of the countryside, agricultural buildings undoubtedly play a vital role. They often come to characterise an area or are the dominant feature within a view or location. The introduction of residential development within this landscape, along with the domestic paraphernalia that this can bring, is likely to significantly undermine this. While protection is given to Areas of Outstanding Natural Beauty (AONBs), National Parks, Conservation Areas and Sites of Special Scientific Interest through the withdrawal of PD rights, many people would consider wider areas countryside landscapes to be worthy of protection and as rich in heritage and intrinsic beauty.

Much careful consideration should be given to any development which has the potential to erode either its heritage or beauty and the system in England arguably does not do this adequately under the new arrangements now in place.

5.8.6 The new arrangements in England raise questions about the ability of local authorities to manage the rural context. Questions certainly exist from the perspective of the implications for delivering sustainable development and the impact upon the character and appearance of the rural context are of particular note. That said, the new arrangements provide for significant freedom and flexibility for the reuse of agricultural buildings.

5.8.7 For Wales, the question of creating new PD allowances for agricultural buildings is a matter of whether the issues associated with such provisions are outweighed by the potential opportunities created by new freedoms and flexibility.

Whether linked to a Prior Approval model or not, a fundamental consideration in this context is *need* given the potential for undesirable outcomes to occur.

5.8.8 The creation of new PD allowances must be associated with an imbalance in the proportionality hierarchy, level of subsidiarity, and a need to reduce *excessive* regulation. The use of a Prior Approval system in association with PD rights would need to be associated with a need to prioritise such changes given some over-riding driver such as can be considered to exist in association with the provision of new agricultural buildings (which support agricultural enterprise and food supply) or telecommunications (which supports effective telecommunications infrastructure).

5.8.9 During this research presentation a view was expressed that added flexibility and freedom was desirable for the agricultural sector. It is accepted that a relaxed regime such as is found in England would create freedoms. There was, however, no substantiated evidence to suggest this was *needed* to an extent that the implications of a more relaxed regime were acceptable. The rural context of Wales is sensitive and beautiful; it is suggested that it is entirely appropriate that matters such as sustainable development, landscape impact, design and appearance are considered thoroughly through the planning system. A Prior Approval model with more extensive 'catches' compared to the English model is a consideration here, but the benefits of such an approach are questionable; this would still create a challenging priority-based process with reduced management opportunities for the local authorities.

5.8.10 Ultimately, the requirement for a planning permission does not in itself represent a barrier; a positive planning policy construct in Wales will support the appropriate reuse of agricultural buildings.

5.8.11 On balance, at this time, it is not considered desirable to pursue PD right provisions for agricultural buildings in Wales. This research identified no substantiated evidence to suggest that this was necessary and needed to an extent that the issues associated with such freedoms and flexibility should be over-ridden.

5.9 Waste

Recommendations

1. The Welsh Government undertakes further research into planning and waste, including potentially opportunities for adaption of the UCO to support the inclusion of defined forms of waste processes/operations/enterprises within the B2 use class

5.9.1 Waste, alongside mineral development, sits outside of the mainstream of planning. During the workshops the issue of waste was raised as one which warrants further consideration, specifically with regards to how it can interact with the use classes order.

5.9.2 The main thrust of this was a suggestion that, with evolving technologies, the environmental issues traditionally associated with some waste processes can now be overcome. Consequently, the argument was forwarded that there are a number of waste processes that can now potentially be re-classified as general or light industrial uses and so would fit a B1 or B2 use classification.

5.9.3 Issues associated with waste processes include noise, smell, air pollution and traffic generation, as well as impacts that touch upon wider political, environmental and socio-economic considerations. Further, how we plan for, and deal, with waste is an increasingly divisive matter in the discourse around social justice. All of these issues make planning for waste a sensitive matter and why traditionally it has been afforded the closed developmental control afforded by the Sui Generis classification.

