

REPORT TO: DEVELOPMENT QUALITY COMMITTEE - 19 APRIL 2010

REPORT ON: EXTENDING PERMITTED DEVELOPMENT RIGHTS FOR DOMESTIC MICRO-WIND TURBINES AND AIR-SOURCE HEAT PUMPS

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 151-2010

1 PURPOSE OF REPORT

- 1.1 The report seeks to confirm the views of the Council in response to the Scottish Government Consultation Paper "Extending Permitted Development Rights for Domestic Micro-wind Turbines and Air-source Heat Pumps".

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
- a notes at Appendix A the response issued by the Director of City Development on the Council's behalf in respect of the interim consultation exercise outlined in paragraph 4.4 of this report;
 - b agrees and approves Appendix B to this report in the Council's formal response to the Consultation Paper; and
 - c authorises the Director of City Development to issue the formal response to the Scottish Government by 30 April 2010.

3 FINANCIAL IMPLICATIONS

- 3.1 From recent experience it is unlikely that the proposals for the broadening of permitted development rights with the safeguards which are included will result in any significant decrease in income from fees associated with this application type. However, neither is it anticipated that there will be a significant increase in fee income where it is determined that planning permission is required.
- 3.2 Irrespective of the levels of application numbers which may result from the new legislation, workloads on case officers in both the Development Quality and Environmental Health and Trading Standards teams will increase because of the proposed introduction of prior notification procedures. On a case by case basis the workload involved could be equivalent to the receipt and determination of an application. As with other prior notification submissions it is presumed that a fee would be applicable.
- 3.3 The unpredictability of likely numbers of applications, prior notification submissions and pre-application enquiries materialising as a result of the legislation makes accurate assessment of budget costs/income difficult.

4 BACKGROUND

- 4.1 The Scottish Ministers are committed to promoting a greater uptake of microgeneration, recognising its potential to provide a sustainable source of low

carbon energy and in reducing carbon dioxide emissions from buildings. It forms part of a coherent approach to energy policy, recognising that promoting reduced energy consumption and promoting low carbon technologies are key to achieving sustainable economic growth.

- 4.2 In order to encourage the installation of more microgeneration equipment on domestic buildings, this Consultation Paper is seeking views on the extent to which planning control can be reduced by making domestic micro-wind turbines, and air-source heat pumps permitted development, thereby removing the need for planning permission. Currently no permitted development criteria apply. In doing so the draft proposals seek to strike a balance between the control of adverse impacts on residential amenity and the wider environmental benefits of CO₂ emission reductions. The Scottish Ministers hope that this will encourage the wider use of domestic microgeneration techniques and help to reduce burdens on householders and planning authorities.
- 4.3 The Scottish Government first consulted on permitted development levels for a full range of micro-renewables equipment in March 2008. Report 198-2008 considered by the Development Quality Committee of 21 April 2008 refers. Following that consultation, permitted development rights for certain domestic microgeneration equipment came into force in March 2009 (eg for solar panels, bio-mass systems and heat pumps). It emerged from the consultation that further work was needed to explore the feasibility of introducing permitted development rights for domestic wind turbines and air source heat-pumps. Ministers subsequently commissioned an independent study to examine issues associated with these categories of apparatus in further detail. Following that research, the current consultation paper seeks further views.
- 4.4 In January 2010 and in response to the Scottish Government's commitment within Section 70 of the Climate Change (Scotland) Act 2009 to consult on the above matters within a specified period of time, an interim and short timescale consultation exercise was undertaken by Scottish Ministers. Given the timescales involved the Director of City Development responded to that consultation paper and his letter of response is provided for information in Appendix A. Following consultation, a Draft Order was laid before the Scottish Parliament on 5 February 2010 and this came into effect on 8 March 2010. This Order and the accompanying explanatory Circular 2/2010 grants permitted development rights to freestanding domestic wind turbines and air-source heat pumps on a distance criteria basis. The consultation paper which is the subject of this report is similar but more comprehensive with the opportunity to respond to specific questions included. It will therefore be necessary, following this consultation, for Scottish Ministers to lay a further or amending Order before the Scottish Parliament to reflect the outcome and to issue a further explanatory Circular.
- 4.5 One of the differences between the 2008 consultation paper and the current one is that this time the Draft Amendment Order is not included in the paper. Therefore there is no opportunity to comment on the specific wording of the Draft Order.
- 4.6 The Consultation Paper poses a series of 23 questions and these, together with suggested Council responses are set out in Appendix B to this report.
- 4.7 At the moment, the installation of domestic wind turbines and air source heat-pumps (with the exception of proposals granted permitted development rights in the Order

