

CONSULTATION RESPONSE FORM

Consultation on planning policy and legislation for second homes and short-term holiday lets

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CONSULTATION QUESTIONS

Proposed amendments to the Town and Country Planning (Use Classes) Order 1987 (UCO)

Q1 Do you agree or disagree that amending secondary legislation as proposed would be an effective means of helping to address the impacts of second homes and short-term holiday lets that have been identified in some communities?

We agree in principle. The proposed new use classes could make the different ways in which houses are used, and thus their status within a community, clearer. Whilst the proposed changes would not affect existing second homes and short-term holiday lets according to the consultation document (but see our comment under Question 7 below), the changes could in future allow Local Planning Authorities (LPAs) to have an overview of changes of use in the context of dwellings in their area which could affect the sustainability of communities and the Welsh language.

This information, as well as the information that would be gathered if the Government were to establish the holiday home licensing scheme that it is considering, could assist LPAs to judge whether or not there was a disproportionate number of second homes or short-term holiday lets in particular communities, or a trend towards that. In order to obtain the most comprehensive information possible, we consider that the licensing scheme would need to be mandatory. Using Article 4 Directions to disapply permitted development rights could enable LPAs to restrict further changes of use to primary homes in areas of concern.

However, there is some ambiguity regarding the proposals. The consultation document states that “we will be moving from a situation in which changing to use as a second home does not require planning permission, to a situation where it may require planning permission if it is determined that it constitutes a material change of use.” (4.3) There is considerable qualifying in this sentence and whether or not Article 4 is used seems to be a matter of choice for LPAs. We believe that detailed guidance is needed regarding how LPAs should reach a decision on using Article 4 to achieve the purpose of these changes.

Another consideration is whether changing the category of a dwelling would affect the number of new residential houses allowed in an area. That is, would converting a C3 dwelling house to a C5 secondary home or C6 short-term let justify building more C3 residential houses, and would this be a suitable policy for some communities or not? The relationship between the proposed new use classes and the LPAs' Local Development Plans must be considered.

We also note that the success of the proposed measures would be dependent on the ability of LPAs to collect evidence, monitor the situation and take enforcement action. It could be very challenging for them to ascertain whether people spent more or fewer than 183 days per year in their houses. It must be ensured that LPAs have adequate resources for this work. On the basis of discussions with planners, we understand that a number of use restrictions arising from the General Permitted Development Order (GPDO) are already very difficult to supervise without significant resources. We also note that TAN9 which provides guidance on planning enforcement is not currently operational, but that previous versions¹ note that “enforcement action is discretionary and should be used as a last resort and only when it is expedient”. Additionally, a means of co-operation must be found between Local Authorities’ Council Tax Departments and Local Planning Departments to enable better monitoring of the situation and integration of taxation reforms proposed in the consultation *Local taxes for second homes and self-catering accommodation* with the reforms proposed in this consultation.

Q2 Do you agree that class C3 should be amended and new use class C5 (Secondary Homes) and use class C6 (Short term lets) be created? If not, please explain why.

We agree, but please see our comments elsewhere too.

Q3 Do you agree with the descriptions of the new and revised use classes? If not, please explain why.

We agree.

Q4 Are there any scenarios whereby use as a dwelling house under use class C3 could become unclear? Please provide examples.

No comment.

Q5

¹ [W67-TAN-9-Enforcement-of-Planning-Control.pdf \(caerphilly.gov.uk\)](#)

Would you support amending primary legislation (i.e. the TCPA 1990) for the purpose of managing second homes and short-term holiday lets?

We would support amending primary legislation for the purpose of managing second homes and short-term holiday lets. We believe that the proposed changes should be confirmed through primary legislation in order to ensure that second homes and short-term lets can be managed through the planning system in the long term. We consider the current proposals to be for the short term and we ask the Government to set a timetable for amending primary legislation in this area.

Proposed amendments to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO)

Q6 Do you agree the GPDO should be amended to permit changes of use set out in Table 2 if the proposed changes to the UCO are taken forward? If not, please explain why.