5.9.4 Repositioning waste within the B use class, as an industrial process, would either require complex restrictions which arguably undermine the entire point of the change, or would effectively open up the possibility of waste sites within areas that would previously have been unacceptable. This would be possible because of the sideways permitted development movement of uses within a specific class; whereby waste development would be able to establish itself upon a site previously occupied by a use within the same use class. The ramifications of this would be played out both in terms of land use terms and its associated impacts but also politically.

5.9.5 By their very nature waste processes have traditionally been located away from sensitive areas, where the aforementioned impacts do not result in an unacceptable form of development. Currently, where waste development is proposed planning applications require a wealth of supporting documentation, statements and technical assessments in order to demonstrate that the development can be adequately managed. Without strict information requirements and robust decision making processes it is difficult to envisage, without further

research, how waste processes could be effectively managed through the planning system, even allowing for Prior Approval processes or other arrangements. The introduction of a Prior Approval process would in itself be fraught with difficulties, considering the degree of technical information that would be required to ensure that no unacceptable impacts would result.

5.9.6 There would of course be benefits in including some waste processes within the B use class. Smaller businesses involved in waste processing would be unburdened by the requirement of having to obtain planning permission. Some companies may also find it easier to diversify and grow their businesses. It is also accepted that many modern waste processing systems, sites and facilities have comparable implications to those of other uses found within the B2 classification. This is a key point which merits consideration; if impacts in some circumstances are comparable with uses placed within a use class, then the use type in question should not be further restricted unless there is sound justification for this to occur.

5.9.7 One fundamental issue with bringing waste processes into a defined use class is the loss of control at a strategic level. The current dualism of waste and minerals development would be lost and the management abilities of local authorities compromised from the strategic perspective.

5.9.8 Nevertheless, despite the concerns presented above it remains the case that waste is a dynamic areas which is evolving rapidly and is associated with new technologies and, particularly, the growing relationship between waste and energy production. The research team have not had an opportunity to fully explore the merits of the suggestions that have been put forward due to the limited specialist evidence and advice possible within the confines of this research. It is therefore suggested that future technical research be undertaken to consider options associated with waste and their relationship with planning, the UCO and their PD rights.

5.10 Flexibility

Recommendations

1. The Welsh Government to promote and support the use of LDO more widely (or a Welsh variant model). This should include their use in association with other tools, such as Enterprise Zones.
2. The Welsh Government to support the use of Article 4 Directions in association with the introduction of the PD rights based measures

5.10.1 This research also sought to understand how existing planning mechanisms that enable flexibility in the process or spatial application of control are operating in Wales and whether potential existed for alteration or adaption of these models, or indeed the introduction of new arrangements. Given the principle of subsidiarity, the degree of flexibility that is available, and applied, at the local level is important; the balance must be correct in theory, and the application must be effective and to best effect in practice.

5.10.2 In the context of this research, the focus was upon the Prior Approval/Notification process, Article 4 Directions and Local Development Orders. These all have the potential to impact on the operation of the UCO and Permitted Development rights. Opinions were also sought on Enterprise Zones given their close link with the Local Development Orders.

5.10.3 The online survey indicated that each of the mechanisms was seen in a generally favourable manner by many respondents, though the workshops and interviews provided an opportunity to expand on these viewpoints revealing a variety of concerns as to how these mechanisms operate in practice on one hand, and on the other, interest in their wider use and application.

5.10.4 The Prior Approval/Notification process, whilst acknowledged as a useful tool for providing flexibility, efficiency and a proportionate response in the case of certain forms of development, e.g. telecommunications equipment and agricultural development, drew less support from interview/workshop research participants as a means of providing greater flexibility in the context of change of use. A minority of participants representing the agricultural sector did however support their further use, with particular interest voiced for similar flexibilities around change of use to that introduced in England (see discussion in section 5.8 of this chapter).

