

THE HIGHLAND COUNCIL

PLANNING, ENVIRONMENT & DEVELOPMENT COMMITTEE

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Agenda Item	10
Report No	PED 7/11

CONSULTATION ON THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) AMENDMENT ORDER 2011 – HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS

Report by Director of Planning & Development

SUMMARY

The Scottish Government proposes to change the rules that determine what type of householder development requires planning permission. Currently, permitted development is governed by the Town and Country Planning (General Permitted Development)(Scotland) Order 1992. The proposed changes are intended to simplify, be proportionate and increase the efficiency of the development management process but with due regard to protecting amenity. In line with the objectives detailed in Modernisation of the Planning System, the proposed changes seek to remove the need for planning permission for minor householder developments. It is also intended to simplify the existing Order which has been amended more than 25 times since coming in to force. The efficient operation of these procedures is important in order to ensure that the planning system is supporting the contribution by planning to sustainable economic growth.

The purpose of the consultation is primarily to seek views on the proposed changes. The Highland Council has been involved in undertaking a pilot study (Inverness and Dingwall offices) and is a key member of the Scottish Government working group assessing the implications of the proposed changes. The Scottish Government invites written responses to the consultation paper by Friday 14 January 2011.

The consultation paper sets out the proposed new classes of householder permitted development and these will replace the existing Classes 1-6. For the first time, it introduces limited permitted development for flatted properties. In addition, a Draft Circular 1/2011 is to accompany the revised Order and provides guidance on the interpretation and implementation of the new Classes including diagrammatic examples. The consultation paper is organised into four sections with 5 annexes.

The Highland Council welcome the changes proposed within the Order which will streamline and simplify the current procedures. It asks 17 questions and these are specified with the responses proposed by The Highland Council for each and as set out in the following report.

1. Introduction

- 1.1 The changes introduced by the new Town and Country Planning (General Permitted Development)(Scotland) Amendment Order 2011 (Order) are based on reducing the number of uncontroversial planning applications submitted for householder development where it is considered the planning system can add little or no value. The Draft Circular identifies that the 'planning system exists to protect public interest rather than the private interests of householders'. The changes introduce a number of concepts that apply to several of the classes of householder development and address the main concern that the current Permitted Development Order for householder developments is too restrictive and involves unnecessary submission of planning applications for relatively minor and uncontroversial proposals.
- 1.2 The revised Order has taken into account the changes implemented in England as set out in the 2008 English Householder Permitted Development Order. The Heads of Planning Scotland (HoPS) have assisted in the assessment of the proposed changes and reviewed the findings of the pilot studies. The Scottish Government has identified that approximately 50% of the 40,000 planning applications made each year relate to householder developments and of these, the majority of proposals relate to single storey rear extensions. Approximately 97% of these are granted permission, indicating the need for review and an opportunity to reduce the number of applications but without detriment or risk to public amenity. It is intended that the Order would come into force in mid 2011.
- 1.3 The consultation paper is organised as follows:
- Part 1 - Introduction and Background
 - Part 2 - General issues
 - Part 3 - Classes of Householder Development Rights
 - Part 4 - Consequential Amendments
 - Annex A - List of Questions
 - Annex B - Draft Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011
 - Annex C - Draft Circular
 - Annex D - Partial Business and Regulatory Impact Assessment
 - Annex E - Partial Equality Impact Assessment
 - Annex F - Response to the Consultation

2. Summary of the Main Changes Proposed

2.1 The revised Order is intended to simplify and potentially remove 20-25% of householder planning applications by making the following key changes:

- Creating 3 new classes (particularly directed at reducing the need for planning permission for single storey rear extensions)
- Introducing the concept of a **principal** elevation to distinguish what is usually the front and rear of a house
- Allow alterations or improvements to houses and flats (other than extensions) if within a 1 metre 'bubble' around the walls or roof of a house or flat. This would remove the need for planning permission for example for satellite dishes and clarifies the position on rooflights.
- Introducing a new site coverage criterion to replace the current floorspace limits and 30% maximum site coverage. The new limitation will be based on ensuring that there must be 'at least the same area of garden remaining undeveloped as developed'.
- New definition for calculating the height of a building and external dimensions.
- Maintain strict controls within conservation areas and within the curtilage of listed buildings.