It is noted: “The intention is that planning permission would not be required to change from a C5 (Secondary Homes) or C6 (Short-term Let) dwelling to a C3 (Primary Homes) in any case. This ensures properties in use as second homes or short-term holiday lets can return to general C3 housing supply without impediment, particularly in areas where there are localised housing pressures.” (4.15) We welcome that intention in principle but we believe that consideration should be given to whether the fact that a dwelling had been removed from the C3 housing supply previously affected subsequent decisions regarding new C3 houses in areas in the interim, and what would be the side-effect of a possible increase then in the number of open market houses that would be available when a house returned to being a C3 house. Consideration should also be given to the relevance of sections 10.12–10.17 (Rural Housing) of Technical advice note (TAN) 2. We believe that clarity is needed too regarding what happens when a C5 or C6 house is sold. Is it sold with permission to be a C5 or C6 dwelling or would a new buyer have to apply for planning permission for that dwelling in order to use it as a C5 or C6 dwelling?

It is also noted: “Generally, a mixed use is considered a ‘unique use’ (i.e. sui generis) and therefore development consisting of a change of use to a mixed use may require planning permission. Permitting changes of use to and from a mixed use as set out in Table 2 will provide clarity that where a mixed use occurs, planning permission is not required since it will be granted by the GPDO.” (4.16) This section suggests that planning permission will not be required for mixed use. One proposed example of such use is Class C5 and Class C6. We are concerned that the owners of primary homes would be able to convert their properties to

secondary homes and short-term lets without having to seek planning permission, by classifying them as 'Mixed use' rather than C5 or C6.

There are many considerations here regarding the side-effects of the changes in Table 2 on the property stock in the short, medium and long term. We believe that the Government will have to provide detailed guidance and resources to assist LPAs in deciding when action should be taken to control the numbers of second homes and short-term holiday lets and to assist them in doing so. Please note our response to Question 7 below.

Q7 Do you agree the use of Article 4 Directions by local planning authorities provides an appropriate targeted response to a location-specific issue? If not, please explain why and/or suggest an alternative approach.

We agree in principle. In our response to the Government's consultation, *Amendments to permitted development rights*, we agreed with the proposal that LPAs should be able to act quickly to make Immediate Directions in the case of Changes of Use. However, some aspects of Article 4 Directions require clarity. For example, it is noted in that previous consultation, "A Direction with immediate effect would last six months and would then expire unless confirmed by the LPA following consultation." (8.10) How long can an LPA decide that such a Direction will last? And would an individual Direction need to be made for each area where an LPA wished to disapply permitted development rights? We would not wish LPAs to have to bear a heavy administrative burden when trying to use Article 4 Directions and having to make a direction anew every six months. Second homes and holiday lets are not a short-term problem in communities and we believe therefore that the period of six months should be much longer if not limitless. In addition, it should also be ensured that it is possible for an authority to act quickly to use Article 4 in other areas where it observes a substantial rise in second homes and holiday lets, possibly because of restrictions in other areas. Any new system will have to be implemented effectively.

It is also noted: "Where it can be evidenced that a property has been used as a second home or short term holiday let prior to the Article 4 direction coming into force, planning permission will not be required to continue such use." (4.23) However, we understand that Sections 191-192 and Section 171B of the Town and Country Planning Act allow LPAs to act retrospectively within four years with respect to changing the use of a dwelling. It would be advisable to consider whether those sections of the act are relevant in this context in order to try and ensure that some dwellings which are already holiday lets or second homes come within the scope of these changes.

In order to assist LPAs in identifying the areas that need to be targeted, consideration should be given to setting a threshold for the percentage of second

homes and short-term holiday lets that are acceptable in terms of community sustainability and on the basis of the percentages of Welsh speakers in those communities. This can be compared with the position of houses in multiple occupation. LPAs can already set a threshold for the percentage of this type of property in their area. For example, it is noted in the Anglesey and Gwynedd Joint Planning Policy Service report, *Managing the use of dwellings as holiday homes* (2020), that the threshold in most of the two counties is 10%. It is possible that a lower threshold would need to be set for second homes and short-term holiday lets.

