

**Report To:** Safe Sustainable Communities Committee      **Date:** 18 January 2011

**Report By:** Corporate Director Regeneration and Environment      **Report No:** SSC/11/01/01/SJ/NMcL

**Contact Officer:** Development and Building Standards Manager      **Contact No:** 01475 712420

**Subject:** Scottish Government Consultation on Householder Permitted Development Rights

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## 1.0 PURPOSE

- 1.1 Scottish Ministers wish to simplify the rules applicable to the requirements for householders to obtain planning permission. They also seek to remove the requirement to obtain permission for minor and uncontroversial proposals. This consultation sought views by 14 January 2011. The purpose of this report is to inform the Committee of the draft response submitted on behalf of the Council.

## 2.0 SUMMARY

- 2.1 The consultation poses 17 questions, which were responded to as detailed in paragraphs 4.2 to 4.17.

## 3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee agrees to the consultation response submitted to the Scottish Government.

**Stuart Jamieson**  
**Head of Regeneration and Planning**

## 4.0 BACKGROUND

4.1 Scottish Ministers wish to simplify the rules applicable to the requirements for householders to obtain planning permission. They also seek to remove the requirement to obtain permission for minor and uncontroversial proposals. This consultation sought views by 14 January 2011.

The consultation poses 17 questions:

## 4.2 Types of development

These are allocated into a range of use classes. The proposed changes to use classes are summarised in the table below.

Current Class of the 1992 Order	Proposed Changes	Proposed Classes
Class 1  (enlargement, improvement or other alteration of a dwellinghouse)	Divide into 3 separate Classes to make it easier to identify the appropriate Class of permitted development and to apply more relevant limitations to each Class.  For example, the proposed Order separates two storey extensions from single storey extensions, and hence the proposed limitations that are not the same as for a single storey extension.	Class 1 - single storey ground floor extensions.  Class 2 - all other extensions.  Class 3 - and any other improvement or alteration not involving an enlargement.
Class 2  (alteration to the roof of a dwellinghouse, including enlargement of the dwellinghouse)	Divide into 2 separate Classes	Class 4 - covering an enlargement by way of a roof alteration (e.g. a dormer).  Class 5 - any other improvement or alteration to the roof that is not an enlargement.
Class 3  (provision of any building or enclosure or pool within a curtilage)	Divide into 2 separate Classes	Class 6 - any outbuilding.  Class 6A - any other building, engineering, installation or other operation
Class 4  (hard surfaces)	Becomes new Class 6B  (Subject to a new standard condition)	Class 6B.
Class 6  (satellite dishes)  Classes 6A to 6F (domestic microgeneration)	Classes for Satellite Dishes and some domestic microgeneration equipment are no longer required, as this type of development would fall within the proposed Classes 3, 5 or 6A.	Would fall within the proposed Classes 3, 5 or 6A.

Class 7 (gates, walls, fences etc)	Becomes new Class 6CB	Class 6CB

#### 4.3 Consultation Questions

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

*Response: Fewer, more clearly written rules are easier and quicker to apply. Generally, the path of questions requiring answering to determine that planning permission is not required is lengthy, and the requirement to cross refer between classes and the circular will make it difficult for non practitioners to apply.*

Q2. Are the new Classes sensible and workable?

*Response: The classes are generally sensible and, subject to more detailed description and clearer interpretation as explained elsewhere in this response, are workable.*

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

*Response: The wording of the regulations is, in places, difficult to understand and would benefit from greater clarity. For example, classes 2 and 3 require reference to class 1, class 5 requires reference to class 4, and class 6A to 6. Without reference to interpretation and the circular, an accurate interpretation of the regulations is not possible. The impact of the changes on application caseload is difficult to assess, however the difficulty in interpretation is anticipated to result both longer and more pre application queries and the potential for more enforcement queries.*

#### 4.4 Concept of Principal Elevation

A different approach to defining the front and rear of a dwellinghouse is proposed so that fewer restrictions apply to development in the rear of a house. The Principal Elevation Concept assumes that every house has one elevation designed as its main or principal elevation. This will normally be the front of the house. Having identified the principal elevation the side and rear elevations can therefore be identified.