5.10.5 Particular concerns with the mechanism raised by participants included:

- In determining a Prior Approval application, local authorities are limited in the matters they are able to assess, despite these not always being representative of the potential impacts a particular development might cause;
- the strain on resources which the process creates for local authorities, as consideration of an application is still required across a range of often substantive issues;
- the lack of fee income it generates in relation to the time required to process and consider the application;
- the potential for the loss of s106 contributions;
- the inability of the LPA to attach conditions to development sought under prior approval/notification;
- that the processes are not easy to understand for many users of the planning system,
- the process creates an effective prioritisation of certain applications over others due to the shorter timescales allowed for their assessment, and;
- that the requirements of the application are in some cases, close to that which is required through the standard planning application process making the demands on developers and applicants only minimally less onerous.

5.10.6 Of additional and particular note was the widespread resistance to the rollout of Prior Approval/Notification which has taken place under the English planning regime alongside the extension of permitted development rights. Although the specifics of the new English regime were not all discussed in detail, many research participants felt the existing Prior Approval/Notification processes in operation in Wales were already poorly understood by users of the planning system, therefore, it is not unreasonable to expect this view to be held with regard to similar changes in Wales. As a result, the extent to which such changes would actually stream-line and simplify the planning system in practice is worthy of consideration.

5.10.7 On the basis of the research, we recommend that the Prior Approval/Notification process only be considered in the context of matters meriting national prioritisation. This research specifically identified no such requirement at this time, however should such priorities be identified by the Welsh Government, we recommend that LPAs are allowed to apply for exemptions and given time and support in order to prepare Article 4 Directions which can repeal these rights if a considered case is made as to why they should not apply to certain identified areas.

5.10.8 Though generally acknowledged in the online survey as being a useful tool for managing development, Article 4 Directions met with mixed opinion during the interview/workshop phases of the research project. It was considered by many that these tools are already widely used throughout Wales and are seen as particularly valuable in the context of protecting conservation areas. On the other hand, although a minority view, it was noted by those supporting the agricultural sector that they could place unnecessary burdens on rural businesses.

5.10.9 However, for many participants, particularly those in the public sector, it was felt that Article 4 Directions were difficult, time-consuming and costly to develop. Furthermore, it was noted that there were no guarantees that work undertaken into these mechanisms would be approved by the Welsh Government. The issue of compensation was also raised as a further barrier to their increased implementation and highlighted as an argument against national deregulation of the permitted development rights regime, where the onus is upon the LPA to pay compensation to those affected by changes where the LPA seeks to repeal permitted development rights through an Article 4 Direction.

5.10.10 On balance, provisions under the existing compensation regime operating in Wales outline clear means by which LPAs can limit their liability to incur compensation payments, through providing extensive notice as to plans to introduce an Article 4 Direction. As such, and on the basis of the research, we recommend that Article 4 Directions may offer a suitable means for LPAs to adjust any national level changes in the permitted development rights regime concerning change of use to suit local circumstances should these be pursued. In the context of this research, the application of Article 4 Directions is a key element of the proposals for HMOs and we note that appropriate lead-in times and support should be given to LPA's by the Welsh Government to enact such changes in order to respond to the difficulties raised with regard to the process of putting Article 4 Directions in place.

5.10.11 Local Development Orders (LDOs) were also considered to offer a useful means by which to manage development by many of those taking part in the online survey results. However, participants involved in other phases of the research indicated that they had little practical experience of these mechanisms, and in some cases, knowledge of what they involved or how they were prepared. This is to be expected given the low take-up of LDOs in Wales to date, although several participants noted the example of the Newport city centre LDO and many expressed an openness to hearing more evidence as to the benefits of the LDO's.

5.10.12 Other concerns raised by participants around LDOs echoed many of the concerns in relation to both the prior approval process (as development sought through LDO's usually have to provide details through a prior approval/notification process) and Article 4 Directions. It was, for instance, felt by many that the mechanisms would be difficult, time-consuming and costly to prepare. Concerns around reduced fee income from applications and the time needed to assess the prior approvals/notifications as well as fears over the loss of s106 income or CIL contributions were also indicated. These issues are largely in line with those raised in the consultations carried out to date by the Welsh Government into LDO's and raised previously in this report. It was also noted by a minority of participants that LDOs had limited applicability outside of major urban areas and were largely irrelevant for many parts of Wales, particularly rural areas.

