

**REPORT TO: CITY DEVELOPMENT COMMITTEE – 27 OCTOBER 2014**

**REPORT ON: PLANNING CONTROLS, PAY DAY LENDING AND BETTING OFFICES – SCOTTISH GOVERNMENT CONSULTATION**

**REPORT BY: DIRECTOR OF CITY DEVELOPMENT**

**REPORT NO: 374-2014**

## **1 PURPOSE OF REPORT**

- 1.1 This Report seeks to confirm the views of the Council in response to the Consultation paper "Planning Controls, Pay Day Lending and Betting Offices" and to authorise the Director of City Development to issue the response to the Scottish Government by November 14 2014.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee
- a endorses the recommendations in Appendix 1 to this report as may be amended by Committee as the Council's formal response to the Consultation.
  - b authorises the Director of City Development to issue the formal response to the Scottish Government by 14 November 2014.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no direct financial implications arising from approval of this report. Changes to the legislation may result in a small increase in planning applications which will be accompanied by an appropriate planning fee.

## **4 BACKGROUND**

- 4.1 The Scottish Government has issued a consultation paper seeking views on whether, and how, the planning system can address concerns around the negative impact of over-provision or clustering of betting shops and payday lenders on the character and amenity of town centre and shopping areas.
- 4.2 For some time both the Council and the Scottish Government have been concerned about problem gambling and pay day lending at exorbitant interest rates and the impact this has, particularly on the most vulnerable and deprived in the community. The Gambling Act 2005 removed the power from local government to allow the location and number of betting offices to be restricted where appropriate, on grounds of overprovision.
- 4.3 Report 52-2014 on Problem Gambling was approved by the Policy and Resources Committee in March 2014. This report considered a number of measures to tackle and heighten awareness of the social problems caused by gambling, including (amongst other matters) calling on the Scottish Government to review and revise the Town and Country Planning (Use Classes) (Scotland) Order 1997 to designate bookmakers a "sui generis" use.
- 4.4 That report recognised that gambling was a significant problem in areas of poverty and deprivation and that there was a link between gambling and alcohol abuse. It noted the correlation within the city between locations of gambling establishments, premises licensed to sell alcohol, and areas of multiple deprivation. It also noted that currently bookmakers offices fell within Class 2 of the Use Classes Order whereas if they were redesignated a "sui generis" use, planning permission would be required for all new bookmakers premises (although recognising that any decisions made on such applications would have to be based on material planning considerations such as matters of design, noise, or traffic issues etc)..

- 4.5 In April 2014 the Scottish Government held a summit on “Tackling Payday Lending and Gambling in Scottish Town Centres and neighbourhoods” and a number of themes emerged from this including the fact that Scotland did not have the powers in relation to the regulation of payday lenders and limited ones for gambling and concern about both the number and clustering of payday lenders and betting shops in town centres.
- 4.6 In response to the summit, a 12 point Action Plan was developed by the Scottish Government which included 2 points relevant to the planning system. The first was an undertaking to ensure that Scottish Planning Policy (SPP) would include a policy to support planning decisions seeking to address over proliferation and clustering of activities of concern (this was achieved by the inclusion of paragraphs 67 and 70 in SPP). The second was an undertaking to consult on changes to legislation to remove exemptions from planning control for betting offices and certain financial activities.
- 4.7 The proposals in the consultation paper are to make betting offices “sui generis” meaning all new betting offices would require planning permission. This accords with the Council’s views set out in Report 52-2014. In addition it is proposed to include a requirement that all new pay day lender premises would also require planning permission.
- 4.8 The aims of the consultation paper are supported and a detailed response to the questions raised is set out in Appendix A to this report. The response agrees with the proposals to control betting offices and pay day lending premises and considers that the proposals are an effective and proportionate response to the issues identified.

## **5 POLICY IMPLICATIONS**

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues identified.

## **6 CONSULTATIONS**

- 6.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

## **7 BACKGROUND PAPERS**

- 7.1 Planning Controls, Payday Lending and Betting Offices – Scottish Government Consultation Paper August 2014.
- 7.2 Scottish Government summit “Tackling Payday Lending and Gambling in Scottish Town Centres and neighbourhoods” April 2014.
- 7.3 Scottish Planning Policy 2014.