Concerns were expressed about using this approach in the previous consultation and subsequent stakeholder engagement. It has been argued that disputes will arise as to what is or is not the principal elevation, that a new subjective assessment is being introduced and that a site visit may be necessary to answer a simple enquiry. A small working group tested alternative approaches, which included revising the definition of a road.

A similar approach has been used in England since 2008 and is currently being examined as a solution in Northern Ireland. Testing has demonstrated that in the vast majority of cases the front and back of a house are commonly understood although there are occasions where the principal elevation concept introduces complexities, in particular in isolated houses in the country and houses which have a designed rear elevation which may front a road.

The 1992 Order also generates the need for a site visit, because such a large proportion of householder developments require the submission of a formal planning application. The Scottish Government considers, on balance, that the benefits in reducing the number of unnecessary planning applications far outweigh the disadvantages.

#### 4.5 **Consultation Question**

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?

*Response: In the vast majority of houses the principle elevation will be obvious. Overall, the approach and intent is supported.*

#### 4.6 **1 metre "bubble" around the walls and roof of a house for alterations and improvements (other than extensions)**

The proposed new structure isolates enlargements (i.e. extensions, dormer windows etc) from all other alterations and improvements. It is proposed to allow all other alterations and improvements, as permitted development subject to a 1 metre restriction. This can best be visualised as allowing a 1 metre "bubble" surrounding the walls and roof of a house, within which a householder will not require planning permission.

This approach removes the need for a number of minor developments currently subject to complex rules which are frequently ignored or misunderstood and rarely enforced.

The proposed approach provides individual householders, other than those in conservation areas or with listed buildings, considerable scope to alter the appearance of their house. The 1992 Order allows considerable scope for development but most householders do not take advantage of the full scope. The Scottish Government therefore considers that the vast majority of householders will continue to exercise their rights responsibly.

#### 4.7 **Consultation Question**

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

*Response: As with the concept of the principle elevation, the intent and approach taken in introducing a 1 metre "bubble" is supported.*

#### 4.8 **New site coverage criterion**

Another key change is replacing the current limitation on floorspace and 30% ground coverage with a new single site coverage limitation. For an extension or outbuilding to be PD, the footprint of the resulting development (including any previous development) cannot be bigger than the area of undeveloped garden.

It means that the absolute maximum site coverage of a rear or front garden is 50%. This could represent a significant increase on the current 24 square metres allowed in the 1992 Order. However, most applications do not seek to cover such a large area and it is anticipated this limit will rarely be reached. If on the occasions a householder can address the cost, design issues and comply with the other limitations, the risk of a single storey building covering up to 50% of the curtilage causing harm to public or private amenity is considered an acceptable one.

#### 4.9 **Consultation Question**

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

*Response: The principal of the site coverage criteria is sound, however it is poorly*

*expressed in the regulations, requiring reference to the circular for interpretation. Most non practitioners, including householders, will not recognise the link between circular and regulation, and it is considered essential that the regulations be clear and precise in their own right.*

#### 4.10 **Height and external dimensions**

The 1992 Order defines the height of a building to be measured from ground level. Where the ground level is uneven (e.g. on a sloping site) it should be measured from the highest point. This has resulted in some unfortunate impacts on sloping ground where a considerable amount of underbuilding can be permitted development.

As the proposed Order relaxes other controls, it is considered necessary to change the way in which height is measured to limit the scale of certain developments. The amendment changes the height measurement from the highest point to the lowest point.

In addition, for practical purposes, that all measurements should relate to external dimensions.