5.10.13 Whilst the aforementioned reservations were expressed, LDOs were also seen as a source of potential to create flexibility within the planning system at a local

level, a means of freeing up officer time in the long-term and removing non-contentious applications from the planning system. They were also acknowledged by some as a means of implementing local plan policies by creating the confidence that applications would be granted permission, thereby driving investment and developer interest in areas and brownfield development.

5.10.14 On balance, we therefore recommend that the Welsh Government seek to promote LDOs and provides further direction and guidance concerning their application and use. Whilst LDOs may not be applicable to all areas of Wales (and cannot be developed in protected areas, e.g. SSSI's), they appear to be particularly well suited to promoting change of use as a means of rejuvenating town centres (an almost universal concern raised in the workshops) and in the case of industrial/business parks, the targeting of expanded permitted development rights alongside provisions which allow for new build development, can provide a clear and flexible framework, attracting investment and contributing toward the long-term development of particular geographic areas, sectors and industries.

5.10.15 We also recommend that the Welsh Government takes stock of the previous efforts to increase the up-take of LDOs and how these were delivered to LPAs, e.g. Circular advice and funding to understand how new approaches could be more effective. One practical recommendation arising from the research was the creation of a set of 'model LDOs' to help LPAs with their production.

5.10.16 It is also suggested that the example of Newport's LDO should be closely monitored given the potential opportunity to further highlights this as a case study to provide insight, emphasise potential and opportunity, and to comfort LPAs concerned about issues such as the loss of s106 contributions or CIL payments as well as protection of assets such as listed buildings and development in sensitive areas, e.g flood zones.

5.10.17 Finally, Enterprise Zones (EZ) were also discussed through the research, though many did not see these designations as being 'planning mechanisms.' The value of EZ's was considered most significant from the perspective of the associated financial incentives provided to firms locating in these zones, but areas designated as EZ may have LDO directly associated with them.

5.10.18 Similar concerns were raised as to the limited applicability or appropriateness of EZs in the Welsh context. Additionally, criticisms of the EZ concept were noted, including that they encouraged local and temporary relocation of businesses rather than new investment. However, they were also acknowledged by some participants as being appropriate in the context of larger urban areas and business parks, airports, etc.

5.10.19 Although there are no specific recommendations relating to EZs have emerged from this research, we do note the potential value of these mechanisms in the wider context of delivering on local visions for economic development which are likely to involve new development and which may to some degree also benefit from

flexibilities around change of use. It is also of note that zonal planning approaches are also being pursued in relation to housing development in England and in Scotland that the first 'Simplified Planning Zone' in recent decades has been created at Hillington Park to encourage continued investment and growth of an existing business park.

5.11 Other non-legislative matters

Recommendations

1. The Welsh Government and local authorities to work together to promote and support greater clarity of interpretation, together with greater consistency in approach between local authorities.
2. The Welsh Government and local authorities to work together to enhance information provision, support, guidance and consistency for interactions with non-professionals/clients.

5.11.1 This research has resulted in a series of non-legislative recommendations which emerged through the wider discussions undertaken. Some of these are included in the other sections of this chapter by their association. Others were more general points that emerged. The non-legislative matters arising from this research are summarised here.

5.11.2 The majority view identified through the interviews and workshops points to agreement that for planning professionals the UCO and associated PD rights are effective for use and well understood *conceptually*, however for professionals, a clear need for clarification of some matters is present.

5.11.3 Of particular note is the need for some guidance to support greater consistency in the determination of certain use classes. Of particular note is the differentiation between coffee shop (A1) and café (A3), B1 Office verses A2 Office, B1 Industry verses B2 industry, as well as the criteria for determining whether a property is a House in Multiple Occupation (HMO). In addition, the status of something as 'ancillary' is a matter raised as lacking clarity.

5.11.4 The role of case law in providing clarity is recognised, and is there recognition that some guidance is already available. Nevertheless a relatively strong view appears to exist that further clarity is required. The issue is as much a lack of consistency in interpretation within the profession and between local authorities as it is a lack of guidance as such, though there would also appear to be scope for the formation of more guidance too.

