

Number: WG24963



Llywodraeth Cymru
Welsh Government

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Consultation – summary and assessment of responses

Subordinate Legislation Relating to Certain Internal Operations (Mezzanine Floors)

Date of issue: April 2015

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1. Introduction

1.1. This consultation exercise sought views on the proposal to introduce subordinate legislation which has the effect that where additional floor space is proposed for the purpose of the retail sale of goods in the existing footprint of a building, and it is over 200sq metres, it will be “development” and subject to planning control. The consultation was launched on 21 November 2014 and was open for responses for 12 weeks until 13 February 2015. This paper provides a summary of consultee responses together with the Welsh Governments reply.

2. What is the current position?

2.1 At present internal works do not fall within the definition of development. Planning permission is therefore only required if the original permission for the building or subsequent variation was granted subject to a planning condition restricting the maximum amount of floor space allowed or if the installation of a mezzanine floor is expressly not permitted.

3. Why are we proposing change?

3.1 With the recent renewed focus¹ on seeking ways to support and enhance² established town centres and to protect their viability the introduction of this subordinate legislation is complementary to the wider review of retail planning policy which the Minister for Natural Resources announced in October 2014³.

3.2 Uncontrolled retail floor space increases may impact on the vitality and viability of existing centres which in turn can also undermine national planning policy aimed at promoting vibrant town centres. This may occur, for example, in out of centre locations by the installation of mezzanine floors within retail units where need for new retail space has not been established or does not exist, or where sequentially preferable sites for additional retail provision have not been considered.

3.3 Uncontrolled increases in retail floor space may also lead to additional car use where locations are poorly served by public transport, causing a need for more parking, and social exclusion for those without access to a car. Whilst many larger stores will have already created mezzanine space it is possible that there are still retailers who are not restricted by a planning condition and who could, if they wish, create additional floorspace without recourse to the planning system.

3.4 Whilst uncontrolled increases in retail floor space could have negative impacts as described above, the purpose of the proposed provisions is not to halt retail mezzanines and other internal floor space increases, it is to bring such developments which are

¹ <http://wales.gov.uk/topics/housing-and-regeneration/regeneration/vibrant-and-viable-places/?lang=en>

² <http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/town-centres-and-retail-dynamics/?lang=en>

³ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/retailtowncentres/?lang=en>

above the specified size within planning control, and therefore subject to the same planning considerations as other retail extensions. Local planning authorities would still require sound planning reasons for not permitting such development.

3.5 Local planning authorities currently have the discretion to attach conditions to restrict mezzanines on new retail developments. We are seeking to build on this power to ensure a consistent approach across Wales and apply these provisions to existing developments also.

3.6 Introducing this provision would support the aims of Planning Policy Wales (PPW)⁴ of promoting established town, district, local and village centres as the most appropriate locations for retailing. Applications for mezzanine development would need to take in to account the tests set out in PPW such as impact on existing centres, need for the development, accessibility and impact on travel patterns.

3.7 In the right locations determined through the development management system, such development can contribute to the Welsh Government's planning policy objectives. The construction of additional floor space within an existing building may bring benefits to retailers such as better use of buildings, improved productivity from the existing building footprint, and more efficient use of land. Mezzanines may also reduce the need for new stores by improving performance and increasing return from an existing consent.

4. What were the main changes proposed?

4.1 Section 49 of the Planning and Compulsory Purchase Act 2004 ("PCPA") which is partially in force in relation to Wales, introduces new sections 55(2A) and (2B) into the Town and Country Planning Act 1990 ("TCPA"). These provisions provide the power to bring under the meaning of "development", operations which increase the internal gross floor space of a building by a specified amount and in prescribed circumstances.

4.2 We therefore propose to change the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 to bring proposals for additional floor space over 200 square metres within the existing footprint of a building used for retail purposes within the control of the planning system.

4.3 As a result, a proposal to create additional retail floorspace in an existing building above this threshold would require the submission of a planning application to the local planning authority where they would need to assess and determine the application in the context of national and local planning policies. This ensures that this form of development is subject to the same planning policy considerations as other retail extensions.

