

# WEST DUNBARTONSHIRE COUNCIL

## Report by the Executive Director of Housing, Environmental and Economic Development

Planning Committee: 7<sup>th</sup> June 2011

Reissued for Meeting of West Dunbartonshire Council: 29 June 2011

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**Subject: Scottish Government Consultation on amendments to Non-Domestic Elements of Permitted Development Rights.**

### 1. Purpose

- 1.1 The Committee is requested to consider this consultation paper and to agree a response.

### 2. Background

- 2.1 Permission for many minor types of non-domestic development is granted by a statutory instrument of the Scottish Government: the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended). This permission, known as 'permitted development', means that such minor works do not require a planning application.
- 2.2 As part of the wider reviews of planning legislation, the Scottish Government have issued a consultation paper which seeks views on the proposed alterations to the existing permitted development rights. The review covers a wide range of developments types and interests from aviation and harbours to industrial developments, shops and offices, and waste management facilities.
- 2.3 The consultation paper seeks to look at ways to make the planning system more efficient and proportionate, so that planning applications are not required where no value can be added, or where it imposes unnecessary costs and delays to developments considered to be of a minor nature.
- 2.4 It should be noted that a similar review by the Scottish Government of permitted rights for householder developments has already taken place with the Council's response to that consultation paper being agreed by the Planning Committee on 11 January 2011. As yet the Scottish Government has not implemented any of the changes to householder permitted development as outlined in the consultation paper.

### 3. Main Issues

- 3.1 The Scottish Government proposes both minor and major changes to the classes of permitted development applicable to non-domestic development. The purpose of the consultation is to seek views on these changes and the consultation paper contains 27 questions on which the Council's views are sought. The recommended responses are attached in Appendix A.

- 3.2** The proposed changes cover a wide range of business types and most of the proposals seek to increase permitted development rights in order to facilitate economic growth and allow minor uncontroversial types of development to be implemented without requiring application for planning permission. For example, the existing permitted development rights for industrial and warehouse sites (Class 23) is proposed to be increased to include free-standing buildings (up to a certain footprint) as well as continuing to allow some extensions to be added without requiring a planning permission.
- 3.3** There are also proposals to insert new classes of permitted development rights for types of development which did not previously have permitted development rights. For example offices, institutions (schools, universities, colleges, hospitals, care homes) and shops are now proposed to benefit from permitted development rights for some developments subject to limitations such as size, height, and distance from boundary, etc.
- 3.4** Some of the new classes are in response to changes in culture and technology. It is proposed to insert a new class to allow permitted development rights for pavement cafes (including pubs, restaurants, mobile refreshment stalls, etc) and farmers markets. The commitment to waste reduction has seen a proposal for a new class for waste management facilities which sets out to give limited permitted development rights for waste storage containers, extensions to existing waste processing facilities and works on existing landfill sites, all subject to limitations.

#### **4. People Implications**

- 4.1** It is envisaged that the proposals will lead to a reduction in the number of minor non-domestic planning applications, and that this will free up officer time to concentrate on the more major and complex applications. However it is likely that there will be an increase in the number of enquiries to confirm whether planning permission is required and subsequent applications for certificates of lawfulness.

#### **5. Financial Implications**

- 5.1** Whilst it is clear that there is likely to be a drop in numbers of applications of up to 15% the loss of fees is more difficult to quantify as the fees vary depending on the nature of the proposal (either based on floor area or a flat rate of £319). As an indicator, during the period 2010-11 the Council received 47 applications for minor non-domestic proposals (known as Business and Industry local applications) bringing in a revenue of £55,000. This percentage accounts for almost 30% of fee income generated by planning applications.
- 5.2** In reality it is likely that not all minor developments which currently require a planning application will now become permitted development and so the loss of revenue is likely to be much less than this figure. It is anticipated that the drop will be partially offset by fee income from an increased number of applications for certificates of lawfulness. Additionally, the Scottish Government is also currently undertaking a wider review of the resourcing of

the planning system which may involve a general increase in fee levels especially for the major applications.

## **6. Risk Analysis**

**6.1** It is considered that there is no risk associated with the proposals.

## **7. Equalities, Health & Human Rights Impact Assessment (EIA)**

**7.1** There are no equalities issues.

## **8. Conclusion and Recommendations**

**8.1** The proposed amendments to non-domestic permitted development rights will increase the proportion of minor developments which can be carried out by businesses and industries without the need for planning permission. This will in turn reduce the number of applications received by the planning authority. Some of the limitations for each class require amendment and/or clarification in order to safeguard amenity, environmental concerns and this has been outlined in our response to the consultation paper.