approved in March 2010) require householders to apply for planning permission. The cost and time required by a householder to undergo the process required can be a disincentive to progressing any further with the project. If, however, the equipment were to be defined as "permitted development" by amending secondary legislation, permission would be granted as a right, provided it met strict criteria.

- 4.8 PD rights have to cover general situations and hence are set at a precautionary level, but the consideration of the specific circumstances of a case by a planning authority can take account of local circumstances. Part of that consideration will involve giving those most likely to be affected by the proposal an opportunity to have their views taken into account before the planning authority determines the application. It also gives the planning authority the opportunity to impose specific conditions to control adverse effects, without which they would have to refuse the application.
- 4.9 Even when small-scale developments are permitted development, the legislation often builds in qualifications which, when satisfied, give the required environmental protection to communities and neighbours. Examples of this are the siting of permitted works so that they would not materially affect the external appearance of a building or more clear cut exceptions, for example, the requirement for planning permission for all developments in a conservation area; or the requirement for listed building consent for the most minor proposal when applied to a listed building.
- 4.10 Appendix C to this report summarises the draft proposals in respect of criteria to be applied in permitting domestic wind turbines and air source heat-pumps across a range of circumstances without the need for planning permission.
- 4.11 The full text of the Consultation paper is set out on the Scottish Governments website at:

www.scotland.gov.uk/publications/2010/02/05083644/9.

Copies of the document have been deposited in the Members Lounges.

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. The main issue is identified as follows: clearly the judgement as to whether domestic wind turbines and air source heat-pumps should be permitted development and what particular criteria should apply balances sustainability objectives against any potential adverse environmental impacts on neighbours and communities in general.

6 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Director of Finance and Assistant Chief Executive have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 Extending Permitted Development Rights for Domestic Wind Turbines and Air Source Heat-pumps - Consultation Paper - February 2010.

- 7.2 Permitted Development Rights for Micro-wind Turbines and Air Source Heat-pumps Consultation - January 2010.
- 7.3 Letter from Director of City Development to Directorate for the Building Environment, Scottish Government dated 29 January 2010.
- 7.4 Town & Country Planning (General Development Procedure) (Domestic Microgeneration) (Scotland) Amendment Order 2009.
- 7.5 Permitted Development Rights for Domestic Microgeneration Equipment - Consultation Paper March 2008.
- 7.6 Report 198-2008 to Development Quality Committee on 21 April 2008.
- 7.7 Article III of the Minutes of the Development Quality Committee of 21 April 2008.
- 7.8 Town & Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010.
- 7.9 Circular 2/2010.

Mike Galloway
Director of City Development

Ian Mudie
Head of Planning

IGSM/IAR/KM/BQ29

7 April 2010

Dundee City Council
Tayside House
Dundee

APPENDIX A - LETTER TO SCOTTISH GOVERNMENT DIRECTORATE FOR THE BUILT ENVIRONMENT



INVESTOR IN PEOPLE

Permitted Development Right for Domestic Micro-Wind Turbines & Air Source Heat Pumps Consultation
 Directorate for the Built Environment
 The Scottish Government
 2-H (Bridge), Victoria Quay
 EDINBURGH EH6 6QQ

Mike Galloway OBE - Director
 City Development

Floor 15, Tayside House
 Crichton Street, Dundee DD1 3RB

Tel: 01382 434000
 Fax: 01382 433013

If calling please ask for: Iain Ross

Our Ref: MPG/IAR/MM BQ29

Your Ref:

Date: 29 January 2010

Dear Sir/Madam

Permitted Development Right for Domestic Micro-Wind Turbines and Air Source Heat Pumps Consultation

I refer to the opportunity which you have offered the Council to comment on the consultation paper. Given the short timescale for responses it has not been possible to have this response endorsed by Members. This will be carried over into the further consultation opportunity which is envisaged during February.

