

**REPORT TO:** CITY DEVELOPMENT COMMITTEE - 27 JUNE 2011

**REPORT ON:** NON DOMESTIC PERMITTED DEVELOPMENT RIGHTS

**REPORT BY:** DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 283-2011

## **1 PURPOSE OF REPORT**

- 1.1 The report seeks to confirm the views of the Council in response to the Consultation Paper on "Non Domestic Elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992" issued by the Scottish Government in March 2011 and to authorise the Director of City Development to issue the response to the Scottish government by 1 July 2011

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee:
- a endorses this report as the Council's formal response to the consultation paper; and
  - b authorises the Director of City Development to issue the response set out as Appendix A to the Scottish Government by 1 July 2011.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 Any change that liberalises permitted development rights will remove the need to submit planning applications in certain instances and this will have an impact on the Council's planning fee income. However, it is very difficult to estimate what this would be, particularly since many of the matters considered in the Consultation Paper do not involve any significant number of planning applications in Dundee.
- 3.2 It is also anticipated that potential applicants will seek confirmation from the Council, in writing, before proceeding with their permitted proposals thereby counterbalancing to a degree the time which would have been spent in determining applications with additional informal assessment work. In addition, it is anticipated that enforcement workloads will increase to confirm compliance with the Order as developments enter the construction phase.
- 3.3 As is the practice with many other Councils, formal inquiries as to whether a planning application is required can be made the subject of an application for a Certificate of Lawfulness which attracts a fee and which would partly offset any loss in income as a result in a drop in planning applications.

## **4 BACKGROUND**

- 4.1 This initiative is part of the Scottish Government's proposals for the modernisation of the planning system introduced during 2009. The Scottish Government believes that a well functioning planning system is essential to increase sustainable economic growth. Considering minor and uncontroversial types of development is not an effective or efficient way of regulating development, adds no value to the planning system and imposes unnecessary costs on development and on planning authorities.

- 4.2 The purpose of the consultation paper is to seek views on the General Permitted Development Order (which exempts certain developments from the need for planning permission) with the aim of:
- establishing a clear purpose for permitted development rights and making the provisions of the GPDO more proportionate, streamlined, clearer and easier to use;
  - reducing bureaucracy and the need for planning applications where scrutiny adds little or no value individually or cumulatively;
  - updating and assessing the continuing relevance of the various classes; and
  - aligning the GPDO with the planning reform agenda, in particular with current legislation and planning policy.
- 4.3 The consultation does not cover householder permitted development as this has been the subject of a previous consultation and focuses on specific issues and those of relevance to Dundee can be summarised as follows:
- a Climate Change - views are sought on whether there are any other structures, operations or technologies which could be the subject of PDR (Permitted Development Rights) and contribute towards the objectives of the Climate Change (Scotland) Act 2009.
  - b Flood Risk Management - views are sought on whether there are any other structures, operations or technologies which could be the subject of PDR and contribute towards the objectives of the Flood Risk Management (Scotland) Act 2009.
  - c Disability Access - the 1992 Order currently offers no specific PDR which would allow service providers to carry out works to comply with the Equality Act 2010. Views are sought on how this could be enabled, perhaps by a new class of PDR.
  - d Infrastructure - views are sought on whether current PDR should be removed in connection with aviation and harbours and whether there should be PDR for electric charging points.
  - e Commercial and Retail - in England, new PDR have been introduced for the erection of new buildings of a certain size in recognition of the economic downturn. Views are sought as to whether this should also apply in Scotland to industry and warehousing and whether controls for drainage of hard surfaces should be introduced. There are also sections on PDR for institutions, offices, pavement cafes and shops.
  - f Farmers' markets - currently these require planning permission and are also regulated under the licensing regime.
  - g Waste Management - currently there are no PDR for this and views are sought on whether it would be appropriate to introduce them for waste storage, waste management facilities and landfill sites.

- 4.4 The consultation paper can be viewed by Members at <http://www.scotland.gov.uk/Resource/Doc/347034/0115494.pdf>.
- 4.5 The Council has been asked to respond to a series of 27 questions based on its consideration of the proposals. These are outlined in Annex A together with the Council's responses.
- 4.6 Although the Council's detailed response to the standard questions posed is contained in Annex A to this report, the following general conclusions emerge:
- a the Council is generally supportive of measures to encourage sustainable economic development and remove unnecessary costs and controls on development; in particular it supports measures that assist the economic development of the city;
  - b the character and appearance of conservation areas and the curtilage of listed buildings can be protected by removing permitted development rights in these areas;
  - c any changes to retailing permitted development need to ensure that the viability and vitality of existing centres are protected; and
  - d as with any change, even changes that simplify the system, it is likely that developers will seek written confirmation as to whether their proposals need planning permission. This raises the issue as to whether Councils should make a charge for giving such advice or alternatively to insist that in every case an application for a Certificate of Lawfulness of Proposed Use or Development is submitted involving the payment of a statutory fee. This would confirm or otherwise immunity from enforcement action.

## **5 POLICY IMPLICATIONS**

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.

## **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 Non Domestic Elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 - Consultation Paper - March 2011.

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MPG/CW/KM

23 May 2011

Dundee City Council

## **APPENDIX A**

### **NON DOMESTIC PERMITTED DEVELOPMENT RIGHTS**

#### **QUESTIONS AND COUNCIL RESPONSES**

##### Business and Regulatory Impact Assessment

- Q1 Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?

The Council considers that this is a matter for the business community.

##### Strategic Environmental Assessment (SEA)

- Q2 Please provide details of any significant environmental effects (positive or negative) which you think may arise in relation to the potential changes discussed in this paper.

The Council is not aware of any significant impacts.

##### Equality Impact Assessment

- Q3 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.