**8.2** The Head of Planning Development Management Sub Group are having a workshop on this consultation paper on 10 June. An Officer from this Council is intending to attend the workshop and any relevant comments from the workshop would be incorporate within the Councils response to the consultation paper

**8.3** It is recommended that the Committee notes the content of this report and agrees that Appendix A forms the Council's response to the consultation paper and any additional relevant comments will be added following the workshop.

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**Date: 22 May 2011**

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**Appendix:** Appendix A: Response to the Consultation Paper

**Background Papers:** 1. Consultation on Non-Domestic Elements of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992

**Wards affected:** All

## **APPENDIX A – RECOMMENDED RESPONSE TO CONSULTATION QUESTIONS**

### **Business and Regulatory Impact Assessment (BRIA)**

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

If the proposals outlined in the consultation paper were implemented it would remove simple commercial and industrial applications from the planning system. This would impact on planning authority fee income, exacerbating the resourcing problems which were identified in the recent consultation on extending householder permitted development rights. If as suggested householder applications to some extent subsidise larger applications, the same would also be true of minor non-domestic applications. Similarly, extending permitted development rights is likely to result in an increased number of enquiries to planning authorities, for which they do not receive a fee.

### **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.**

Extending permitted development for non-domestic development is unlikely to have any positive environmental effect as its sole purpose is to remove development from direct planning control. The various proposed changes have potential to have negative impacts but these seem likely to be small scale, insignificant and localised.

### **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.**

It is not considered that the potential changes would raise any equality issues.

## **EMERGING ISSUES**

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

**Q4. What types of technology, equipment, structures or related developments should be considered for permitted development rights (PDR) to support climate change / flood risk management or disabled access?**

In respect of climate change, the technologies to reduce emissions are still emerging, however the introduction of PDR for microgeneration equipment is welcome. The amendments to Classes 20 (land drainage works) and Class 25 (hardstandings) would benefit from a more sustainable approach to flood risk management and the introduction of a general class for wheelchair ramps and disabled access (except in conservation areas) would be welcome.

**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?**

It is considered that, in general, the right balance is being achieved.

## **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?**

This Council does not have direct experience of aviation development and the following comments are therefore of a general nature.

The current PD rights do seem to be unduly broad, as they exclude from effective planning control various types of development which would have very significant local consequences, and it is noted that they are significantly broader than those applicable to other transport undertakings (e.g. railway station development). It is recognised that many operational buildings associated with the aviation industry are necessarily very large (e.g. aircraft hangars) and that it may not be desirable to subject all of these to the normal planning controls or application fees. However, some operational development (e.g. passenger terminals, car parks etc.) can have very significant impacts on the surrounding area and is considered anomalous to exclude these from planning control. It is suggested that the PD Order might address this by differentiating between facilities for the movement, control and maintenance of aircraft (i.e. airfield operations) and those for the handling of passengers and freight (i.e. terminal operations), with less generous PD rights for the latter category.

### **Harbours**

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

Whilst it is recognised that some dockland facilities can give rise to significant amenity problems, it is not considered desirable to significantly reduce the

scope of PD rights for what is generally one of the more sustainable modes of transport. It would however be desirable to introduce some control over specific types of development associated with handling cargo with particularly strong odours (e.g. fish meal) where these take place within 400metres of a house or other sensitive use (this distance being suggested on the basis that it is what is specified for malodorous agricultural uses).

There is also a concern that some port operators have extensive interests in property development and that in some cases PD rights may have been employed in order to prepare land for redevelopment rather than for purposes genuinely related to shipping or associated inland transport. In particular, this relates to the infilling of redundant dock basins, thereby creating additional development land, but also destroying features which it might have been desirable to retain as part of the redevelopment. In such situations it would be difficult for a planning authority to prove that the work was not carried out for a legitimate dock purpose as the developer can easily claim that the work was necessary in order to remove a redundant feature which was a maintenance liability, or to accommodate some other dockland development which never materialises. It is therefore recommended that any infilling of a dock basin should be subject to planning permission in order to safeguard the amenity of an area.

### **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 proposed restrictions on development within 2 metres of the boundary of a site which fronts a road are not clearly worded as they would have the effect of restricting development within 2 metres of any boundary of such a site. What is presumably intended is to restrict development within 2 metres of a boundary which fronts a road. Even this may be unnecessarily restrictive as it would prevent development in car parks adjacent to the road where the parking space is accessed from within the site and the charging point faces into the site. An alternative to this might be to introduce a general caveat that PD is granted on the basis that the charging point will never be used to charge vehicles parked wholly or partly on a public road. In other respects the proposals are clear and reasonable.