Table 1, annexed to rear of this report, provides a summary of the proposed changes.

2.2 The main changes will result in the following categories of development as permitted:

- Single storey rear extensions to houses
- 1.5 or 2 storey extensions to the rear of houses where a minimum of 10 metres separates the proposed extension from any boundary
- Alterations to the external appearance of a house provided it does not extend by more than 1 metre. This would enable cladding, satellite dishes etc. but excludes balconies.
- Dormer windows where the elevation is not bounded by a road.
- Alterations to the roof, for example flues or addition of satellite dishes
- Provision of buildings, outhouses etc within the curtilage of the house provided the site coverage does not exceed the area of undeveloped land.
- Provision of hard surfaces
- Erection of decking and raised platforms to the rear of houses
- Erection of porches on front elevations but not to exceed 3 square metres or 2 metres in height.
- Erection of gates and fences not to exceed 2 metres to the rear or 1 metre forward of the principal elevation but measured from the lowest ground level.
- Each of the classes restricts the scope of development permitted within conservation areas or listed buildings.

3. Consultation Response

3.1 Question 1 - Do you agree that the new structure of the householder development Classes makes the rules easier to apply?

Response – Yes. However, the situation in rural areas differs significantly from that of an urban location raising concerns that there may actually be an increase in applications for minor developments, for example where the principal elevation of the house is orientated to take advantage of views and the rear of the property is bounded by a road.

Question 2 - Are the new Classes sensible and workable?

Response – Yes. The new rules follow a logic and the examples provided within the Circular add clarity. There is concern regarding the term 'dual pitched roof' as it is not clear if this will exclude a hipped and mansard type roof. The segregation of front and rear curtilages provides opportunity for considerable scale of development within newer residential areas. No account is taken of the need to secure appropriate surface water drainage facilities yet the scope of development which could be permitted could result in a significant area of developed ground resulting in limited amenity area for householders. A total site coverage maximum is considered a more appropriate criterion. This would also apply to areas of decking which are proposed in Class 6c.

Question 3 - Do you agree that the new structure and rules would reduce the number of applications and queries?

Response – the revised Order will reduce the number of planning applications but is likely to lead to an initial increase in the number of enquiries to establish whether permission is required. The Circular will provide a useful reference and it will be essential to ensure this is given wide publicity and it is recommended it be made available on the Scottish Government eplanning portal. It is anticipated that the number of complaints will increase involving a corresponding increase in the need for site inspections and resultant implications on staff time, but that this too will reduce as public awareness of the changes increases. The Highland Council would support a simplified diagrammatic guide for use by the public to encourage awareness. It is recommended that a standardised guide for use by all planning authorities be provided by Scottish Government and should supplement the more technical details provided within the Circular.

Question 4 - Do you agree with the proposed approach to identifying and defining the front and back using the principal elevation concept? If not, can you suggest a suitable alternative?

Response – Yes. The principal of identifying the main elevation is welcomed and although it is recognised that it is more of an architectural concept than one which reflects the concept of the street as a public realm, it is anticipated that there will be a general recognition and understanding of the term which should avoid disputes. It is not considered that it will lead to an undue demand for site inspections to establish the position. The widening of Class 1 to include side elevations is also

welcomed but fails to address situations in which a house may turn its back to the road which is a common feature of houses on the west coast of Scotland and older residential areas. The Circular provides welcome clarification on the interpretation of the concept of Principal Elevation.

Question 5 - Do you agree with the proposed 1 metre “bubble” provision for all other alterations and improvements to dwellinghouses that are not extensions?

Response – Yes. This class will remove the need for planning permission for satellite dishes and flues. Clarification should be provided whether Juliet style balconies are similarly exempt. At a depth of 1 metre or less, these are unlikely to cause significant loss of neighbouring amenity because they cannot be used as outdoor rooms. The terms of the proposed Order would continue to require applications for these types of development but to no advantage. Concerns are expressed regarding the potential for cladding of buildings which would be exempt under this Class but welcome the exclusion within conservation areas.

