

Scottish Government

Consultation on Non-Domestic Elements of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992

Response of Cairngorms National Park Authority (CNPA)

Question 1:

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

- Currently, planning application fees are not sufficient to cover the cost of dealing with applications and therefore fewer applications, due to a broadening of PDR, might produce savings and efficiencies for planning authorities. However, the lower income from planning application fees may be insufficient to trigger these outcomes and the consequence could be higher unit costs per application.
- There is likely to be a lack of cost savings with planning officers still needing to be consulted and to visit sites in response to requests about the need for a planning application.
- There is a danger with opening up non-domestic PDR that the cost of a monitoring and enforcement service will rise due to the notion that all works are now permitted development.

Question 2:

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 Strategic Environmental Assessment (SEA) should take account of the two National Parks and the reasons for their designation and the obligations under the National Parks (Scotland) Act 2000.

Question 3:

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.

The CNPA would have concerns relating to Gypsies/Travellers and their seeming lack of opportunity to access the documentation on relevant changes that occur in planning legislation which leads to potential conflict on planning issues. There are also concerns about the lack of opportunity for some groups to access the any changes of legislation by online facilities particularly in rural areas.

Question 4:

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

- Flooding Risk Management:

With regard to the new Householder PDR and the issue relating to hard standing and the need for porous material and whether that should be similarly extended to Non-Domestic PDR, it should be borne in mind that this would compound the problem that is being seen with the new Householder PDR in this specific area. It is very difficult to monitor and enforce that the correct surface material has been used and is indeed porous so that a SUDS can be formed. The technical equipment and expertise is not generally available for planning monitoring staff within planning authorities to verify the requirement and effectiveness of these surfaces and therefore further PDR in this area for Non Domestic developments would exacerbate the problem and do nothing for flood risk management.

- Disability Access

There is a clear omission in the 1992 Order on the minor operations for disability access and some external works should be incorporated into a new PDR order.

Question 5:

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?

- Class 18A (1) and Class 20 pertaining to agriculture and forestry respectively require some further control over the outcome from carrying out drainage and other water management projects in regard to flood risk management.
- All classes where statutory undertakers have PDR in the 1992 Order require a further scrutiny as the issues of flooding, climate change and, the wider public concern about protection of cultural and natural heritage has changed significantly since the PDR legislation of the 1992 Order. A system of prior notification in the two National Parks for works by statutory undertakers could moderate these concerns. There is already an existing precedent for some works by Scottish Water to require 28 day prior notification to the planning authority and that could be expanded to cover all works not subject to a planning permission.

Question 6:

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?

Not applicable.

Question 7:

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

Not applicable.

Question 8:

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

Yes and is to be welcomed.

Question 9:

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

Yes, with the suggested amendment at Class 30 (b).

Question 10:

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

Yes, except in a Conservation Area or within the curtilage of a Listed building where a planning application should still be required.

Question 11:

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

Yes. New buildings could be permitted to the same requirements of extensions and larger ones should be subject to a prior notification system with the local planning authority so long as they are proposed to be within the existing boundaries of the business.

Question 12:

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

New buildings could be permitted to the same requirements of extensions and larger ones should be subject to a prior notification system with the local planning authority so long as they are proposed to be within the existing boundaries of the business.

Question 13:

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

- As submitted in answer to Question 4, there is a very real issue about the efficacy of the monitoring and enforcement that may be required in regard to the proposal of porous/permeable surfaces for addressing the drainage.
- There is always a risk of contamination where rubber wheeled vehicles fuelled by fossil fuels as against electric vehicles. Development management over the drainage issues in an industrial and warehouse development should stay with the planning authority and not be incorporated into PDR.

Question 14:

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

- The CNPA consider that a minimum distance from the boundary of 5 metres as existing is about right.
- Currently, there is no mention of the curtilage as a measurement but there is a reference to not reducing the area for parking of turning of vehicles in the 1992 Order. It would be unwise to use a percentage of the curtilage as a guide, as has been used in the new Householder PDR, because of the need for staff parking, import and export of goods and large transport movements could be compromised by this criterion being used for permitted development.
- The proposal for the existing floor area to be pegged at 25% increase of existing floor area might be increased.