4.4 The threshold of 200 square metres is considered appropriate to capture larger retail developments, such as out of town retail parks and supermarkets, but should not stifle the expansion of smaller retailers located in town centres.

⁴ <http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>

4.5 Changes to the development order would only apply to new retail developments or proposals for additional internal floor space in an existing retail unit. It will not apply to mezzanine floors in place prior to the date on which the development order is made, or where construction of a mezzanine has commenced prior to that date.

5. Next Steps

5.1 This consultation paper is published alongside the final subordinate legislation which is due to come into force on 22 June 2015.

6. Details of Responses

6.1 Targeted consultees were drawn from the core stakeholders consultation list held by the Planning Directorate of the Welsh Government. These stakeholders included all local planning authorities in Wales, together with relevant public bodies, businesses, special interest groups, professional bodies and other interest groups. The consultation was open to all through the Welsh Government website.

6.2 All responses have been considered fully, in total, 17 consultation responses were received. There were 3 responses from the business/consultant sector, 7 from local planning authorities, 6 from professional bodies/interest groups and 1 from a member of the public. Three (17%) of the responses were in letter form and did not specifically address the 4 questions. One of the respondents, although answering questions 1 and 2, did not answer questions 3 and 4. **Appendix A** includes a list of all respondents. Copies of the individual consultation responses are available on request.

6.3 A summary of the questions can be seen below in section 7. A statistical overview of all responses is available in **Appendix B**.

7. Statistical Breakdown and Overview of the Responses to Each Question

7.1 A summary of the key findings under each consultation question is set out below. This section provides a detailed summary and analysis of the key themes generated for each question followed by the Welsh Government response.

Question 1:

Do you agree with the proposal to bring additional internal floor space within a retail building under planning control? Should this apply to any other uses?

Question 1	Businesses	LPA	Professional Bodies/Interest Groups	Other	Total	%
Yes		7	2	1	10	59%
No	3		1		4	24%

Statistical Review

7.2 More than half of the respondents agreed with the proposal to bring the creation of additional floor space in retail buildings under planning control. In addition to this 2 of the 3 respondents who responded by letter were in general support of the proposal. All 3 of the business responses plus 1 professional body disagreed with the proposal.

Overview

Opinions supporting the proposal related to:	Opinions opposing the proposal related to:
<ul style="list-style-type: none"> • Without legislation the vitality of Wales' town centres could be impacted, this undermines Planning Policy Wales and other Planning Policy • Additional floor space can lead to additional car use and parking problems • Legislation will help ensure consistency across Wales and consideration should be given to extending it to other commercial uses • The current system does not allow local planning authorities to seek S106 contributions towards highway improvements • Legislation will mitigate potential legal arguments where local planning authorities have sought to control floorspace via conditions 	<ul style="list-style-type: none"> • Will damage retailers ability to improve efficiency and competitiveness, this has been proved in England • Mezzanines are often used for purposes ancillary to retail and do not necessarily result in a footfall increase • Mezzanines allow stores to meet changing customer requirements • In some instances town centres and high streets no longer provide cost efficient trading posts • Despite reports there is a lack of substantial evidence to support threats to town centres and any need for change • Restrictions can currently be imposed by conditions anyway • Opportunities to install mezzanines have already been taken, therefore, the necessity and benefit is questionable

Welsh Government Response

7.3 The proposed changes are not intended to oppose mezzanines where they are appropriate. The provision simply brings a development under control of the planning system whereby any affects or impacts can be properly considered in a consistent manner across Wales. Issues like efficiency and competitiveness are recognised as important to the retail sector, however, it is reasonable to expect that where unplanned increases in floorspace could have detrimental affects that local planning authorities are able to consider these.

7.4 The most effective use of a mezzanine is an operational matter for the business. The immediate use of a mezzanine, perhaps for administration or storage space for example, does not preclude its later use for another purpose such as retail floorspace which may have impacts.