Question 6 - Do you agree with the proposed new site coverage criterion? Do you consider it will be clear to householders?

Response – concerns are raised that the site coverage of a rear and front garden could be up to 50% of the total area. This is a significant increase on the existing maximum of 24 square metres and 30% site coverage. It is anticipated it may lead to issues in newer residential areas where gardens are typically more modest. It has the potential to erode a significant area of private garden ground and no account is taken of the potential for surface water drainage problems, particularly on sloping sites. It is unlikely that householders will easily identify 50% which could lead to an increase in the need for site inspections. The Interpretation of Part 1 within the Order excludes the dwellinghouse from the ‘total developed area’ which enables a significant area of the total garden to be developed. It is recommended the 50% maximum be reduced or based on the total developed area to include the existing house.

Question 7 - Do you agree with the proposed changes to the measurement of height and the use of external dimensions?

Response - Yes. This is an improvement on the current situation where height is measured from the highest point. The change to measuring from the lowest point is welcomed and provides greater clarity when dealing with sloping sites. The use of external measurements is a pragmatic approach and welcomed.

Question 8 - Do you agree that the removal of permitted development rights should only apply to conservation areas and the curtilage of listed buildings?

Response – Yes, the removal of permitted development rights should apply to conservation areas and the curtilage of listed buildings but thought needs to be given to the use of conditions and Article 4 directions in restricting permitted development rights in the circumstances detailed below. The Order makes this restriction very clear but it is assumed that conditions could continue to be used

elsewhere if deemed necessary in order to limit permitted development rights. Concern is expressed with regard to the potential for overdevelopment of housing developments which are designed at higher levels of density (for example The Drum, Bo'ness or Polnoon, Eaglesham) where the concept of the original layout does not readily lend itself to significant additional development without potential detriment to the amenity of residents and compromising the layout. Article 4 Directions may be necessary to limit opportunity for extensions in these situations.

Question 9 – Is it resource efficient to review and replace existing householder Article 4 directions? If not, why not? If Article 4 directions do cease to have effect what process should there be for the application for and issuing of new directions?

Response – the proposed revision of the Order by generally excluding permitted development rights from houses within conservation areas provides sufficient protection to ensure the character or appearance of the conservation area is preserved and enhanced in accordance with statutory duty. It is envisaged there will be a reduced need for Article 4 directions. However, not all Article 4 directions are restricted to householder developments and there would be a continuing requirement to limit permitted development rights for other properties. A blanket removal of Article 4 Directions should make provision for revision of existing Directions where the terms apply to other than dwelling houses. The timing of these amendments will be crucial in implementation of the proposed Order.

Question 10 – For each Class of householder permitted development in the draft Order:

- a) Is the granting of permission, and the restrictions and conditions, clear and reasonable?**
- b) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?**
- c) Are there any changes to the controls that would strike a better balance?**

Response – the majority of classes are clear. The following comments are made in respect of each class where clarification is required:

Class 1 – Any enlargement of a dwellinghouse by way of a single storey ground floor extension, including any alteration to the roof required for the purpose of the enlargement.

Comment – the assumption that the curtilage and property boundary coincide is not always applicable in a rural situation. This requires clarification. Definition of dual pitched roof should identify if mansard and hipped roofs are included. It is ambiguous at present and has the potential for a lack of continuity in application.

Class 2 – Any enlargement of a dwellinghouse, other than a single storey ground floor extension, including any alteration to the roof required for the purpose of the enlargement.

Comment – this class is considered clear and reasonable and will remove the need for planning applications for a significant number of rear extensions, particularly conservatories.

Class 3 – Any improvement or other alteration to the external appearance of a dwellinghouse that is not an enlargement

Comment – restriction of Juliet style balconies is not considered necessary and this should be addressed. Concerns that this class will enable the formation of outdoor living spaces above a flat roof to the potential detriment of residential amenity requires to be addressed and it is recommended that reference is made in the Order to restrict use of roof tops.