Question 15:

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

Yes to all of the proposals **except** for the following proposal “No prevention of the use of land, which was last used as an outdoor sports facility, from being used for that purpose”. A proposal such as this should be in an up-to-date Local Plan and not part of a PDR consideration.

Question 16:

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

- The CNPA agree the proposals of no greater height than and similar materials to an existing building; not within 5 metres of the boundary and not greater than 25% or 50 square metres, whichever is the least.
- The CNPA would also agree that no PDR for office buildings in a Conservation Area or in the curtilage of a Listed Building.

Question 17:

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?

- The CNPA would not support a proposal to consider PDR for these activities as it would engender a ‘grey area’ in terms of scale of operation and what is acceptable. Every situation is different and invariably there are public safety issues on activities on pavements. There is also the problem of littering and public nuisance etc and controls would be difficult to enforce where there is PDR and no formal permission required. Development management permission and licensing should continue in these situations.
- The CNPA would suggest that Class 15 of the 1992 Order is not an appropriate class to promote PDR for ‘pavement cafes’. There is already concern from planning authorities and public misunderstanding with this class and the 28 days in any calendar year permission for some activities. The 28 day permission is not sufficient time for a ‘pavement café’ culture to be engendered by a business and this would inevitably lead to abuse and enforcement action to regulate the activity. The promotion of a ‘pavement café’ culture should be through the existing development management process and not through new PDR legislation.

Question 18:**Do you agree that PDR should allow shops, banks, pubs, restaurants and other similar businesses to enlarge their businesses?**

- The CNPA as the first National Park in Scotland to produce a Local Plan also has a Sustainable Design Guide which seeks to promote a better outcome through development management across the Park and therefore it seems somewhat incongruous to be proposing PDR for planning proposals to shops etc.
- The proposed limitations to PDR in the consultation are acceptable and necessary but they would lead to little scope for businesses actually doing anything very worthwhile and seems an unnecessary addition to planning legislation.
- The costs of the planning authority would inevitably rise as greater monitoring and enforcement would be required to ensure that businesses did not exceed the limited PDR as proposed.

Question 19:**Do the controls on PDR for caravans strike the right balance between removing unnecessary planning applications and protecting amenity?**

- The siting of caravans is a big issue in the Cairngorms National Park because of the wish to retain the special qualities of the landscape and protecting that amenity for Scotland. Because of these special qualities, the CNPA propose that PDR is withdrawn from all caravan parks and any caravans for non short term holiday use.
- All caravans that are touring caravans for short term holiday purposes need not have to apply for planning permission to be sited in the Park.
- The CNPA agrees that outside the two National Parks, the PDR and related limitations and conditions should be listed in the GPDO rather than cross referencing to the 1960 Caravan Act which is in urgent need of revision and new legislation.
- The archaic 1960 Caravan Act is in need of an urgent overhaul and the CNPA would strongly suggest that a new interpretation of what is a caravan is long overdue. Currently, a caravan can be anything from a wooden triangular 'wigwam' through to a 3 bedroom 2 bathroom static 'dwelling' and causes a lot of debate and confusion among both the public and planning officers.

Question 20:**Should there be PDR for open air markets where an operator's licence has been obtained from the local authority?**

- The CNPA does not have responsibility for granting Market Operators licences, that is the responsibility of the 5 local authorities within the Park boundary. However, the Park's planning regulations do permit the CNPA to be the relevant planning authority if an application is called in by the CNPA Planning Committee.
- The CNPA is very supportive of the Scottish Government's local food and drink initiative and that small local farmers' markets can be controlled by Market Operators licence. It is important that small local traders and markets in dispersed rural communities can have more PDR in relation to trading but much relies on the rigour and detail of the local authority granting the licence.
- One of the issues surrounding these markets is the definition of a Farmers' Market and the likelihood of these local markets being 'hijacked' by marketers that are not local and are not selling locally produced goods. A Market Operators licence should be required to control the merchandise that is sold and should not be part of planning permission.