The reason for this particular consultation is understood and tracks to Sections 70 and 71 of the Climate Change (Scotland) Act 2009 which committed Scottish Ministers to consult on these issues within a specified timeframe.

The Council's comments set out in this letter relate to both topics but mostly to micro-wind turbines.

Reference is made to the Council's Report 198-2008 submitted to the Directorate in response to the first consultation document and in particular to Sections E and G of Annex A of that report. This remains the position of the Council. Very few proposals for domestic micro-wind turbines will constitute permitted development in compact urban areas such as Dundee.

When faced with an application for planning permission planning authorities may wish to grant planning permission but are uncertain as to what level of noise control to impose by condition and how such conditions would be enforced. The Council hopes that the next consultation will include draft guidance for discussion. The content of the research report appears to have made headway in this direction.

The Council also notes that it is proposed to introduce a Prior Notification procedure. Paragraph 16 indicates that this is to be a requirement before permitted development rights can be exercised. Given that the distance and other criteria are fairly definitive, why is it considered that prior notification procedures are necessary for this aspect of permitted

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The Scottish Government

29 January 2010

development in particular?. If this proposal is retained the Council would ask that its practical implications be discussed in the forthcoming consultation exercise.

I will ensure that the Respondent Information Form and the Equal Opportunities Questionnaire are completed and sent to you separately.

Yours faithfully

Mike Galloway
Director of City Development

APPENDIX B**EXTENDING PERMITTED DEVELOPMENT RIGHTS FOR DOMESTIC MICRO-WIND TURBINES AND AIR-SOURCE HEAT PUMPS
FEBRUARY 2010****QUESTIONS AND COUNCIL RESPONSES**

Q1 What grounds are there, if any, to further constrain the PD proposals for domestic microgeneration equipment, especially wind turbines, in areas designated for their landscape quality?

The Council has no comments.

Q2 What grounds are there, if any, to further constrain the PD proposals for domestic microgeneration equipment in areas designated for the protection of flora and fauna, geological or archaeological interests?

The Council has no comments.

Q3 What grounds are there, if any, to further constrain the PD proposals for micro wind turbines and air source heat pumps in World Heritage Sites?

The Council has no comments.

Q4 Should PD rights for air source heat pumps be granted in areas designated for their built heritage value providing that the principal elevation fronting a road is unaffected?

Greater protection of amenity for conservation areas would be given if the planning permission was required in respect of developments located on any elevation where the proposal is visible from a road.

Q5 Are the separate controls for listed buildings sufficient to control the installation of microgeneration equipment?

Yes.

Q6 Will the setting of listed buildings be adequately protected by not granting PD rights to wind turbines and ASHP within their curtilage?

Yes.

Q7 Do you think the general conditions on amenity and other impacts could be applied to the PD rights for MWT and ASHP equipment?

In the Council's opinion these general conditions should be removed because specifications set out in the wording of the permitted development clauses should be sufficiently clear and unambiguous that no general conditions, which can be difficult to enforce, are necessary.

Q8 Do you agree with the principle of applying a noise impact criterion for wind turbines to deal with the potentially adverse impacts?

The Council considers that a noise based criterion is necessary. However, it considers that it would be more appropriate to apply the alternative of technical noise standard NR35 measured at 1 metre from the facade of any neighbouring property, a measurement which would guarantee a satisfactory internally measured standard with windows open.

It is recognised that by applying any kind of criterion such as this it may lead to enforcement issues where the reality or the perception is that noise levels are breached continuously or periodically despite the noise source having been accredited under the Microgeneration Certificate Scheme and therefore being exempt from planning control. On testing by the Council it may not be possible to categorically confirm that the installation should now require retrospective planning permission. It is the Council's view that the Order and accompanying guidance should remove as much uncertainty as possible as to the need for planning permission. In addition, it would be helpful for Councils to receive guidance as to how the provisions of the Order can be most efficiently and effectively enforced.