5.11.5 It is recognised that the areas identified as requiring clarification cannot be defined absolutely, but it is suggested that some further work in this area would be beneficial.

5.11.6 For non-professionals, a number of issues exist in relation to understanding and using the system, but these concerns are tempered by a fairly strong view that

the planning professional is the interface for the majority of the users. In some cases however, for example householders and small business owners, non-professionals are more likely to undertake direct research and act upon the information identified. As such, some areas have been identified that have traction based upon the primary research undertaken:

- I. The Planning Portal is not clear enough in relation to whether the user is seeing information concerning the Welsh nation, or England. It is recommended that a distinct disaggregation be undertaken to separate England and Wales online through the delivery of a more distinct and recognisable Welsh offer.
- II. Google/Bing etc. search results favour English results. This is likely to be mitigated with the further release of new Welsh legislation which will be more readily identifiable from English legislation.
- III. There is a suggestion that there is lack of plain Welsh/English guidance to support non-professional users, this concerns both online and physical information provision.
- IV. There is considered to be an absence of single point access to information, particularly online. Clearly a diverse range of information sources do exist; there would however appear to be merit in providing greater legibility to the availability of information online.
- V. Local Authority approaches to providing information and support vary, and fees are increasingly required for detailed guidance. Given this, it is suggested that strategic information sources should identify more overtly that such variations do exist, and where possible such variations should be minimised through the promotion of common approaches where appropriate and desirable.

5.11.7 The implications of the above are varied, from increased support demands for local authorities due to a lack of adequate information through to required enforcement action due to misinformation. A relatively strong view exists that the Welsh Government should provide additional guidance to support for non-planning professionals. Suggestions made include a written guide and the provision of a single source of online information.

6. CONCLUSIONS

6.1 This research was undertaken to support subsequent review and potential change in Wales focused upon the UCO and the associated PD rights. Based upon an iterative research strategy, this research has directly responded to matters that have arisen *through* the process, without predetermined intentions. This research therefore identifies areas for change where *need* exists for a response within the Welsh nation context.

6.2 Throughout the interviews and workshops, the strongest call has not been for structural change, but rather guidance and clarification concerning definitions, terminology, classifications and processes. This is the case from the perspective of both the professional and non-professional. A clear view exists that the system in place is fundamentally sound and that significant change is not required or desired.

6.3 Changes proposed are contained and focused in response to an identified need for change.

6.4 The recommendations of this report include both legislative and non-legislative matters, including suggestions for further work the develop investigations beyond that possible within the confines of this research project.

6.5 It is hoped that the recommendations of this report represent a sound basis upon which to undertake further research where necessary and pursue change options.

7. RECOMMENDATIONS

7.1 Strategic Recommendations

1. National changes to the UCO and PD rights are limited and driven by identified need within Wales
2. Greater flexibility pertaining to the UCO and their associated PD rights is realised and supported at the *local* scale.
3. The UCO and PD rights be seen in context and further work concerning the management of land use be undertaken within a wider positive framework of review considering other systems of control and financial systems

7.2 Legislative Linked Recommendations

Class A

1. Beauty salons (including nail parlours) reclassified as A1
2. Bookmakers and payday loan uses be placed into a new use class (A4) and be provided with PD rights to A2/1
3. Takeaways be placed into a new use class (A5) and be provided with PD rights to A3/2/1
4. Car showroom lose current PD rights, remaining in Sui Generis
5. Public Houses:
 - i. If no ACV system is in place, the Public Houses are located within their own use class with no PD rights. This will afford protection to properties, albeit in a manner that is potentially over-regulating when considered against the extent of the issue spatially.
 - ii. If ACV system is introduced in Wales, a new use class is created called 'Assets of Community Value'. This would be linked to the boundaries of the ACV legislation, rather than a distinct UCO group. This would be a use class without an associated PD rights. This would not only allow for Public Houses to be identified and protected, but potentially also other assets considered to be significant and identified in the ACV legislation, such as restaurants or village shops.

iii. If ACV system is introduced in Wales but option 2 is not desired, a new use class be created for Public Houses and linked to the ACV legislation as found in England.