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14 October 2014

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## APPENDIX 1

## PLANNING CONTROLS, PAY DAY LENDING AND BETTING OFFICES

## CONSULTATION QUESTIONS

**Proposed Changes****Betting Offices**

18. The proposal is to remove reference to "betting offices" from Class 2 and add "betting offices" to the list of uses in article 3(5) of the UCO. Article 3(5) provides that a use listed there does not fall within any of the classes to the UCO. Other uses listed in article 3(5) include: amusement arcades; public houses; theatres and hot food takeaways.

19. In addition, the GPDO would be amended so that, while changes of use to betting offices may require planning permission, as far as possible the current freedoms from planning control to change from use as a betting office to other uses would remain.

20. We also propose specifying that the definition of "betting offices" should follow section 150(e) of the Gambling Act 2005, namely premises licensed under that Act for "the provision of facilities for betting, whether by making or accepting bets, by acting as a betting intermediary or by providing other facilities for the making or accepting of bets".

21. We understand that fixed odds betting terminals (FOBT) are classed as B2 gaming machines in Gambling legislation, and that these would only be available in betting offices and casinos. We do not anticipate therefore that increasing planning controls on betting offices would displace activity, such as FOBT, to other premises which might then start to cluster.

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

Agree  Disagree

Comments A Betting Office is clearly defined (S150( e) of Gambling Act 2005) and the control is proportionate by permitting changes of use from a betting office to other uses.

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

Yes  No

Comments See response to Q1 above.

**Pay Day Lending**

22. As indicated in paragraph 16 above, premises offering PDL services are likely to be covered by the financial services element of Class 2 (Financial, professional and other services). Despite the wide use of the terms pay loan, pay day lender and PDL, there is not a widely agreed single definition as to whom or what the terms refer.

23. The Financial Conduct Authority's definition states a pay day lender offers high cost short term credit where:

- APR is equal to or higher than 100%
- Credit is provided for any period up to 12 months

- Credit is not secured by a mortgage, charge or pledge

24. PDL can be offered from a variety of premises, ones which might specialise in such lending or others which offer it as part of a range of products or services, such as pawn broking, cheque cashing, money transfers, foreign exchange and/or other financial services or a combination of these.

25. In many cases, therefore, PDL may form only a limited aspect of the range of financial services offered from the premises and may be a part, perhaps only a very small part, of the overall use of the premises.

26. Another challenge in applying planning controls to premises engaging in PDL is that, despite definitions provided by the likes of the FCA, it is not straightforward to identify a suitable definition of PDL for the purposes of the UCO. Any definition would require to be sufficiently broad to catch the wide range of potential activities that should be included, otherwise slight changes in loan terms might avoid controls. At the same time, it should not be so broad as to capture a much wider range of activities unnecessarily.

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

Yes  No

Comments Without a clear definition it would be difficult to exercise planning control. The FCA definition seems appropriate but linking a use to matters such as interest rates offered and length of loan period will be very difficult for local authorities to monitor and questions relating to material change of use will be complex. The alternative is not to have a definition on the basis that the uses of concern are clearly recognisable. On balance we favour using the FCA definition.

27. In order to achieve any additional planning control over changes of use within the financial services sector, a wider range of activities would be likely to have to be removed from Class 2 of the UCO. Two Options are considered below. Essentially these are:

- i) continue to include financial services within Class 2 but subject to certain exclusions; or
- ii) replace the general reference to financial services with references to specific financial activities.

28. The first approach in Option 1 seeks to identify and exclude from Class 2 the sorts of businesses likely to offer PDL and which are likely to cluster in shopping areas, undermining the character or amenity of the area or the wellbeing of communities. The second approach in Option 2 seeks to identify and include the sorts of financial services business less likely to either engage in PDL or to cluster in shopping areas, and which are, therefore, less likely to be associated with the negative impacts mentioned above.

29. We do not propose to amend Class 1 (Shops), on the basis that, as their main characteristic is that of shops selling goods to the public, the fact they may be offering pay day loans as a side line would be less likely to materially affect the character or amenity of shopping areas or the wellbeing of communities. As with other mixed uses, it would be for the planning authority to judge whether the activities at a particular shop meant it had gone beyond a Class 1: Shops use and required planning permission for other uses, such as financial services.