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

This is a clarification only and does not actually alter PD rights under class 30, as it is considered that most authorities would already consider a charging point to be a piece of street furniture akin to those specified as examples. The need for such a clarification is therefore questionable, but its effect is clear.

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

Yes, the proposed allowances are considered appropriate.

**COMMERCIAL AND RETAIL**

**Industrial and Warehouse Development**

**Q11. Do you think that we should clarify that Class 23 (Industrial and Warehouse Development) of the General Permitted Development Order includes research and development (R&D)?**

Yes. However, the reason that research and development may not always have been viewed as an 'industrial process' is that some R&D activities are more akin to office uses, and the current PDR does not specifically allow for activities ancillary to the industrial process or storage/distribution use, other than employee facilities. In view of this, it is suggested that the clarification in class 23 should refer to "R&D and office accommodation where this is ancillary to the industrial process or storage use carried out at the site".

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

Whilst recognising that many small industrial buildings are uncontroversial, this proposal does have the potential to result in some developments which have significant adverse impacts upon amenity. In particular, problems are anticipated in the case of small industrial sites and sites within mixed use areas, where a sizeable building could be erected in a location which adversely affects neighbours or is harmful to visual amenity. Although the proposed floor area limit for new buildings is much lower than that for extensions, it is considered that the risks are greater for new buildings because a new building can be located some distance away from the existing buildings, whereas an extension is necessarily adjacent to them. A limit on the distance from existing (large) buildings might go some way towards addressing this – for example the new building might be limited to positions within 100m of existing buildings of equivalent or greater size.

If PDR is introduced for new buildings this should at least be subject to the same controls as class 23 in relation to proximity to the boundary, impact on parking, and use.

The proposed limitations on the combined floor space of buildings and extensions requires to be clarified. The current 1000m<sup>2</sup>/25% limit in class 23 is understood to apply to the total area of all extensions relative to the original building, and once that limit had been 'used up' any further extensions require permission. It is not clear how the proposed 100m<sup>2</sup> limit for new buildings and the 1000m<sup>2</sup> combined limit for new buildings and extensions would relate to the existing provisions. As currently worded it would appear that any number of new buildings could be erected provided that none of them exceeded 100m<sup>2</sup> in area, but also that new buildings can only be erected if the combined floor area of the largest of these new buildings and the largest extension does



not exceed 1000m<sup>2</sup>, even in the case of a very large industrial premises where the 25% limit on extensions may have allowed much larger extensions.

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

Yes. This has also been proposed for householder PD, and it is logical to include it for commercial properties where the extent of the hard surface will normally be much greater and the need for appropriate means of water disposal will therefore be more pressing.

However, it should be noted that this will be very difficult for planning authorities to enforce; once a hard standing is laid down it may not be easy to prove that it is insufficiently permeable. As acknowledged in the consultation paper there is also scope for disagreement between developers and planning authorities on whether the risk of contamination negates the requirement for permeability. Nonetheless, most responsible developers would comply with the requirement and it would therefore be of benefit.

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

In general, the current limits work well and that it would be hard to change them without the increasing potential for loss of amenity (e.g. visual amenity, impact on other uses within a mixed use area, parking) particularly for small sites.

**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?**

Yes. The extension of PDR for council development would be particularly welcome as due to the 2009 changes to planning regulations council interest planning applications cannot be determined under delegated powers, and therefore such applications now take up a disproportionate amount of time and resources.

Most such sites have relatively large grounds which are capable of accommodating extensions of the sizes suggested, although problems may emerge with smaller facilities (e.g. small private schools operating within residential areas), and where the proposals would allow front extensions with significant visual impacts and potential loss of parking spaces. It is suggested that the definition of 'schools' should not include private nursery schools where such situations are the norm. A restriction on development within conservation areas would also be appropriate.

(The consultation paper specifies that the meaning of 'Original' building is 'as defined in the amending Order', but no new definition is provided, so it is assumed that it is not intended to change the current definition.)

## **Offices**

### **Q16. Do you think that we should have PDR for office extensions?**

Yes, the insertion of a new class to give PDR to office extensions would be welcome and the suggested limitations would be appropriate. However, there is a need to safeguard to prevent front extensions (e.g. no closer than the closest part of the building to a road bounding the curtilage) and that there is no loss of parking.