Question 2:

Do you agree that the proposed floor space threshold of 200sqm (or above) before planning permission is required is appropriate? If no, please provide evidence to justify an alternative threshold.

Question 2	Businesses	LPA	Professional Bodies/Interest Groups	Other	Total	%
Yes		7	2	1	10	59%
No	3		1		4	24%

Statistical Review

7.5 More than half of the respondents agreed with the threshold being set at 200sqm. In addition to this 2 of the 3 respondents who responded by letter were in general support of the proposal. All 3 businesses, plus 1 professional body disagreed with the proposal.

Overview

Opinions supporting the threshold related to:	Opinions opposing the threshold related to:
<ul style="list-style-type: none">• Town centre stores are typically smaller than out of town stores, therefore, mezzanines in town centre stores below the threshold will not look out of place, therefore, supporting growth in appropriate locations• Correlates with England which has shown to be effective• Concern that retailers might construct multiple mezzanines below 200sqm, although this has not happened in England• Consideration should be given to a reduced threshold in certain areas such as National Park and AONBs, possibly 100sqm	<ul style="list-style-type: none">• Threshold taken in 2005 by England was based upon flawed data• DCLG Consultation in July 2014 'mooted' the potential increase of the English threshold• If legislation is introduced, there should be a 6 month period before restrictions take effect• Threshold is at odds with the floorspace threshold of 2500sqm contained in TAN 4 which triggers the current requirement for an assessment of retail impact

Welsh Government Response

7.6 The threshold adopted in England was done so in 2005 and the UK Government has recently consulted on raising this threshold. They have yet to confirm their final proposals on this issue. It is considered that the 200 sq m threshold is a sensible threshold, given the differences in the retail markets and structure in Wales as identified in the 2014 Genecon report. As in England, this threshold can be reviewed in time to ensure that it is meeting its policy objectives.

7.7 The 200 sq m threshold determines when a planning application is required and PPW, which post dates TAN 4, indicates criteria local planning authorities should take in to account when assessing applications for new retail development. The 2,500sqm threshold in TAN 4 is designed for new retail developments that already require planning permission but, notwithstanding this, section 6 goes on to say that assessments may also be necessary for some smaller developments, for example those likely to impact on a smaller town or district centre. It is for the local planning authority to determine whether any evidence provided by an applicant is sufficient in any case.

Question 3:

Do you think the provisions should include any exceptions to those described above? If so, please can you explain why.

Question 3	Businesses	LPA	Professional Bodies/Interest Groups	Other	Total	%
Yes	3	5	1		9	53%
No		2	1	1	4	24%

Statistical Review

7.8 A majority of the respondents expressed opinions and possible amendments about the proposal to introduce the creation of additional floor space under planning control. Responses received by letter also expressed possible amendments.

Overview

Opinions supporting exceptions to the proposals related to:	Opinions opposing exceptions to the proposals related to:
<ul style="list-style-type: none"> Existing retail units in town centres should be exempt, for this the boundary of town/local centres would need to be defined A reduced threshold in National Parks, AONBs and listed buildings In England exemption is given to units selling hot food If legislation is introduced, there should be a 6 month period before restrictions take effect 	<ul style="list-style-type: none"> Units in city centres/district centres/local centres should not be exempt as the introduction of a large mezzanine has the potential to create additional floorspace in a less sequentially preferable location and could undermine the retail hierarchy Exceptions are unnecessary given the unnecessary nature of the proposal

Welsh Government Response

7.9 Using the wording from the Use Classes Order it is intended that the provision will include an exception to hot food as is the case in England. Where the primary use is A1, all mezzanine development over 200sqm will require planning permission. The proposal will not make exceptions for existing retail units in town centres or other areas as the purpose is to ensure consistency across Wales, it is also difficult to define ‘Town Centres’ in legislation.