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

Agree  Disagree

Comments We are confident that we can make a judgement about material change of use from a shop to a PDL.

30. As described above there are broadly two approaches to removing uses from Class 2 that might engage in PDL. With both options, as with betting offices, we propose to use the GPDO to retain, as far as possible, the existing freedoms from planning control for changes from uses associated with PDL to other uses.

### **Option 1**

31. Remove from Class 2 specific activities which are likely to offer PDL, perhaps alongside other products and services, and to cluster or be prevalent in shopping areas to the extent that they would undermine the character and amenity of the area or the wellbeing of communities, and exclude them from the UCO.

32. The candidates for activities to be removed from Class 2 and added to the list in article 3(5) of the UCO would appear to be uses involving:

"Money Service Business" - as defined in Regulation 2 of the Money Laundering Regulations 2007, i.e. an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers.

"Pawn broking"

"Premises for buying goods from visiting members of the public"

"Financial lending other than by deposit takers"

"Deposit takers" - means an entity with permission under Part 4A (permission to carry on regulated activities) of the Financial Services and Markets Act 2000(1) that includes accepting deposits, including-

- (i) a bank;
- (ii) a building society within the meaning of section 119(1) (interpretation) of the Building Societies Act 1986(2);
- (iii) a credit union within the meaning of section 31(1) (interpretation) of the Credit Unions Act 1979; or (interpretation) of the Credit Unions Act 1979(3); or
- (iv) a friendly society within the meaning of section 116 (friendly societies etc.) of the Friendly Societies Act 1992(4).

33. This approach may not sufficiently cover all premises which might engage in PDL as a secondary or ancillary activity and such premises might cluster.

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

Yes  No

Comments Specifically defining those uses that give rise to concern is considered to be the best approach. As with betting offices we agree that changes of use from PDL's should not be restricted.

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

Comments The stated activities of money service businesses, pawn brokers, premises for buying goods from the public and financial lending other than by deposit takers seems sufficiently comprehensive.

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

Comments We do not consider that other exceptions should be made.

### **Option 2**

34. Limit the "financial services" to be included in Class 2 of the UCO to a number of more specific uses.

35. These limited uses to be included should relate to financial services unlikely to raise the sorts of planning concerns with PDL, even if some, like the "deposit takers" below, may have products which would be regarded as within some definition of a pay day loan.

36. The proposed limited list of "financial services" to be included in Class 2 (i.e. financial service uses remaining in Class 2 along with professional and other services) is:

"Accountancy services"

"Insurance Services"

"Deposit takers" - i.e. an entity with permission under Part 4A (permission to carry on regulated activities) of the Financial Services and Markets Act 2000(1) that includes accepting deposits, including-

- (v) a bank;
- (vi) a building society within the meaning of section 119(1) (interpretation) of the Building Societies Act 1986(2);
- (vii) a credit union within the meaning of section 31(1) (interpretation) of the Credit Unions Act 1979; or (interpretation) of the Credit Unions Act 1979(3); or
- (viii) a friendly society within the meaning of section 116 (friendly societies etc.) of the Friendly Societies Act 1992(4).

37. This approach would not include explicit exemptions for "professional services" or "other services" who may be engaged in some "financial services" as part of an overall package of services, e.g. estate agents' or solicitors' offices. As with other mixed uses, it would be for the planning authority in individual cases to consider whether the extent of any financial services provided by such premises was material change of use requiring planning permission.

38. While this has the advantage of applying control to a wider range of uses of premises that might also offer PDL services, it is likely to mean that more financial services activities that are not of concern would in future require planning permission.

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

Yes No ✓

Comments We prefer the approach where the activities of concern are specifically identified and removed from Class 2.

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

Yes  No

Comments We are not aware of other examples that should be included.

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

Comments We are not aware of other exceptions that should be included.

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

Option 1  Option 2

Comments We prefer the approach in Option 1 where the activities of concern are specifically identified and removed from Class 2. There is a danger that Option 2 creates a requirement for planning permission for activities which cause no concern

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

Yes  No

Comments The change to the legislation, particularly with regard to PDL, should be accompanied by a circular giving clear guidance to planning authorities on how to interpret and operate the new controls.

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

Comments We consider that the BRIA is robust.

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

Comments We consider that the EqIA is robust.