#### 4.11 **Consultation Question**

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

*Response: This clarification is welcomed.*

#### 4.12 **Conservation Areas**

It is proposed that the only specific areas where restrictions on permitted development will apply should be conservation areas and within the curtilage of list buildings. Currently, unless an Article 4 direction is in place, some types of alteration or improvement to a dwellinghouse in a conservation area would be permitted development. This could include external cladding, window alterations etc. The Government propose that existing Article 4 directions should cease to have effect, subject to transitional arrangements. The need to make new directions should lead to a review of existing Article 4 directions, many of which were made sometime ago.

#### 4.13 **Consultation Questions**

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

*Response: 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?

*Response: Inverclyde Council supports changes removing the need for Article 4 Directions relating to householder development in Conservation Areas. Where existing Article 4 Directions incorporate restrictions beyond householder development, it is suggested that the Government utilise powers under Article 6 of the Town and Country Planning ( General Permitted Development) Order 1992 and issue a direction cancelling householder sections of the relevant Direction(s).*

#### 4.14 **PART 3 - CLASSES OF HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS**

**Class 1 - Any enlargement of a dwellinghouse by way of a single storey ground floor extension, including any alteration to the roof required for the purpose of**

## **the enlargement**

Single storey extensions are the most common form of householder development and least controversial. The intention is to make as many as possible single storey rear extensions permitted development. It is proposed to control the extent of the projection from a rear wall if the extension is within 1 metre of the boundary of the curtilage. In the vast majority of cases, the curtilage of a house will coincide with the property boundary. If any part of a single storey extension falls within 1 metre from the boundary, it may only project from the rear wall by 4 metres if a detached house or 3 metres if a terrace or semi detached house. Rear elevation is defined as opposite the principal elevation. It is also proposed to limit the height of the extension and restrict the floorspace of an extension to 16 square metres in a conservation area. This is the same limit as in the 1992 Order.

### **Class 2 - Any enlargement of a dwellinghouse, other than a single storey ground floor extension, including any alteration to the roof required for the purpose of the enlargement**

This Class is for any extension that is not a single storey extension. Most typically, this would be either a 1.5 storey extension or a 2 storey extension, and it is more common for this type of extension to raise legitimate planning issues. No part of the extension be closer than 10 metres from the boundary of the curtilage without requiring planning permission as it was considered that this distance would be the minimum distance sufficient to be sure that such impacts would be acceptable. It is recognised that the majority of houses would be unable to meet this criteria and therefore, as now, most 1.5 or 2 storey extensions will require planning permission. This is consistent with the likely need to ensure adequate control over the impacts caused by this type of proposal.

### **Class 3 - Any improvement or other alteration to the external appearance of a dwellinghouse that is not an enlargement**

The definition of enlargement is key to understanding how Class 3 relates to extensions in Class 1 and Class 2. Enlargement is defined as any development that increases the internal volume of the original dwellinghouse and includes a canopy or roof, with or without walls, which is attached to the dwellinghouse, but does not include a balcony. Therefore, a car port is an enlargement.

Class 3 developments would be permitted and include replacement windows and doors, cladding, painting, new flue, satellite dish, etc. within the 1 metre from the wall, but not within a conservation area or within the curtilage of a listed building. Installation of flues for biomass heating systems or for combined heat and power systems fuelled by biomass sources within Air Quality Management Areas will require planning permission.

### **Class 4 - Any enlargement of a dwellinghouse by way of an addition or alteration to its roof**

This Class typically relates to a dormer extension to a roof. The 1992 Order limits all but the smallest of changes to a roof. This is considered unduly restrictive.

It is accepted that a badly designed dormer can detrimentally affect the visual appearance of a dwellinghouse. The larger the dormer, the more challenging it is to produce a good design. Also, a dormer may result in it being possible to see into neighbouring garden areas. However, a degree of mutual overlooking is commonplace in residential areas and it should not be the purpose of the planning system to protect perceived individual property rights. Therefore, Class 4 allows side and rear facing dormers, subject to size limitations. This is considered to strike the best balance between providing a reasonable relaxation of controls, whilst at the same time placing a limit on the size of a dormer, controlling where most likely to be

in the public view and requiring controls, as now, if in a conservation area.

