

REPORT TO: CITY DEVELOPMENT COMMITTEE - 24 JANUARY 2011

REPORT ON: HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 1-2011

1 PURPOSE OF REPORT

- 1.1 The report seeks to inform the Council that the Scottish Government has published a Consultation Paper on "Householder Permitted Development Rights".

2 RECOMMENDATION

- 2.1 It is recommended that the Committee notes the response set out as Appendix A submitted by the Director of City Development to the Scottish Government on the Consultation Paper on 14 January 2010.

3 FINANCIAL IMPLICATIONS

- 3.1 The Scottish Government estimates that the proposed changes to permitted development would result in a 20% drop in householder applications. Based on 2009/2010 figures for Dundee, this would represent a drop in planning fee income of approximately £9,200. However, the unpredictability of likely numbers of applications and pre-application enquiries materialising as a result of the legislation makes accurate assessment of budget costs/income difficult.
- 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 offset any loss in income as a result in a drop in planning applications.

4 BACKGROUND

- 4.1 The consultation paper concerns proposed changes to the rules governing the relaxation of planning controls almost entirely in relation to dwellinghouses (generally the relaxations do not apply to flats or buildings containing flats). This initiative is part of the Scottish Government's proposals for the modernisation of the planning system introduced during 2009. The consultation paper states that 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 Research carried out in 2006 and responses to a 2009 consultation established that 97% of householder developments are approved and that most of these relate to uncontroversial rear single storey extensions. The Scottish Government previously

introduced a consultation paper on Householder Permitted Development Rights in December 2008 and the Council's response in March 2009 stated that the proposals were as complex and difficult to comprehend as the existing legislation and that the proposals were unlikely to result in a substantial drop in the number of applications received (Report 40-2009 considered by the Development Quality Committee on 16 February 2009 refers).

- 4.3 The intention of the revisions proposed is to simplify the system (the current rules are very complex and the Order has been amended over 25 times) and to remove a significant number of minor householder planning applications from the planning system. Estimates by the Scottish Government based on testing a sample of existing applications under the new rules suggest that some 20-25% of householder applications could be taken out of the system. The consultation paper also includes a helpful draft Circular on Householder Permitted Development which illustrates examples of development which is or is not permitted development.
- 4.4 The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (the GPDO) currently grants planning permission for certain classes of development including, but going beyond, householder developments. The Scottish Government's proposals when confirmed in a revised Order will replace the existing rules which relate to householder developments (extensions, dormers, other roof alterations, porches, decking, walls, fences etc). The remaining provisions of the Order relating to non-householder proposals will remain in force although it is proposed to amend these also in due course.
- 4.5 The latest consultation paper, which Members may view at <http://www.scotland.gov.uk/Resource/Doc/327323/0105671.pdf> addresses most of the defects in the previous proposals. The main proposed changes compared with the current Permitted Development Order are summarised below.
- 4.6 The Council has been asked to respond to a series of 17 questions based on its consideration of the proposals. These are outlined in Annex A together with the Council's responses.
- 4.7 It is intended to increase the level of development by householders which is allowed without applying for planning permission by making the following key changes:
 - Creating three new classes to simplify the system and to include a class relating to single storey rear extensions, most of which would become permitted development.
 - Expanding the use of principal elevation to distinguish what is usually the front and rear of a house and relaxing restrictions in rear gardens.
 - Allowing alterations and improvements to houses or flats (other than extensions) if within a 1m "bubble" around the walls or roof of a house or flat.
 - Introducing a new site coverage criterion to replace the current floorspace limits and 30% ground coverage criterion with a limitation meaning that there must be at least the same area of garden remaining undeveloped as developed.
 - A new definition for calculating the height of a building and external dimensions to allow for greater protection of neighbours on sloping ground.

- Maintaining strict controls for development within conservation areas and within the curtilage of listed buildings.

4.8 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 proposed changes will greatly simplify understanding of Householder Permitted Development and the illustrations in the draft Circular are particularly helpful;
- b the proposals read as an inevitable compromise solution to guard against any significant erosion of neighbour amenity but at the same time leading to a significant reduction in application numbers predicted in the report;
- c the character and appearance of conservation areas and the curtilage of listed buildings are protected by removing permitted development rights in these areas but there are some anomalies which are addressed in the responses to the questions. The Scottish Government hope that the new regulations could result in there no longer being a need for Article 4 directions to protect conservation areas from inappropriate householder developments;
- d however as with any change, even changes that simplify the system, it is likely that householders and agents 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

- 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.
- 5.2 Clearly the judgement as to whether householder development should be permitted development and what particular criteria should apply balances efficiency objectives against any potential adverse environmental impacts on neighbours and communities in general.
- 5.3 In accordance with the Council's policy an Equality Impact Assessment of the consultation paper was undertaken using the Rapid Impact Assessment Tool to determine whether the proposals implementation by Scottish Government is likely to lead to prejudice in terms of race, ethnic background, disability, sexual orientation, gender, religion or belief and age.
- 5.4 No evidence of likely prejudice in any of the six strands listed above was detected.

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 Householder Permitted Development Rights - Consultation Paper - September 2010.
- 7.2 Report 40-2009 - Householder Permitted Development Rights - Development Quality Committee, 16 February 2009.

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APPENDIX A

HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS QUESTIONS AND COUNCIL RESPONSES

Creating More Classes

- Q1 Do you agree that the new structure of the householder development Classes makes the rules easier to apply?

Yes, the rules are much simpler to understand and operate. The illustrations in the Draft Circular are particularly helpful.