Class B

6. B Class renamed as follows:

- B1 Business
- B2 General Industry
- B3 Storage or Distribution

Class C

7. Introduction of Class C4 Houses in Multiple Occupation with associated Permitted Development rights from and to C3 residential.

Class D

8. The Welsh Government to monitor casino developments with a view to the identification of casinos as a Sui Generis use *if* the need arises based upon identifiable impact issues.

Sui Generis

9. The Welsh Government considers renaming 'Sui Generis' as, for example, 'Unclassified' or 'Unique Uses'.

Waste

10. The Welsh Government undertakes further research into planning and waste, including potentially opportunities for adaption of the UCO to support the inclusion of defined forms of waste processes/operations/enterprises within the B2 use class.

Flexibility

11. The Welsh Government to promote and support the use of LDO more widely (or a Welsh variant model). This should include their use in association with other tools, such as Enterprise Zones.

12. The Welsh Government to support the use of Article 4 Directions in association with the introduction of the PD rights based measures.

7.3 Non-Legislative Recommendations

1. The Welsh Government and local authorities work together to promote and support greater clarity of interpretation, together with greater consistency in approach between local authorities.
2. The Welsh Government and local authorities work together to enhance information provision, support, guidance and consistency for interactions with non-professionals/clients.

8. REFERENCES

Relevant legislation

- Circular 94/50 (The Town and Country Planning [Use Classes] Order) 1950)
- The Licensing Act 2003
- The Town and Country Planning Act 1990
- The Town and Country Planning (Use Classes) Order 1948
- The Town and Country Planning (Use Classes) Order 1950
- The Town and Country Planning (Use Classes) Order 1972
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning General Development Order 1948
- The Town and Country Planning General Development Order 1959
- The Town and Country Planning General Development Order 1963
- The Town and Country Planning General Development Order 1973
- The Town and Country Planning General Development Order 1977
- The Town and Country Planning General Development Order 1988
- The Town and Country Planning (General Permitted Development) Order 1995
- Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002
- The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010
- The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013
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9. APPENDICES

9.1 'SurveyMonkey' Questionnaire

What is your position/job title within the authority?

1. Do you consider yourself to work in:

1. Public sector – Unitary Authority
2. Public sector – National Park Authority
3. Private sector
4. Legal sector
5. Elected Member / Councillor
6. Professional body
7. Education
8. 'Third' sector
9. Other....please specify

2. Please choose only one of the following to describe your position:

- Planning – Development Management field
- Planning – Policy field
- Planning – Enforcement field
- Planning – Senior Management
- Legal services
- Education
- Elected Member / Councillor
- Other...please specify

3. How often do you concern yourself with the Use Classes Order (**UCO**) in Wales and the associated Permitted Development Rights?

Daily	Weekly	Monthly	Yearly/Never

Knowledge and understanding of the Use Classes Order (Overview)

4. Do you agree with the following statements?

	Agree	Neither agree nor disagree	Disagree	Don't Know
I have a good understanding of the UCO				
I am clear about what the UCO is trying to achieve				
I believe that the UCO is transparent, clear and easy to use				
My organisation is able to operate effectively using the current UCO				
I believe that the current UCO is a useful tool for achieving my organisations objectives				
I believe that the UCO would benefit from some revisions				

Where you have identified that you disagree, please provide further comment here:

The current Use Classes Order

5. Overall, do you believe that the UCO is accessible and easy to understand for professionals engaged with the planning system?

Yes	No	Don't know

If you have identified 'no' please provide further comment here:

6. Overall, do you believe that the UCO is accessible and easy to understand for non-professionals engaged with the planning system?

Yes	No	Don't know

If you have identified 'no' please provide further comment here:

7. Do you feel that the UCO, particularly the permitted changes and their potential impacts, is given sufficient consideration during the plan making process from the perspective of the potential future evolution of uses?