Q9 If you agree with Question 8 do you think it should be supported by a 100 metres to the nearest curtilage criterion where the blade sweep is up to 3.5 metres or can you suggest and give evidence for another figure?

Contrary to the impression given in the earlier consultation paper, the 100 metres rule does not apply to building mounted turbines. For freestanding turbines, provided the noise criteria are met there may be scope for the distance criteria to be reduced. It is considered that the 100 metres distance criteria is not particularly required on visual amenity grounds even in urban areas.

Q10 Do you agree with the following limits on the scale of building mounted wind turbines viz:

- **2.2 metres diameter or 3.8m² swept area;**
- **up to 3 metres above the roof ridge height; and**
- **one per dwelling?**

The Council is uncertain why the dimensions quoted were selected and it does not have the expertise to question the expert technical advice given to Scottish Ministers. The Council has so far had very limited experience of assessing such installations in practice.

Q11 Do you agree with the following limits on the scale of free standing turbines in rural locations viz:

- **3.5 metres diameter or 9.6m² swept area;**
- **maximum height including tower of 11.1 metres to the tip of the turbine blade; and**
- **location at least 100 metres from boundary of nearest neighbour's curtilage?**

The Council is uncertain why the dimensions quoted were selected and it does not have the expertise to question the expert technical advice given to Scottish Ministers. The Council has so far had very limited experience of assessing such installations in practice.

Q12 Do you agree with the following limits on the scale of free standing turbines elsewhere viz:

- 3.5m diameter or 9.6m² swept area;
- maximum height including tower of 11.1 metres to the tip of turbine blade;
- subject to a noise impact test through MCS; and
- one per dwelling?

The Council is uncertain why the dimensions quoted were selected and it does not have the expertise to question the expert technical advice given to Scottish Ministers. The Council has so far had very limited experience of assessing such installations in practice.

Q13 Should the visual impact of free standing turbine masts be limited to local authority guidance rather than control by a condition on the PD rights?

It is the Council's view that the detailed terms of the Order should be sufficiently clear and unambiguous so that there should be no need for general conditions or local guidance.

Q14 Do you support anemometer masts only being PD where the subsequent turbine would also be PD, subject to the anemometer mast having a maximum height of the MWT, a maximum 12 month trial and a removal condition?

The Council is satisfied with this requirement. However, the Council considers it unlikely that anemometer testing will be necessary in the vast majority of cases.

Q15 Do you agree that air source heat pumps should be permitted development with the proviso that they can achieve the 45dB(A) or as appropriate the 30dB(A) noise criterion?

The comments in response to Question 8 are equally applicable with regard to air source heat pumps.

Q16 Do you think that an overall limit should be set for the combine microgeneration capacity which is permitted development, and if so what should it be? Please justify your answer.

The Council supports the proposal that within each property curtilage permitted development (which satisfies the applicable tests) should apply to one installation only. Cumulative impact from noise is most likely from a neighbour exposed to the output from two adjacent installations, one on either side and both benefiting from permitted development rights. These rights may have been granted because each installation in isolation met all the criteria, including that of noise output. However, in any combination there is scope for noise complaint. Scottish Ministers should consider this scenario and decide whether the first installation by one neighbour is permitted development and the second from another neighbour requires planning permission in order that cumulative noise impacts can be properly measured, assessed and if appropriate mitigated by planning conditions.

Q17 Are the proposals for PD likely to have particular impacts on societal groups?

The Council considers that no societal groups would be adversely impacted on by the proposals.

Q18 Do you agree that the impact of anemometers should be excluded from the RIA?

The Council agrees.

Q19 Do you agree with the range of costs and benefits arising from Option 2?

Yes. However, the introduction of a Prior Notification Scheme would add to the burden on planning authorities (see below).

Q20 Do you agree with the range of costs and benefits arising from Option 3?

