Scottish Government

Householder Permitted Development Rights Consultation – January 2011

Response of Cairngorms National Park Authority (CNPA)

The CNPA becomes the relevant planning authority only when planning applications are called-in and are significant to the aims of the Park. These call-ins are currently averaging about 12% per year of all the applications in the Park. The remaining planning applications are dealt with by the 5 relevant local authorities who make up the Park. The issue of PDR and the smaller household applications do not impact significantly on the aims of the Park but the effect of relaxing PDR could have an impact on the aesthetics and architectural context within the Park.

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

No. In attempting to make sure that the entire new Householder Permitted Development Rights (HPDR) falls in the first 6 Classes makes it more complicated for members of the public. For example, most of Class 7 is now Class 6CB.

Question 2 – Are the new Classes sensible and workable?

Whilst any new proposals can be made to work and the new Classes may remove approximately 20-25% of householder planning applications; they are unlikely to speed up the process as queries from householders and neighbours will increase.

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

Yes, the number of applications will decrease.

No, the number of queries will increase because of the proposed Classes and therefore will not reduce the cost to the local authorities' planning service or speed up the process for householders. There will also be the loss of a fee which will impact on income for providing the required service to the public.

Currently, the householder makes an application which may take 8 weeks or more and 97% will be ultimately passed but it is a clean, formal and scrutinised process. Interpreting the proposed changes about whether the householder does or does not require an application and the possible issues with neighbours would promote a greater uncertainty leading to little improvement in time and saved resources.

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?

No. Whilst there is a plethora of guidance on what is the principal elevation in Annexe C, it is clear that the need for so much guidance indicates the complexity of this approach. This approach is not so easy in rural areas such as the Cairngorms National Park where there are many public rights of way besides public roads which are not confined to those used by vehicles, so there is room for confusion about the principal elevation. It could be questioned whether this degree of complexity is contrary to the ethos of the proposed changes to the householder permitted development rights, which essentially seek to simply and streamline the planning process.

There is also considerable potential for substantial development to a house without planning permission which has all four elevations with no road frontage – eg a farmhouse in a large curtilage. The proposed Class 2 permits enlargement and many houses in the Park could be developed with an inappropriate design and often in a prominent position.

Also, it could be problematic where an elevation may be designed as the principal means of access, but where access in another elevation is the commonly used principal access. Such instances could be open to widely varying interpretations, including amongst the householder and third parties, and is also a matter on which the Planning Authority may not be able to provide a definitive judgement without the benefit of a site visit, which would again defeat the objective of the proposed permitted development rights changes.

An alternative is not to use the principal elevation technique where there is no frontage to a road and these circumstances would require a planning application. However, the principal elevation principle has not been without controversy in England and the use may not be appropriate in rural Scotland.

Question 5- Do you agree with the proposed 1 metre "bubble" provision for all other alterations and improvement to dwelling houses that are not extensions?

This raises some serious concerns about the changes that could be made to a house appearance. Householder's' attempts to benefit from the perceived enhanced permitted development rights could result in adverse design alterations to dwelling houses. For example the position of the main access to the property could be altered in order to manipulate the benefits of the permitted development rights. It could also have the long term effect of stifling the future scope of good and innovative design, in a bid by householders to maximise their opportunities to benefit from permitted development rights at the expense of sound design principles.

Also the opportunity to change the fenestration of the front elevation of a house could have an inappropriate impact on the streetscape as well as additions of small porches.

The current Class 6 and 6A to 6F of the 1992 Order are not particularly complicated and do take account of the need to be "sited to minimise its effect on the amenity of the area". This "bubble" proposal takes no account of the effect of ad hoc and arbitrary design of development within that one metre bubble and there is no mention of the effect on the amenity of the area.

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

A maximum of 50% of the garden ground could be a difficult thing to gauge in many circumstances without visiting and measuring the area. It would not be a case of a visual assessment when the area is already tight or particularly if one is including the use of the side elevation area.

A visit is not saved from a planning officer's point of view compared to a visit for a current planning application. A monitoring visit will be necessary to ensure that the development is correct notwithstanding the possible tension from any neighbours who have had no input into the process as there is no application involved.

No, it is very confusing and nor does not make it clear concerning houses with enormous curtilages like large country house or farmhouses that have no defined curtilages.

One assumes that the words "footprint of the resulting development cannot be bigger than the area of undeveloped garden" means not greater than 50% of the remaining garden excluding the principal elevation. If that is a correct interpretation, it may be preferable to use that percentage figure.

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

Yes. From the perspective of the Cairngorms National Park and having regard to its designated status and unique character, the removal of permitted development rights in relation to conservation areas and the curtilage of listed buildings within the National Park would be welcomed. See response to Q9 below for comments on permitted development in National Parks.

Q9 – Is it resource efficient to review and replace existing householder Article 4 directions? If not, why not? If Article 4 do cease to have effect, what process should there be for the application for and issuing of new directions?