Question 21:**Do the existing controls on PDR in designated areas strike the right balance relating to the formation of private roads and ways?**

- The issue of hill tracks in the Cairngorms National Park is an important one because of the national and international importance of the Park's natural heritage. The subject also promotes some of the fiercest debate between the land managers/owners and the general public. The CNPA considers that it is important to note that hill tracks are used by a large number of different users besides agriculture and forestry and these include mountain biking, walking, field sports and extracting deer and there is a need for a good quality of track construction and maintenance so that ad hoc access tracks are not formed leading to erosion.
- The existing Classes 8, 18, 22 and 27 of the 1992 Order cause a great deal of uncertainty and confusion for land managers/owners and Park residents and enforcement issues for the CNPA. The main concern is that the interpretation of the PDR classes is very wide depending on the perspective of the parties involved.

- The land owners/managers take the view that any work on existing tracks is justified regardless of the scale of the operations and should be considered favourably under PDR legislation. The public view is often one of wholesale destruction of the natural heritage and injurious to the landscape and looks to the CNPA to sort out the problem, given the first aim of the Park. The planning officer frequently sees the engineering works being in excess of the PDR and requiring a retrospective planning application.
- Therefore the CNPA do not consider that the existing PDR controls in Designated Areas are practical or sufficient to protect those areas in the National Park and deliver the first aim of the Park which is 'to conserve and enhance the natural and cultural heritage of the area' which is enshrined in the National Parks (Scotland) Act 2000.
- The CNPA, with Loch Lomond & Trossachs National Park Authority (LLTNPA) and Scottish Natural Heritage (SNH), have held discussions with the Scottish Government to propose that National Scenic Areas (NSA) should be denotified in Scotland's National Parks, as a way of simplifying the clutter of multiple designations. The CNPA's existing policy approach is to ensure that the whole National Park is managed with equivalent sensitivity to those areas currently in the NSAs in order to conserve and enhance the special qualities for which the whole Park was designated. Integral to this proposal is that hill tracks, agricultural and forestry operations currently within the scope of the PDR would not be covered by any PDR class in the National Park including scenic qualities. We propose that all such works should require prior notification in order to consider whether a planning application is required. We also propose that the landscape significance of National Parks is recognized explicitly by a statement in Scottish Planning Policy (SPP), putting National Parks on par with NSAs in terms of landscape.
- New hill tracks and construction and maintenance of existing hill tracks and accesses would not be covered by any PDR classes and would require prior notification to the CNPA so that a decision could be made on whether a planning application is required on development management grounds. This would be similar to the 28 day prior notification process already in operation for agricultural buildings through local authorities and would be a consent procedure. This proposal would also address the need for a single coherent procedure to cover the parts of concern regarding construction and maintenance of private roads and ways in the Cairngorms National Park.
- The CNPA would have to have the ability to manage this prior notification process through new powers in order to discharge its responsibilities. By way of context, the CNPA currently does not have the responsibility to manage the agricultural buildings prior notification procedure and that has caused difficulties. This new power could be incorporated into the Non Domestic element of the new PDR Development Order and related back to the CNPA designation order.

- It is important to note that there is existing guidance from SNH called “Constructed Tracks in the Scottish Uplands” which must be incorporated as a good practice guide in any legislation covering construction of hill tracks and private ways in general.
- All new private accesses to existing residential and non residential buildings from public or trunk roads would still be subject to development management control.

Question 22:

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 of terms such as ‘hill tracks’ or the locations (eg. ‘semi-natural areas’, ‘open hill land’) where they occur?