7.10 There is not considered to be a need to introduce a 6 month grace period. The intention to commence the provision has been known since December 2014. A prolonged period prior to commencement may have a detrimental affect in terms of what the provision is trying to achieve, i.e. control potential impacts of unplanned floorspace.

Question 4:

Do you consider that these proposals will have any costs to you? If so, please can you identify what these are?

Question 4	Businesses	LPA	Professional Bodies/Interest Groups	Other	Total	%
Yes	3	3		1	7	41%
No		4	2		6	35%

Statistical Review

7.11 Opinions on the financial implications of the proposals were evenly split. Most markedly was that 3 local authorities thought there would be costs, as opposed to 4 that didn't.

Overview

Opinions agreeing that the proposal will have cost implications related to:	Opinions disagreeing that the proposal will have cost implications related to:
<ul style="list-style-type: none"> • Possible increase of planning applications which are currently set at a fee that may not represent full cost recovery • Assessment of applications with vitality and viability assessments may require local planning authorities seeking specialist advice from external consultants, not all of the costs may be recovered by the planning fee • Costs related to advertising changes and making changes to local planning authority's advisory documentation • Local planning authority staff will need to be trained • Increase in Planning Enforcement workload • Increase in application for Lawful Development Certificates • Increase in requests for pre application advice • Increase in S106 payments • Increase will mean less efficient use of existing buildings 	<ul style="list-style-type: none"> • No comments were made

Welsh Government Response

7.12 It is recognised that there may be more applications which need to be processed with implications for service costs. Costs associated with the administration and advertisement of planning applications is comparable to those of all types of planning applications.

7.13 The current fee structure for planning applications in Wales is set out in the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (Wales) Regulations 2009. For any future mezzanine floor applications, section 9 (part b) of these regulations should be used.

7.14 The Welsh Government, along with all elements of planning policy and delivery, will keep the implementation of the regulations associated with these changes under review. Following feedback received from service users and local planning authorities, the Welsh Government will assess the need for future training in this area and, in future reviews of the planning application fees schedule could assess the appropriateness of the relevant fee in relation to the time taken by local planning authorities to assess and determine applications.

Question 5 – Any other comments

7.15 A few other issues were raised by respondents and these are summarised below:

- Planning Policy Wales and TAN 4 will need to be updated if the legislation is introduced
- Clarity needed about information should accompany future applications

Welsh Government Response

7.16 The Welsh Government is in the process of reviewing PPW and TAN 4. These will be updated to include changes in relation to Mezzanine provisions.

Appendix A – Full List of Respondents by Category

Businesses/Consultants

1. British Land
2. Stadium Group
3. M and G Real Estate

Local Planning Authorities

1. Newport City Council
2. Pembrokeshire County Council
3. Denbighshire County Council
4. National Park Wales
5. Bridgend County Borough Council
6. Ceredigion County Council
7. Merthyr Tydfil County Borough Council

Professional Bodies/Interest Groups

1. British Property Federation
2. Accessible Retail
3. Royal Town Planning Institute Wales
4. The Law Society
5. Association of Convenience Stores
6. Institution of Civil Engineers

Other

1. One individual respondent.

Appendix B – Statistical Overview of all Responses

The table below provides an overview of all responses to the questionnaire and gives a strategic outline of the overall responses to the consultation proposals.

Consultation question	Yes or No	Businesses	LPA	Professional body	Other	Total	%
Do you agree with the proposal to bring additional internal floor space within a retail building under planning control? Should this apply to any other uses?	Yes		7	2	1	10	59%
	No	3		1		4	24%
Do you agree that the proposed floor space threshold of 200sqm (or above) before planning permission is required is appropriate? If no, please provide evidence to justify an alternative threshold.	Yes		7	2	1	10	59%
	No	3		1		4	24%
Do you think the provisions should include any exceptions to those described above? If so, please can you explain why.	Yes	3	5	1		9	53%
	No		2	1	1	4	24%
Do you consider that these proposals will have any costs to you? If so, please can you identify what these are?	Yes	3	3		1	7	41%
	No		4	2		6	35%