Yes	No	Don't know

If you have identified 'no' please provide further comment here:

8. Do you feel that the UCO, particularly the permitted changes and their potential impacts, is given sufficient consideration during the planning application decision making process from the perspective of the potential future evolution of uses?

Yes	No	Don't know

If you have identified 'no' please provide further comment here:

9. From the perspective of basic land/building use categorisation and identification, is the current UCO fit for purpose?

Yes	No	Don't know

If you have identified 'no' please provide further comment here:

10. From the perspective of managing social/environmental/economic/cultural impact of changes of use, are the current UCO and associated Permitted Development Rights fit for purpose?

Yes	No	Don't know

If you have identified 'no' please provide further comment here:

11. On balance, would you like to see revisions to the UCO to make more/fewer changes of use permitted development?

More changes of use as Permitted Development	Fewer Changes of Use as Permitted Development	No change	Don't know

12. Thinking about each part of the order please can you indicate whether you consider the class to be fit for purpose?

	Positive: Fit for purpose	Neutral	Negative: Change needed	Don't know
A1 Shops				
A2 Financial and Professional Services				
A3 Food and drink				
B1 Business				
B2 General Industrial				
B8 Storage or distribution				
C1 Hotels				
C2 Residential Institutions				
C2A Secure Residential Institutions				
C3 Dwelling houses				
D1 Non-Residential Institutions				
D2 Assembly and Leisure				
Sui Generis				

Where you have suggested a change is needed, please provide further comment and/or suggestions for change here:

Existing mechanisms that affect permitted development rights

13. Thinking about existing mechanisms that impact the operation of the UCO, do you agree with the following statements?

	Agree	Neither agree nor disagree	Disagree	Don't Know
Prior Approval is a useful way of managing changes of use				
Local Development Orders are a useful way of managing development				
Article 4 directions are a useful way of managing development				
Enterprise Zones are a useful way of managing development				

Please provide further details as to your reasons for your answers to the above question if you have agreed or disagreed with a statement:

Implications on your organisation

14. Overall, if more changes of use became permitted development what implication would this have upon your organisation?

Negative	Neutral	Positive	Don't Know

Please provide further details as to your reasons for your answer to the above question:

15. Overall, if fewer changes of use became permitted development what implication would this have upon your organisation?

Negative	Neutral	Positive	Don't Know

Please provide further details as to your reasons for your answer to the above question:

Open questions:

16. Are there any other positive, negative or unintended impacts of the UCO as a tool for building and land use categorisation you would like to comment on not covered elsewhere?

17. Are there any other positive, negative or unintended impacts of the Permitted Development Rights arrangements associated with the UCO you would like to comment on not covered elsewhere?

18. Are there any desirable or undesirable changes to the UCO from other countries/systems (for example England, Scotland or Northern Ireland) which you would like to see or would not want to see in Wales?

Further research

19. Would you be willing to participate in more detailed discussion about the matters discussed in this questionnaire?

- Yes
- No

If yes:

- Name
- Email address
- Telephone number

We will not pass these details on, and your responses will be anonymised.

20. Is there anyone within your organisation that we should contact to discuss these issues in further detail?

- Yes
- No

If yes, please provide contact details here:

9.2 Interview framework

The structure below was used only as a framework across the interviews undertaken; for each interviewee a bespoke approach was taken based upon their position and the prior information provided in their questionnaire responses.

Wales UCO Review: Interview topic guide – initial outline

Initial question

1. Could you explain the way in which your organisation works with the UCO and its associated Permitted Development rights?