- Q2 Are the new classes sensible and workable?

Yes, although there are additional classes, the system is now much simpler to operate. Subjective rules such as siting structures to be as unobtrusive as possible have been removed.

- Q3 Do you agree that the new structure and rules would reduce the number of applications and queries?

There is no doubt that the new structure and rules will reduce the number of planning applications and it may be that applicants adjusting their proposals to fit within the new scope of permitted development may lead to a greater reduction than the estimated 20%. However, it is expected that the number of queries will significantly rise rather than reduce. This is because applicants and agents will be unfamiliar with the new rules (even if they are easier to apply than the current rules) and initially at least will seek comfort from planning authorities that matters that for many years would have required planning permission are now permitted development.

Concept of Principal Elevation

- Q4 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?

The difficulty is that side and rear elevations have the potential to be the most prominent and exposed elevations where there is no effective boundary screening, irrespective of the proposed development's proximity to adjacent roads. The principal elevation has the potential in some layouts to be the least exposed or prominent. Unsightly permitted developments could therefore result. However, without a very complex series of rules it is impossible to govern those unusual situations which, it is accepted, are the exception rather than the rule. With enhanced protection for conservation areas it is considered that the principal elevation concept provides an acceptable balance between amenity and efficiency.

1m "Bubble" of the Walls or Roof of a House for Alterations and Improvements (Other Than Extensions)

- Q5 Do you agree with the proposed 1m "bubble" provision for all other alterations and improvements to dwellinghouses that are not extensions?

Yes. However, removing permitted development for this entire class in conservation areas may be unduly restrictive but certainly uncomplicated to implement.

New Site Coverage Criteria

- Q6 Do you agree with the proposed new site coverage criteria? Do you consider it will be clear to householders?

Yes, the old rules were very difficult to understand and often involved trying to find out when garages or outbuildings were built.

Height and External Dimensions

- Q7 Do you agree with the proposed changes to the measurement of height and the use of external dimension?

Yes, decking in particular can be problematic on sloping ground. The changes create a fairer position for all. Similarly, external dimensions is the most pragmatic way to measure householder developments.

Conservation Areas

- Q8 Do you agree that the removal of permitted development rights should only apply to conservation areas and the curtilage of listed buildings?

Yes.

- Q9 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?

The Council would hope that subject to adjustments, the new permitted development regime could give sufficient protection to conservation areas that there would be no need for householder Article 4 directions.

Classes of Householder Permitted Development Rights

- Q10 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 private and public amenity?
- c Are there any changes to the controls that would strike a better balance?

The response to this is as follows (where a class is not mentioned there are no specific comments on it):

Class 1

1(2)(b) - It appears that this is designed to protect the amenity of neighbours but only relates to rear extensions. An extension to a principal elevation may have an adverse impact on amenity but is not covered.

1(2)(e) - It is considered that more protection should be provided within conservation areas where a road frontage extension could be permitted development. The regime for Class 1 in conservation areas is very liberal when compared to Class 3, for example, where there is no permitted development in conservation areas.

Class 3

3(2)(c) - Minor proposals in a conservation area on a rear elevation and not visible from outwith the site require planning permission even if they are unlikely to affect its character or appearance.

Class 4

4(2)(b) - Half the width of the roof plane measured at the eaves could result in a very substantial dormer on a hipped or pyramidal roof. 40% would be a more appropriate measurement.

4(2)(c) - Dormers built on the eaves line can appear incongruous. The 0.3m from the edge of the roof plane should be applied to the eaves line as well.

Class 6(B)

6B(2) - It would be very difficult for a planning authority to enforce the restrictions in (i) and (ii). In addition, there is no justification for exempting hardstandings in rear gardens.

Class 6C

6C(2)(b) - In practice the 0.5m restriction will mean that most decking will require planning permission.

Class 6CA

6CA(2)(a) - Few porches would meet the 3m² restriction. This should be increased to 4m².

Class 6CB

6CB(2)(c) - As with the current permitted development regulations, it is unclear whether the removal of an enclosure and its replacement with another can be construed as an "improvement". For example, is it permitted development to replace a 3m high roadside wall with a fence of a similar height by construing this as an "improvement".

6CB(2)(d) - There is no protection in conservation areas, even for enclosures fronting a public road. This would need to be addressed to avoid the need for an Article 4 direction.

Class 6CC - Flats

Q11 Should we introduce a new Class for fences, gates, walls or other means of enclosure for flats similar to Class 6CB?

No, unless it is intended to remove Class 7

Any other Comments

Consequential Amendments

Q12 Should we amend Class 72 so that it does not apply to a dwellinghouse or flat?

Yes.

Q13 Guidance

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

No, the guidance appears to be quite comprehensive.

Transitional arrangements

Q14 What transitional arrangements could be put in place to deal with development projects which straddle the old and new regime?

As the proposals are to liberalise permitted development, it is considered that this should not be such a critical issue. However, early advance warning of the proposed date of the new regulations coupled with a campaign of advertisement of the changes would greatly assist planning authorities and applicants in achieving a smooth transition.

Q15 What would be the most appropriate way of dealing with Article 4 directions made under the old rules?

If the proposed new rules can be amended to provide increased protection in conservation areas then there should be no need for Householder Article 4 Directions.

Business and Regulatory Impact Assessment (Annex D)

Q16 Are there any costs or benefits not identified in the draft BRIA? If so, do you have any information or can you suggest sources of relevant information on these costs and/or benefits?

No.

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.

Equality Impact Assessment (Annex E)

Q17 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)?

No.