For the above reasons controls a roof enlargement if it is on a roof plane fronting a road. This would typically be the front of the house, but could be a side or rear facing roof plane if a road, bounding the curtilage, happened to be on the side or rear.

There are also limits to the scale of any dormer. For it to be permitted development, it must not exceed half the width of the roof plane (the width of the roof plane is measured from the eaves line) or be within 0.3 metres of any edge of the roof plane: for example, the ridge of the roof or the edge of a hipped roof.

### **Class 5 - Any improvement or other alteration to the external appearance of the roof of a dwellinghouse that is not an enlargement**

As with Class 3, the definition of enlargement is key to understanding the relationship between Class 4 and Class 5. Class 5 is intended to cover alterations to the roof such as the addition of a satellite dish, solar panel, new flue, new roofing materials etc. It adopts the same 1 metre "bubble" concept

### **Class 6 - The provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance or improvement of such a building**

Class 6 ensures the building cannot be used as a separate dwelling, and uses the principal elevation concept to isolate the rear garden.

### **Class 6A - The carrying out of any building, engineering, installation or other operation (other than a Class 6 development) within the curtilage of a dwellinghouse, required for a purpose incidental to the enjoyment of that dwellinghouse**

Class 6A relates to forms of development other than a building. A building operation is included in Class 6A, as it would include a wider range of development than just the provision of an actual building. It is intended to apply to garden works, including for example some microgeneration equipment, tennis courts, flag poles and oil tanks etc.

Development in the rear garden is allowed in the same manner as classes 1 and 6.

### **Class 6B - The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse or the replacement in whole or in part of such a surface**

Class 6B is similar to Class 4 of the 1992 Order with two important distinctions; it relates also to the replacement of hard surfaces and is subject to a condition requiring porous materials to be used or provision for surface water run off to be directed to a porous area on site.

The Scottish Government accepts that it will be difficult for planning authorities to detect whether this condition has been complied with. However, this measure will not be applied in isolation. In addition to this planning rule change, the Scottish Government will be working to introduce a range of measures including, public and industry education, awareness and training, home insurance questions and publication of technical standards.

### **Class 6C - The erection, construction, maintenance, improvement or alteration of any deck or other raised platform within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse**

The Government is introducing a new Class for decking because there are no

obvious Classes for considering decking in the current 1992 Order and planning authorities adopt different interpretations.

**Class 6CA - The erection or construction of any porch outside any external door of a dwellinghouse**

This is a new Class. The limitations are similar as those in the 2008 English Order. A Class for porches has existed in English planning legislation for a number of years.

**Class 6CB - The erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure any part of which would be within or would bound the curtilage of a dwellinghouse**

**Class 6CC - Any improvement or other alteration to the external appearance of a building containing one or more flats.**

4.15 **Consultation Questions**

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?

*Response:*

*Class 1 – (b) The substitution of “that” by “the rear” would add clarity. (d) This section is difficult to comprehend. It is recommended that it be sub divided into 2 parts: “The developed area of the front curtilage would be larger than the undeveloped area of the front curtilage” and “The developed area of the rear curtilage would be larger than the undeveloped area of the rear curtilage”*

*e) the removal of the text after “listed building” would ensure full control in conservation areas and may remove the desire of some authorities to promote an article 4 direction. Otherwise, the restrictions are clear and reasonable.*

*Class 2 – There is no equivalent of Class 1 (2)(a), making it possible to erect a 2 storey front extension without requiring permission, but not a single storey front extension. It is recommended that this restriction be added to class 2. Overall, the lack of restriction enables the potential to substantially alter the appearance and scale of houses without planning permission. Visually, this may be more significant in rural areas, with the character of the Scottish countryside detrimentally changing. It is recommended that a limit to the total cumulative footprint of extensions be limited to less than 50% of the original footprint.*