Class 4 – Any enlargement of a dwellinghouse by way of an addition or alteration to its roof

Comment – concern that the restriction on dormers is regulated by the presence of a road rather than as principal elevation. In a planning authority where individual houses commonly have their principal elevation to the rear, this class could lead to a significant number of poorly designed dormers to the detriment of the character of an area. Clarification is required where semi detached or terraced houses are concerned to define the boundary as there will be no eaves line. It is assumed this class includes both hipped and mansard style roofs.

Class 5 – Any improvement or other alteration to the external appearance of the roof of a dwellinghouse that is not an enlargement

Comment – the restrictions within this class are similar to those of Class 3. There is an opportunity to amalgamate these two classes.

Class 6 – The provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance or improvement of such a building

Comment – consider the existing house should be included within the definition of developed area. This would limit the extent of permitted development which is proposed at a maximum of 50% site coverage. Concerns that although Class 6B gives consideration to surface water treatment, it is excluded in this Class.

Class 6A – The carrying out of any building, engineering, installation or other operation (other than a Class 6 development) within the curtilage of a dwellinghouse, required for a purpose incidental to the enjoyment of that dwellinghouse

Comment – no specific concerns. It removes the need for permission for flagpoles for example but would allow for oil tanks where the rear of the property fronts a road.

Class 6B – The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse or the replacement in whole or in part of such a surface

Comment – the requirement that the surface must be of porous material and deal with surface water on site is a concern and will be difficult to monitor. This has the potential to result in a significant increase in enforcement and site monitoring. It also enables the formation of new driveways onto unclassified roads which currently require permission. There needs to be a clearer definition of porous and guidance for householders to minimise potential for non compliance.

Class 6C – The erection, construction, maintenance, improvement or alteration of any deck or other raised platform within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse

Comment – the inclusion of areas of decking as permitted development is welcomed.

Class 6CA – The erection or construction of any porch outside any external door of a dwellinghouse

Comment – concerns relate only to design considerations. With the removal of the need for permission, it is suggested that at the least the roof of porches should be clad to match the existing house.

Class 6CB – The erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure any part of which would be within or would bound the curtilage of a dwellinghouse

Comment – the exclusion should be consistent and include conservation areas and not be restricted to the curtilage of listed buildings only.

Class 6CC – Any improvement or other alteration to the external appearance of a building containing one or more flats

Comment – it is welcome to include permitted development for some classes of development involving flats. It has the potential in areas of tenement flats and tower blocks to have a significant impact on their character and general amenity of an area. The exclusion within conservation areas is endorsed.

Question 11 - Should we introduce a new Class for fences, gates, walls or other means of enclosure for flats similar to Class 6CB?

Response – Yes. This is consistent with the changes for dwellinghouses and is therefore supported. It is recommended that the terms of Class 6CB be amended to include 'or building containing flats' at the end of Class 6CB para 1 which would avoid the need for Class 6CC altogether.

Question 12 - Should we amend Class 72 so that it does not apply to a dwellinghouse or flat?

Response – Yes but include privacy restrictions in Class 3 and 5.

Question 13 - Are there any other issues you would like to see addressed in the accompanying guidance?

Response – Yes. The Circular is welcomed and provides clarification on interpretation of a number of key points. The inclusion of diagrammatic examples is useful for householders and provides clear explanation of the terms of the various classes. There are points that would benefit from clarification and further consideration as noted below.

Definition of principal elevation at paragraph 2.6. This is unduly onerous and seems to anticipate site inspections will be necessary. The diagrams within the Circular are sufficient to provide guidance.

At paragraph 2.10 reference to the Roads (Scotland) Act 1984 is relevant but should also be included in the Interpretation section of the Order. Assessing the extent to which an access falls within the definition of a road will be fundamental to the determination of whether a proposal is permitted development.

Diagram figure 3 describes the principal elevation. The Interpretation section of the Order should make clear that the principal elevation does not take account of bay windows or the stepped configuration of an existing house.