The Council is not aware of any specific issues.

### **EMERGING ISSUES**

##### Climate Change, Flood Risk Management & Disability Access

- Q4 What types of technology, equipment, structures or related developments should be considered for PDR to support climate change/flood risk management or disabled access?

The current PDR measures for microrenewables on domestic and non domestic properties adequately support climate change. Enhanced PDR for disabled access to non domestic buildings should be considered.

- Q5 Are there any particular classes, within the 1992 Order, where the controls do not strike the right balance between meeting the above obligations and the purpose of PDR?

The £100,000 limit for Council developments in Class 33 needs to be updated to take account of inflation.

## **INFRASTRUCTURE**

### Aviation

- Q6 Do the restrictions on PDR for Aviation (in particular Classes 44 and 52) strike the right balance between removing unnecessary planning applications and allowing appropriate control over the wider impacts of development?

The Council supports the development of Dundee Airport and considers that the current PDR strike the right balance between encouraging the development and growth of the airport whilst at the same time protecting amenity.

### Harbours

- Q7 Do the existing controls on PDR for developments within harbours strike the right balance between removing unnecessary planning applications and protecting amenity?

The Council supports the development of the Port of Dundee and sees it playing a key role in the development of offshore renewables. It therefore considers that the current PDR strike the right balance between encouraging the development and growth of the port whilst at the same time protecting amenity.

### Charging Infrastructure for Electric Vehicles

- Q8 Would such PDR, restrictions and conditions be clear and reasonable for wall mounted outlets, upstands and feeder pillars?

The proposals are clear and reasonable and protect the amenity of conservation areas.

- Q9 Is such clarification of Class 30 on minor developments by local authorities clear and reasonable?

Yes.

- Q10 Should there be a deemed advertising consent for nameplates on charging points with the suggested restrictions?

Yes.

## **COMMERCIAL AND RETAIL**

### Industrial and Warehouse Development

- Q11 Do you think that we should clarify that Class 23 (Industrial and Warehouse Development) of the GPDO includes research and development?

Yes, the Council considers that Class 4 uses should be treated in a similar manner to Class 5 and 6 uses.

- Q12 Do you think that we should grant PDR for the construction of new buildings in relation to industrial and warehouse development?

Yes, subject to the restrictions in Classes 23-26.

- Q13 Do you think that PDR for hard surface in Class 25 should include requirements for disposing of surface water?

This makes sense in terms of flood prevention but will be very difficult for the Council to enforce.

- Q14 Do the existing controls on PDR for Industrial and Warehouse Development strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes.

#### Institutions (schools, universities, colleges, hospitals, care homes)

- Q15 Do you agree that we should extend permitted development rights for schools, universities, colleges, hospitals, council-run care homes and other council buildings?

There is no reason why these uses should not benefit from PDR with restrictions to protect amenity as set out in the consultation paper but also with protection for conservation areas and the curtilage of listed buildings.

#### Offices

- Q16 Do you think that we should have PDR for office extensions?

Yes, but with restrictions to protect amenity as set out in the consultation paper but also with protection for the curtilage of listed buildings.

#### Pavement cafes

- Q17 What sort of activities under the heading of "pavement cafes" should be considered for PDR (eg pubs, restaurants, mobile refreshment stalls) and what sort of PDR and related controls should apply?

All these matters would be better controlled under a licensing regime and should not require planning permission.

#### Shops

- Q18 Do you agree that PDR should allow shops, banks, pubs, restaurants and other similar businesses to enlarge their premises?

There should be limited PDR for these uses but the Council is concerned about permitting extensions to retail premises which could cumulatively affect the vitality and viability of established centres. In addition there should be a restriction on permitted development within conservation areas.

**CARAVANS**

- Q19 Do the controls on PDR for caravans strike the right balance between removing unnecessary planning applications and protecting amenity?

There are no caravan sites within the functional area of the Council but it would seem clearer if caravan sites were brought within the ambit of the GPDO.

**FARMERS' MARKETS**

- Q20 Should there be PDR for open air markets where an operators licence has been obtained from the local authority?

Yes, this is the most practical solution and the one currently operated by the Council.

**HILL TRACKS**

- Q21 Do the existing controls on PDR in designated areas strike the right balance relating to the formation of private roads and ways?

The Council has no issues with hill tracks.

- Q22 Is there an approach or combination of approaches that would ensure the majority of the hill tracks of concern were subject to a consent procedure? If so can you suggest definitions for terms such as "hill tracks" or the locations (eg "semi-natural areas", "open hill land") where they occur?

See answer to Q21 above.

- Q23 Would a restriction of the PDR for the improvement of private roads and ways help address the concerns about hill tracks? If so, what form should the restriction take?

See answer to Q21 above.

**WASTE MANAGEMENT**

- Q24 Would it be appropriate to have PDR for any types of waste management facilities? Are there types of waste management facilities for which it would be inappropriate to have any PDR and, if so, why?

This tends to be a controversial land use and it would be difficult to separate out types of waste management. Many of the waste management activities of the Council will enjoy PDR already. Residents are likely to be particularly concerned about this land use and it is not considered that PDR would be appropriate in an urban setting unless the site was a considerable distance from the nearest houses.

- Q25 What sort of issues would PDR have to address that would not be addressed by WML and the PPC regimes or by other legislation?

The most obvious issue would be the visual impact of these developments.

- Q26 Do you have any comments on this proposal to clarify the PDR on temporary structures required during building operations?

The Council are satisfied with this proposal.

- Q27 Would such PDR, restrictions and conditions be clear and reasonable for waste storage containers, waste processing facilities and landfill sites?

If PDR are to be extended to waste management facilities (and the Council considers that this is likely to prove controversial) then the proposals set out in the consultation paper seem clear and reasonable.