*Class 3 – With reference to class 2, it is considered unreasonable that a 2 storey extension which more than 10 metres from a boundary is permitted development, but that a small balcony projecting less than 1 metres and more than 10 metres from the boundary is not.*

*Class 4 – Clarification is necessary to ensure that the roof plane refers, in the case of semi detached and terraced houses, only to the roof plane of the application site and not the roof plane of the building.*

*Class 5 – Refer to comments on class 3. The use of “improvement” in class 5(1)*



*allows for subjectivity which should form no part of the regulations.*

*Class 6 – The use of “improvement” in class 6(1) allows for subjectivity which should form no part of the regulations. Class 6(2)(e) is difficult to comprehend. It is recommended that it be sub divided into 2 parts: “The developed area of the front curtilage would be larger than the undeveloped area of the front curtilage” and “The developed area of the rear curtilage would be larger than the undeveloped area of the rear curtilage”*

*Class 6A – Class 6(2)(e) is difficult to comprehend. It is recommended that it be sub divided into 2 parts: “The developed area of the front curtilage would be larger than the undeveloped area of the front curtilage” and “The developed area of the rear curtilage would be larger than the undeveloped area of the rear curtilage”*

*Class 6B – Inverclyde Council is concerned to note that the management of the natural surface water, which is currently controlled by other areas of legislation, is being brought under planning control by the imposition of requirements that will be difficult to monitor and unlikely to be an enforcement priority. It is recommended that conditions relating to porous surfaces and water run off be deleted.*

*Class 6C – The use of “improvement” in class 6C allows for subjectivity which should form no part of the regulations.*

*Class 6CA – ( c) favours flat roof porches, whereas a more attractive single pitched roof porch may require planning permission. A 4 metre height restriction for a pitched roof should be introduced.*

*Class 6CB – The use of “improvement” in class 6C allows for subjectivity which should form no part of the regulations. A further category should be introduced adding restrictions to conservation areas.*

#### 4.15 **Consultation Question**

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

*Response: Yes. It is also considered that additional permitted development rights be added for outbuildings (class 6), non buildings (class 6A), hard surfaces (class 6B) and decking (class 6C).*

#### 4.16 **PART 4 - ADDITIONAL QUESTIONS**

##### **Consequential Amendments**

Class 72 of the 1992 Order refers to the installation of CCTV cameras on any building, including dwellinghouses and flats. The limitation also applies the "1m bubble" so it has the same effect as new Classes 3 and 5. However, the other restrictions for Class 72 aim to protect the privacy of neighbours. There is therefore the option of either leaving Class 72 as it stands or amending Class 72 so that it does apply to dwellinghouses or flats, as it is more appropriately dealt with in the proposed order.

#### 4.17 **Consultation Question**

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

*Response: Class 72 should not apply to houses or flats, as cameras will fall within the 1 metre “bubble”.*

Q13. Are there any other issues you would like to see addressed in the

accompanying guidance?

*Response: No.*

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

*Response: The requirement for planning permission should be determined by the date of valid receipt. All authorities should, however, if determining an application after the transitional date, make a determination with reference to the new regulations and issue planning permission for works deemed to be permitted development.*

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

*Response: Where existing Article 4 Directions incorporate restrictions beyond householder development, it is suggested that the Government utilise powers under Article 6 of the Town and Country Planning (General Permitted Development) Order 1992 and issue a direction cancelling householder sections of the relevant Direction(s).*

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?

*Response: No comment.*

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)?

*Response: No.*

## 5.0 **IMPLICATIONS**

### 5.1 Finance:

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

5.2 Personnel: None.

5.3 Legal: None.

## 6.0 **LIST OF BACKGROUND PAPERS**

Scottish Government – Consultation on Householder Permitted Development Rights – copy available in the Members Lounge