The arbitrary assessment as to when a house elevation fronts a road is open to question and should be defined. If 30 metres is considered appropriate, this should be stated to avoid subjective assessment.

Paragraph 2.15 provides conflicting advice regarding the definition of the undeveloped area. The Order does not exclude the footprint of the original dwellinghouse.

The calculation for site coverage is cumbersome and unduly onerous. Clarification is required on when the area covered by the original dwellinghouse is to be taken into the calculation.

Paragraph 3.4 – it is considered the rear boundary should also be included in the hatched area.

4. Transitional Arrangements

4.1 Question 14 - What transitional arrangements could be put in place to deal with development projects which straddle the old and new regime?

Response: It is considered that where a planning application has been lodged on the basis of the existing regulations, it should continue to be processed and permission issued. The difficulty will arise if objections have been lodged, or where a recommendation would otherwise have been one of refusal. The Highland Council favours a transitional period where every opportunity would be made to advise an applicant of the impending changes and recommend that an application is not therefore lodged. Publicity of the proposed introduction of the Order and on-line

advice within the eplanning portal will ensure the public are aware of the potential for their development to be classed as a permitted development. For applications submitted but not determined, where objections are lodged, and where the scheme of delegation requires, determination may involve referral to Committee. This is not considered to result in a significant percentage of applications being dealt with in this manner. The importance of early publicity of the changes will be essential and the planning authority can aid in this respect. The alternative of simply returning applications as permitted development is a straightforward solution and will avoid difficulties that may arise where third party concerns have been lodged.

4.2 Question 15 - What would be the most appropriate way of dealing with Article 4 directions made under the old rules?

Response - The Highland Council would recommend that existing Article 4 Directions are rescinded. Where the terms refer to other than householder developments, a revised Direction should be confirmed. The Highland Council would welcome simplification of the process where a revised Direction only is involved and to be confirmed.

4.3 Question 16 - Are there any costs or benefits not identified in the draft BRIA? If so, do you have any evidence or can you suggest sources of relevant information on these costs and/or benefits? We would like to discuss the detailed impact of these changes with a number of companies that may be affected by these proposals. Please let us know if you wish to be contacted?

Response – the Order will benefit householders who will no longer have to submit planning applications for a wide range of proposals. It is anticipated the reduction in planning applications received will involve a change in emphasis for development management staff either as a result of requests for Certificates of Lawful Use of Development (for which a fee is charged) or, more frequent complaints from concerned neighbours. These will involve site inspections and may generate a significant amount of additional work by planning authorities for which no fee is levied. It is anticipated that pre-application enquiries will also increase and The Highland Council would request that consideration is given by the Scottish Government towards formalising the process of pre-application advice and enable a nominal fee to be charged.

4.4 Question 17 - Do you think that any of the proposals in this consultation document will raise any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief)?

Response - There are no implications in respect of any equality groups. The Order is not considered to compromise the needs of the disabled.

5. Summary

5.1 The objective of the changes to the rules relating to householder development is to reduce the number of planning applications where the planning system can add no value. It is aimed at reducing unnecessary regulation but also ensuring that public and private amenity is sufficiently protected. The intention is that the changes would

be a benefit to all householders.

- 5.2 The Scottish Government is committed to ensuring that the planning system is designed and delivered in a way that is sensitive and relevant to the diverse needs and experiences of all people living in Scotland. The revised Order is intended to remove 20-25% of householder planning applications and to simplify the rules for assessing when a planning application is required and to remove the need for otherwise minor developments. It is anticipated the reduction in householder applications will enable planning authorities to concentrate on development planning and processing applications for major developments. The changes proposed are essential to the Scottish Government's central purpose of increasing sustainable economic growth.

RECOMMENDATION

The Committee is asked to note the contents of this report and homologate the terms of the response to the Scottish Government on its consultation paper which was lodged on 14 January 2011.

Signature:

Designation: Director of Planning & Development

Date: 6 January 2011

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Background Papers: The Town and Country Planning (General Permitted Development) (Scotland) Amendment order 2011 – Householder Permitted Development Rights
Draft Circular 1/2011