In order to assist in setting such a threshold, current data and information, as well as data for recent years, should be used to create presumptions for the sustainability of communities and the Welsh language. (See Councillor Rhys Tudur's evidence to the Local Government and Housing Committee on 26 January 2022.²) The data already collected on factors such as the number of children in the local schools, the language medium of schools, the number of permanent residents in the community, the number of second homes and patterns of house purchase, could be used to create these presumptions and set a suitable threshold that would help to ensure the viability of communities and the Welsh language. This could form part of the remit of the proposed Commission on Welsh language communities, which the Government proposes to establish through the *Welsh Language Communities Housing Plan* consultation.

We have already highlighted the concept of a threshold in our response to the previous Government consultation, *Local taxes for second homes and self-catering accommodation*. We believe that the Government should provide detailed advice on such a threshold, including the size of the area where the threshold should be set. Consideration would need to be given to the risk that imposing a threshold in one particular area could encourage an increase in the number of second homes and short-term holiday lets in adjacent areas. Expert advice would assist LPAs to determine when and where Article 4 Directions should be used to disapply permitted development rights in order to manage the numbers of second homes and short-term holiday lets. Government-approved advice would give LPAs the authority to make sound decisions they would be certain of their ability to defend if challenged. The Government should emphasise that it expects LPAs to use Article 4 Directions in line with its advice, and that this would not be a matter of choice should the situation require intervention. We would like to emphasise again, however, that planning authorities need resources and real support if the intention of this consultation is to be realised.

Q8 In respect of change of use to a second home or short-term holiday let, where an Article 4 Direction is made, should applicants have a right to claim compensation if a local planning authority refuses permission, or grants permission subject to conditions other than those imposed by the GPDO, within the first 12 months?

² [Agenda for Local Government and Housing Committee on Wednesday, 26 January 2022, 09.15 \(senedd.wales\)](https://www.senedd.wales/Agenda-for-Local-Government-and-Housing-Committee-on-Wednesday-26-January-2022-09.15)

Applicants should not be entitled to claim compensation if an LPA refuses permission to convert a primary home to a second home or short-term holiday let. We are concerned that offering such a right would prevent LPAs from making decisions that would protect the sustainability of communities and the Welsh language, as LPAs would be concerned about the financial implications and that this would undermine the aim of this policy step. There have already been examples of the influence of such concerns on decisions. In November 2021 Conwy County Borough Council decided not to levy a Council Tax premium of 50% on second home owners because of the financial implications for the Council if the owners of those houses decided to designate their homes as holiday accommodation and would not need to pay Council Tax as a result.³ The decision of LPAs not to use their taxation powers fully in this context is discussed in Simon Brooks's report, *Second homes: Developing new policies in Wales*, which was welcomed by the Government in 2021. Estate agents should be aware that no compensation is available in such a situation and explain this when providing information about properties to prospective purchasers who may consider, when buying a house, applying for planning permission to change the use of a primary home.

Proposed Amendments to Planning Policy Wales

Q9 Do the proposed amendments to PPW make it clear that the prevalence of second homes and short-term holiday lets must be considered by local planning authorities when developing the requirement for market and affordable homes within a particular area and whether a local policy approach is required in a Local Development Plan (LDP)?

Yes, they make it clear that LPAs must consider the prevalence of second homes and short-term holiday lets when developing the requirement for market and affordable homes within a particular area. However, as we have already noted the Government should also provide detailed advice on how LPAs should assess the situation of second homes and short-term holiday lets in their area and how to respond to the evidence. Please note our response to Question 7 above. When setting a threshold too, consideration should be given to the percentages of Welsh speakers in the area at issue.

It is not clear to us if you are asking in the question above whether a local policy needs to be adopted in a Local Development Plan as well. Our assumption is that

³ [Tax on second homes slashed in half over fears council will lose money - North Wales Live \(dailypost.co.uk\)](https://www.dailypost.co.uk/news/wales/2021/11/15/tax-on-second-homes-slashed-in-half-over-fears-council-will-lose-money-north-wales-live/)

policies need to be in force at the most local level possible in order to respond to the diverse situation of the communities in questions.