Yes. However, the introduction of a Prior Notification Scheme would add to the burden on planning authorities (see below).

Q21 Do you agree with the range of environmental and biodiversity costs presented?

The Council has no reason to challenge these costs.

Q22 We would welcome comments from consultees on the level to which you consider small and micro businesses (including the downstream businesses) are likely to be affected by the proposals.

Based on the Scottish Ministers technical consultants views on the potential attractiveness of domestic microgeneration as a cost effective generator of effective sources of energy, it is considered unlikely that the proposals will lead to significantly increased amounts of businesses in this sector.

Q23 We would welcome comments on the level to which consultees consider competition might be affected by the proposed amendments to the GPDO.

The Council has no comments.

Other Comments

Prior Notification Proposals

It is noted that these proposals are not specifically being consulted on and yet they are incorporated in the 2010 Order which came into force on 8 March 2010. These provisions require a developer to notify the planning authority of a proposal before the permitted development rights can be exercised. The authority then has 28 days to call for full details to be submitted to it for approval. The Council considers that these procedures which require to be administered can be avoided provided that the permitted development rights are, simply and unambiguously explained in such a way as to clearly indicate whether or not an application for planning permission is required.

The Microgeneration Certificate Scheme (MCS)

Although paragraphs 22-25 of the consultation paper outline the role of the MCS the Council would welcome clarification as to how the Scheme is to operate in practice concerning the certification of apparatus in terms of maximum noise output and of what recourse purchasers and the Council will have if they receive noise complaints from neighbours.

The Amending Permitted Development Order 2010

The Council would welcome clarification as to whether Scottish Ministers intend to consult on the specific terms of a further amending Order.

APPENDIX C - SUMMARY OF PROPOSALS

Type of Microgeneration Technology	Criteria for the Assessment of the Need for Planning Permission in Respect of Normal Domestic Buildings	Buildings in Conservation Areas and World Heritage Sites Within the Curtilage of Listed Buildings
Wind turbines on buildings	Permitted if height above roof ridge does not exceed 3m (including blades) and subject to a maximum diameter of 2.2m or swept area of 3.8m ² . Must achieve noise at nearest curtilage of <45 dB(A) and <30dB(A) within any neighbours habitable room by MCS noise calculation. Subject to MCS product and installer. <u>One MWT per dwelling</u> . Removal when no longer required for microgeneration.	Not permitted.
Wind turbines (free-standing) of up to 3.5m diameter (or 9.6m ² swept area)	Permitted if height on mast (including blades) does not exceed 11.1m and installed at a distance >100m from neighbours curtilage. Must achieve noise at nearest curtilage of <45dB(A) and <30dB(A) within any neighbours habitable room by MCS noise calculation. Must be installed at >11.1m from neighbours curtilage. <u>Subject to MCS product and installed</u> . One MWT per dwelling. Removal when no longer required for microgeneration.	Not permitted. Additionally, not permitted within SSSIs and sites of archaeological interest.
Wind turbines (free-standing of up to 2.2m diameter (or 3.8m ² swept area)	Permitted if height on mast (including blades) does not exceed 11.1m. Must be installed at >11.1m from neighbours curtilage <u>and</u> must achieve noise at nearest curtilage of <45dB(A) and <30dB(A) within any neighbours habitable room by MCS noise calculation. <u>Subject to MCS product and installed</u> . One MWT per dwelling. Removal when no longer required for microgeneration	Not permitted. Additionally, not permitted within SSSIs and sites of archaeological interest.
Anemometer masts	Permitted in the circumstances of a wind trial for a MWT. Not to exceed 3m above roof if building mounted or 11.1m free standing. Subject to a 12 month limit and removal thereafter.	Not permitted.
Air source heat pumps	Permitted if not visible from road in a conservation area. Subject to MCS product and installer. Subject to vibration attenuation installation. Must achieve noise at nearest curtilage of <45 dB(A) and <30dB(A) within any neighbours habitable room by MCS noise calculation. One ASHP per dwelling or flat. Removal when no longer require for microgeneration.	Subject to proposal in the box to the left; not permitted.