- The Cairngorms National Park is defined by legislation as an area of national and international importance for its natural heritage and the combination of its cultural and natural heritage. The Park has a distinctive character and a coherent identity and the designation as a National Park through the Act was to ensure that the special needs and aims of the Park would be collectively achieved. The CNPA is clear that trying to define a ‘hill track’ is not an appropriate basis to determine whether a track would need planning permission.
- The proposals in the consultation seek definitions of terms but the CNPA would look at this aspect in a different way and would propose that ‘special landscape’; ‘wild land’; ‘biodiversity’; ‘geodiversity’ and ‘recreation’ are the defining perspectives in respect of the Cairngorms National Park. Currently, economic drivers like grouse shooting are not permitted development activities that form part of the PDR Order 1992 as defined under Class 18 for agriculture but clearly are closely aligned and can cause confusion in interpreting the 1992 Order. The CNPA is very supportive of these important economic drivers through sport and recreation but would seek a prior notification procedure in order to safeguard the cultural and natural heritage qualities of the Park.
- Therefore, the CNPA would propose that in the whole Cairngorms National Park all aspects of PDR are removed which pertain to all tracks and accesses. (See Q21). New hill tracks and construction and maintenance of existing hill tracks and accesses would not be covered by any PDR classes and would require prior notification to the CNPA so that a decision could be made on whether a planning application is required on development management grounds.

- This would be similar to the prior notification process already in operation for agricultural buildings through local authorities and would be a **consent procedure**. This proposal would address the need for a single coherent procedure to cover the parts of concern regarding construction and maintenance of private roads and ways in the Cairngorms National Park.
- Reiterating the point in Question 21, the CNPA would have to have the ability to manage this prior notification process through new powers as the CNPA, by context, currently does not have the responsibility to manage the agricultural buildings prior notification procedure.

Question 23:

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?

The CNPA response to Questions 21 and 22 covers the response to this question by proposing that a consent procedure is in operation over the whole Cairngorms National Park and LL&TNP and would cover all new hill tracks, maintaining and enhancing existing hill tracks and all private roads and ways. This would be a very simple and efficient way of solving this issue and would support the enforcement function of the CNPA development management service.

Question 24:

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?

- Agriculture, to some extent, has some PDR for dealing with waste from stock holding and rearing practices, although buildings are subject to a notification procedure, local authorities do not often question the efficacy of these facilities. It could be better monitored and that experience suggests that PDR for non agricultural waste facilities would not be the best way forward.
- The CNPA would not agree with PDR for waste facilities dealing with such products as cooked and uncooked food, animal disposal, hospital and household waste. All these types of waste require specialist handling and would require further monitoring by SEPA which are already over-stretched with their resources.

- Construction and quarrying waste is an issue in the Park because it has impacts for the landscape, biodiversity and natural heritage.
- Small scale local community composting schemes could be covered by PDR.

Question 25:

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

- The CNPA would not support PDR to address the issues that frequently concern development management such as visual amenity and on and off site impacts which include traffic issues and importantly reinstatement of the site at the end of its use.
- SEPA can cover quite a lot of the issues by licensing but fly-tipping and 'accidents' that occur demonstrate that licensing does not address all the issues and the monitoring and testing of further facilities which do not go through a rigorous planning application would only exacerbate a very stretched licensing body.

Question 26:

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

- Given practical experiences, the CNPA would not support the inclusion of concrete crushers and graders into Class 14. The use of these on adjoining land to the development causes a high number of complaints from local residents with sleep deprivation, inhalation difficulties and noise. This type of operation needs to be controlled through planning so that timing and geographic position can be controlled. The CNPA strongly supports reuse and recycling of materials but not on an adhoc basis as likely through PDR.
- Class 14 is frequently used by developers to 'spread' their operation over a much greater area than was envisaged in the planning application and is frequently not removed timeously at the end of the development. In a National Park this can have a detrimental effect on the landscape for considerable lengths of time and certainly running into years.

- In many developments, the compound, which is frequently on 'blue land', comes under the red line planning application so that planning conditions can control the activities, therefore the CNPA would propose that Class 14 in the 1992 Order is taken out of new PDR legislation.

Question 27:

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

- The CNPA supports the first (a) PDR proposals for the erection of a waste storage container.
- The CNPA supports most of the (b) PDR proposals for waste management facilities but would propose that the distance from the boundary of a residential property should be greater than 10 metres – suggests 20 metres. There is plenty of evidence of complaints from local residents near to existing waste facilities such as from the noise of bottle banks.
- The CNPA would also propose that Conservation Areas should be included in the proposals under (b) along with no PDR within the curtilage of a Listed building.
- The CNPA would support the proposals in (c) for existing landfill sites.