## **Pavement cafes**

### **Q17. What sort of activities under the heading of 'pavement cafes' should be considered for PDR (e.g. pubs, restaurants, mobile refreshment stalls) and what sort of PDR and related controls should apply?**

Pavement cafes have the potential to create localised amenity issues and careful consideration needs to be given to the limitations imposed alongside any PDR. It is suggested that limitations include ensuring that they are ancillary to a use serving food (but not a licensed premises), that they are not within a set distance of a residential property and are limited in the area they cover (e.g. not more than 20 square metres). In addition pavement cafes should not obstruct the pavement/road and should be adjacent to wall of building with access to the café. There is also a need to have some controls over canopies etc. (e.g. not in conservation area).

## **Shops**

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

The Council gets very few applications for extensions to shops and it is considered that control over them should be retained. The majority of applications are for elevational alterations or the addition of equipment (e.g. air handling units, small storage boxes for newspaper deliveries etc.) and there should be PDR for these types of alterations where they are not on an elevation facing a road or a public street or path.

## **CARAVANS**

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

The Council does not have any caravan and camp sites in the area and have no strong views. However, the current wording is confusing and ought to clarify what is/is not covered by PD without cross-reference to the 1960 Act.

Clarification on the status of camping would also be welcome. Clarification is required on permission of site workers caravans during building operations. This type of development should have PDR subject certain limitations such as distance from other uses/houses and it should be permitted for a certain time period during the building operations.

## **FARMERS' MARKETS**

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

There are concerns whether the licensing regime would be able to take account of subjective issues which we or other planning consultees might raise, for example, traffic, impact on existing retail centres, noise and impact on amenity. However farmers markets should be encouraged where possible. Often this type of market wants to test the local town for demand and consideration should be given to allowing a farmers market PDR on a trial basis in order to test demand in the local area.

## **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?**

### **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 (e.g. 'semi-natural areas', 'open hill land') where they occur?**

### **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?**

It would be helpful for ease of use if the PDR for private roads and ways whether for agriculture, forestry, etc. were all included in one class. The majority of hill tracks do not cause issues if they are implemented sympathetically by the landowner. However on occasions hill track can be visually prominent and the research by Herriot –Watt which suggested that removing PDR for this type of development in certain designated areas such as areas of high scenic and natural heritage value should be adopted. In the past this Council has had an issue whereby a landowner has constructed a track which he has claimed would give me greater access to his farm holding. However the construction of the track was used to dispose of large amounts of waste materials from his businesses elsewhere with access being secondary. The PDR should prevent this situation and clarification should be provided in the PDR. The upgrading of a non-vehicular to a vehicular way

should not be permitted development but should require an application due to safety and amenity issues

## **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.**

Waste management operations are often associated with adverse environmental, amenity and off-site impacts and it is agreed with the Whyte Young Green proposals that restricted PDR are appropriate. It would be totally inappropriate to transfer the scale and range of PDR currently available to industrial and warehouse premises as the impact of waste management facilities are often more significant in amenity and environmental grounds.

**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?**

If PDR were extended it would have to ensure that the development was not overtly prominent, impact on the associated uses and land designations, relationship to adjacent/surrounding uses and any traffic consequences both within and outwith the site area. These are planning issues which we do not believe could be addressed adequately through the WML and PPC regimes. Also, who would assess these impacts and enforce any unauthorised use. The Personnel addressing WML and PPC regimes is unlikely to have the necessary skills and experience of these issues.

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

The proposed amendment seeks to clarify PDR for plant and equipment required for the recovery of materials from wastes and this would accord with the general principles of waste management and sustainable building operations.

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

The installation of waste storage containers is likely to generate localised concerns on environment, amenity, noise and odours and there are concerns about imposing such PDR.

Similarly, the lengthy limitations to be imposed on PDR for extensions to existing waste management facilities suggest the range of potentials for environmental concerns. Some of the limitations imposed would be difficult for planning authorities to enforce, for example, once a hard standing is laid

down it may not be easy to prove that it is insufficiently permeable. However waste management facilities should have the same PDR for hard surfaces as other industrial uses.

In respect of further PDR for landfill sites the proposals would seem reasonable except for the provision of fencing up to 6 metres in height above made ground level in certain locations. Some landfill sites are at the edge of rural areas and it is considered that a 6 metres fence could be potentially visually intrusive even in an area associated with landfill activities. Although the general principle of PDR for litter fencing is welcomed The other works are operational and have wider environmental benefits.