Strategic planning context

1. Do you see the UCO and their associated Permitted Development rights in the context of achieving strategic planning objectives at the national or above local scales? Or, do you see the UCO more, or only, focussed on local concerns?
 - a. If the person interviewed perceives a strategic dimension: Which, if any, strategic planning objectives and their associated Permitted Development do you see the current UCO as having the most practical use in achieving?
 - b. If the person interviewed does not perceive a strategic dimension: Do you think the UCO could support to deliver strategic objectives?
 - c. For both: Potentially prompt in relation to:
 - i. Coastal town regeneration
 - ii. Agricultural / rural diversification
 - iii. Support for tourism
 - iv. Surplus employment land / bringing empty buildings back into use
 - v. Support for the knowledge economy / job growth

Classification and movement

1. Considering the classification of uses, are there any:
 - Uses you would like to see re-classified?
 - New use classes created? or
 - Uses categorised as Sui Generis

in response to particularly concerns?
2. What are your views on the use of Sui Generis and are there any uses currently classified as sui-generis that would be better classified elsewhere in the UCO? Or uses that should be categorised as Sui Generis?
3. Our questionnaire survey has revealed some concerns about the following classifications. Considering each in turn, do you have any particular views on these [edit to remove ones already highlighted in response to Q1]?
 - The need to separate out fast food takeaways and bars from A3 and create an A4 and A5 use class;
 - The need separate out Public Houses specifically

- A2 (removal of Bookmakers and pay day loan from A2)
 - B1 (category too broad),
 - B8 (fails to consider local small scale distribution centre, for internet deliveries etc)
 - C3 (and confusion between boundary between C2 and C3, and the HMO designation)
4. Considering the movements allowed with Permitted Development rights between classes, are there any:
- Movements you would like added?
 - Movements you feel should no longer be included?

in response to particularly concerns?

5. Are there any Permitted Development arrangements you feel strongly are beneficial and should be retained?

Other associated mechanisms

1. Why, in your opinion, do LDOs appear to be so little used, when they allow local authorities the flexibility to alter PD to local circumstances and were seen as a positive tool in the questionnaire?
2. Could / should article 4 directions be used more readily? (Why?)
3. Could / should Prior Approval be used more readily? (Why?)
4. Enterprise Zones often employ planning tools such as LDOs. Do you think EZs should be developed further as planning tools?

Other matters

1. Do you think the current UCO / PD rights impact the likelihood of development coming forward? In what ways?
2. If changes were to be made to the UCO / PD rights, what factors should drive that change? Potentially prompt in relation to:
 - a. to align the UCO more closely with national / strategic policy?
 - b. to align the UCO more closely with local policy?
 - c. to remove planning applications that routinely get approved and reduce the administrative burden on local authorities?
 - d. to reduce the regulatory burden on business and give greater flexibility to applicants to encourage development to come forward?
 - e. to address local concerns about environmental amenity / social issues?

3. On balance, how does the UCO impact on your organisation? [business perspective, resources, finances]
4. Are there any specific issues faced by your organisation that you think the UCO and their associated Permitted Development rights could better address?
5. Would you like to see any additional guidance produced to facilitate the effective operation of the UCO and associated PD rights?

In summary

1. In your view is the UCO fit for purpose in the context of contemporary planning issues in Wales? How would you summarise your reasons?
2. On balance, would you prefer to see greater regulation of uses through the UCO and associated PD rights, or would you prefer to see greater de-regulation allowing more flexibility for property owners?
3. If you were to prioritise one change to the UCO classification what would it be?
4. If you were to prioritise one change to the associated PD rights what would it be?

9.3 Workshop framework

The following represents the basic framework that was used to support the workshop discussions.

Workshop discussion

- Part 1(a) – Fit for purpose? Strategic analysis:
 - The model
 - Use and understanding
- Part 1(b) – Fit for purpose? Analysis of each use class (categorisation and movement):
 - Strengths and weaknesses from the perspective of:
 - Social impact
 - Economic impact
 - Environmental impact
 - Delivering sustainable communities
 - Movement and transportation
 - Local/national distinctiveness
 - Resources (internal and external)
 - Workshop discussion
- Part 2(a): Responses and implication (including resources)
 - Categorisation changes
 - Movement (PD) changes
- Part 2(b): Flexibility
 - Prior Approval - thoughts on current and potential usage (including resources)
 - Area based tools (LDOs / Art.4) – when, where, for what, thoughts on current usage, and potential for the future (including resources)