Following the response to Question 8, existing householder Article 4 Directions need not be required if all permitted development rights are removed in conservation areas and curtilages of listed buildings and this would be welcomed.

However, the whole Cairngorms National Park with its unique character and designation needs a level of extra protection. Indeed this should apply to all National parks. This could be provided in two ways which would not compromise the proposals in this consultation. A system of prior notification as currently used with applications for agricultural buildings could be used. Alternatively, a power equivalent to Article 4 given specifically to the National Park Authorities (NPAs) over all or part of the Parks that permitted development rights could be withdrawn on the basis of assisting NPAs in the discharge of their purpose of collectively achieving the National Park aims as required by the National Parks (Scotland) Act 2000

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 amenity?**

c) **Are there any changes to the controls that would strike a better balance?**

The wording is not clear and that is supported by the large number of drawings of possible examples in Annexe C concerning **Class 1**. The clarity of the principal elevation could cause a lot of problems and the definition of curtilage is very "woolly" and needs a better explanation. The percentages of available garden ground may appear to be clear from a visual appraisal but this is unlikely to be the case particularly when the plot is very small or a peculiar shape.

The one metre gap from the boundary is a very small distance and any construction is likely to affect the amenity of neighbouring houses. The possible loss of sunlight and privacy from a conservatory built out any distance and up to 4 metres high to cover up to 50% of a large garden and no opportunity for conditions such as landscaping or windows because of no formal planning application is likely to cause huge problems with neighbours.

The height restriction to 3m for a mono pitched roof on an extension and the height of the building being measured from the lowest point of the slope of the land adjoining the development is to be welcomed.

Classes 3 & 5 provide little control over inappropriate changes to the house and they could be significant. **Class 4** would permit dormers on side elevations and affect the amenity of the neighbouring property and there is little control proposed over size and width of dormers given the generous proposal of up to 50% of width of roof plane.

Class 6 is messy. 2(b) permits a potentially large area of side and rear garden ground where there is not a second road for development and therefore difficulty in assessment without measuring the site in most cases. **Class 6B** 2(i) & (ii) requires householders to adopt the principles of source control akin to a Sustainable Urban Drainage Scheme (SUDS) to be constructed and notwithstanding the intention of the Scottish Government to produce a range of advisory measures to get compliance, this will be a huge extra piece of work for the planning office for giving advice besides the need to monitor and possible enforcement for the development. Whilst this SUDS-like arrangement is an excellent intention, it will not help the aim of reducing the work and time. **Class 6C** is confusing in regard to 2(b) & (c) and the heights of the decking and where and what is the lowest point from which to measure. It also permits the whole of the side and rear elevation to be covered in decking which may have aesthetic implications. **Class CA** proposes any porch outside any external door of a dwellinghouse and could be problematic with a large number of doors.

Currently a planning application permits an assessment of acceptable materials, design and impact of the development. This will be lost and in the rural areas of the Cairngorms National Park, the good aesthetic qualities may be lost with rural houses which tend to be more prominent in the landscape.

The identification of the principal elevation, an assessment of the areas for development and explaining the proposed classes will not eliminate a considerable amount of work for the development management officer. The monitoring and enforcement of these developments will be extremely difficult and will appropriate enforcement action be supported by Reporters and Procurator Fiscals at appeal.

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

No

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

Leave Class 72 as it stands. There would little control as proposed if Class 3 is implemented on the number of cameras on a building as in the current Class 72.

Q13 – Are there any other issues you would like to see addressed in the accompanying guidance?

It is not made clear that the side elevations when not fronting a road are part of the rear curtilages and the area can be very large. Similarly, there is little guidance on the large rural

curtilages beyond saying it is a matter of judgement and no indication of who makes that judgement.

As highlighted earlier, there should be special attention given to National Parks for the opportunity to be treated differently because of the need to address the aims as set in the National Parks (Scotland) Act 2000. A system of prior notification as currently used with applications for agricultural buildings could be used. Alternatively, a power equivalent to Article 4 given specifically to the National Park Authorities over all or part of the Parks that permitted development rights could be withdrawn on the basis of contributing to collective achievement of the National Park aims as required by the National Parks (Scotland) Act 2000

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

Set a start date of the new regime and any applications validated before that date are dealt with under the old regime. Any pre-application discussion held before that date but no application applied for will be dealt with under the new regime.

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

Where Article 4 Directions are in place for Conservation areas and curtilages of listed buildings, then the removal of all permitted development rights could replace the Article 4 directions as proposed.

Within National Parks, a system of prior notification as currently used with applications for agricultural buildings could be used. Alternatively, a power equivalent to Article 4 given specifically to the National Park Authorities over all or part of the Parks that permitted development rights could be withdrawn on the basis of collectively achieving the National Park aims as required by the National Parks (Scotland) Act 2000

Q16 – 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?

The opportunity for resources in planning to be saved by reducing time on householder applications will be limited due to time still required for advising and visits. There will also be the identified loss in income of £640,000 for the planning authorities.

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.