Q10 Do the proposed amendments to PPW support the proposed amendments to the:

- Town and Country Planning (Use Classes) Order 1987 (UCO); and
- Town and Country Planning (General Permitted Development) Order 1995 (GPDO)

Yes, the proposed amendments to PPW support the proposed amendments to the orders above. We believe that they should be adapted further to include 'the percentage of Welsh speakers in an area' as another local matter which should be considered as well as the number of second homes and holiday lets when developing the requirement for market and affordable homes in a specific area.

Consequences of the proposed changes

Q11 Do you consider that the potential positive consequences of the proposed planning measures for the management of second homes and short-term holiday lets outweigh the potential negative consequences (or vice versa) regarding house prices and the impact on the local housing market? Please explain your response, with reference to evidence where appropriate.

The principal statutory aim of the Welsh Language Commissioner is to promote and facilitate the use of the Welsh language. With this in mind, we refer to Brooks's report and his findings that "the conversion of *more* dwelling houses into second homes could be very detrimental to the Welsh language as well as being unacceptable from a social justice perspective". He notes that "the risk of not taking action will be far greater than any risks that might be associated with the introduction of new policies". We agree with this analysis and believe that action must be taken, although we understand that taking action in this way has its potential limitations and challenges. We welcome the Government's proposed steps, therefore, but we are concerned because more details and guidance are needed in order for them to achieve the comprehensive changes needed to safeguard Welsh language communities.

Q12 Do you have any comments or evidence about the potential consequences, both positive and / or negative, the proposed planning measures for the

management of second homes and short-term holiday lets may have for local economies?

No comment.

Q13 Applicable to local authorities only:

Do you consider that local planning authorities have sufficient resources to undertake an appropriate level of evidence gathering, monitoring and enforcement for the effective implementation of the proposed planning measures? Please explain your response, with reference to evidence where appropriate.

Not relevant.

Q14 Applicable to local planning authorities only:

- What IT (back-office) system is currently used (including version number)?
- What are your contractual arrangements (i.e. costs) for making changes as a result of Welsh Government legislative change?
- How long would it take to implement changes to your IT system?
- What is the expiration date of your current contract with your IT supplier?
- How much staff time is required (per application) to manually enter applications into your back-office system where it cannot be automatically received?

Not relevant.

Welsh language considerations

Q15 We would like to know your views on the effects the proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Please note our response to Question 7 above. In areas where evidence suggests that second homes and short-term holiday lets are having detrimental effects on the Welsh language, if Article 4 Directions from LPAs meant that fewer houses changed use from being primary homes, and if more local people could rent or purchase those houses, the Government's proposals could have a positive impact on the Welsh language by protecting the sustainability of communities where the language is spoken.

At the same time, steps should be taken to ensure that two housing markets do not develop. Brooks warned of this in his report, and the potential for houses with planning permission to be second homes (such as those in the proposed C5 and C6 categories) to increase in value whilst houses without such permission lost some of their value. To avoid such a situation, consideration must be given to whether it is appropriate for a C5 or C6 dwelling to continue to be in that category when it is transferred to new owners. That is, would anyone purchasing a property and wanting to use it as a second home or short-term holiday let have to apply anew for planning permission if that was a requirement of the LPA, whether or not the house was a second home or a short-term holiday let in the past? We have also referred in our response to Question 6 to local planning policies that mean that some dwellings lose their Open Housing Market status when changing their use in particular circumstances (when beyond the development boundary).

General considerations

Q16 We have asked a number of specific consultation questions. If you have any related issues which we have not specifically addressed, please use the space below to raise them.

We would like to know what the Government intends to do in terms of monitoring and evaluating the success of its actions. We would like to emphasise the need for better data and sophisticated and up-to-date information on people's migration trends in terms of planning for the future, including likely impacts on the sustainability of the Welsh language and community resources and services. We would like to know whether local authorities will have a role to play in the context of collecting evidence, as suggested above. If so, we ask whether the Government will support them in that work. We also encourage the Government to continue to consider further additional steps that could be introduced to tackle the challenges caused by second homes and short-term holiday lets.

