



RTPI

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HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS CONSULTATION

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08/54

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Dear Sir or Madam

Householder Permitted Development Rights

The Royal Town Planning Institute (RTPI) welcomes the opportunity to respond to this consultation which discusses proposals to widen the permitted development rights of householders in Scotland.

The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and politically-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2100 members in Scotland, working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and academia.

Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest.

The Institute's response has been prepared following discussion at its Development Management Task Group, to which Alan Cameron from SGDBE kindly presented the Government's proposals. The Institute is particularly grateful to him, and to Hilary MacBean (a member of the Task Group) who prepared a preliminary draft response. Our detailed responses to the questions posed in the consultation document are set out in Appendix 1 and I have set out some general points in summary below.

General Points

A revision of the regulations governing householder permitted development rights has the following objectives:

- i) allowing Planning Authorities to target resources to more significant development proposals, and
- ii) increasing the freedom of householders from express planning control to afford them opportunities to carry out development with less regulation but at the same time ensure an appropriate protection of amenity.

Planning Authority resources comprise different aspects of the existing system. There are professional resources of qualified and in-training planning staff: this is a finite and limited resource that increasingly needs to be directed to the management of development that has the greatest impacts on land use planning in the area. There are the administrative resources that are constantly placed under pressure for savings and therefore need to be directed efficiently and prudently. Finally, there are the financial resources that underpin the above and which are funded either directly through fees (or, potentially planning support grant) or indirectly, through local government budgets.

On all counts, resources are limited and require to be focussed and redirected to better effect. Reform is necessary and possible in all three areas. However, it is clear that the reduction in numbers of planning applications will not be as significant as originally envisaged. This has important implications for the resourcing and staffing of local planning services.

In principle, less regulation is increasingly regarded as a desirable political aim in a society that is increasingly viewed as over-regulated. The test for deregulation has to be the level of harm that may result and a proportionate approach that meets the evolving expectations of society. This objective is gaining further credence as the financial constraints on householders themselves and the economy in general dictate a lower regulatory burden and an easing of consents, to encourage investment and economic activity.

The objective would therefore appear to be to define a system that least imposes on the householder carrying out the development but which underpins this with a regulatory regime that provides standards to protect amenity and design. To minimise the use of resources, both those of the householder and public resources, the system should be as self-regulating as possible, be electronically based to make the most of modern communications and should be robust so that it is capable of being understood and respected by the public at large.

The current proposals run the risk of remaining confusing and opaque to the general user, and complicated and time consuming to the professional and administrator. In other words, they may not entirely meet the defined objectives of the proposed reform.

The redefinition of householder permitted development rights should be framed to effect an appropriate level of control to protect amenity. Amenity has three components; the amenity of the public realm, the amenity of neighbours and the amenity of the household itself. Amenity is largely regarded as a visual entity but other relevant elements are the capacity to carry on essential domestic functions, both inside and outside the house, and the enjoyment of domestic property without undue impacts from noise, emissions, loss of light, loss of air quality and loss of privacy.

The design of development is a component traditionally related to visual and the other amenities mentioned above, but increasingly it is also governed by objectives for energy efficiency and savings, both in terms of the materials used and energy consumption of the final user. Both are relevant to defining an appropriate level of permitted development rights.

Visual amenity is often cited as a subjective matter but has long found a place as a material consideration in planning control. Other amenities are easier to address through technical standards, some of which may be better lodged in the Building Regulations.

Fewer applications for express planning permission should lead to a reduced administrative burden for Local Planning Authorities (LPAs). However, experience in England in using the redefined householder permitted development regulations has shown that this is not necessarily the case. There the regulations sought to find a simpler system that the public could understand and largely self-administer. Some aspects of the regulations were simplified but the complexity was then compounded by introducing poorly-defined terms open to broad interpretation.

At the same time, English experience shows that pressure on resources, and a public demand for more certainty about the requirements for express planning permission, have led to the withdrawal of longstanding informal inquiry systems. The public has been directed to e-planning models on the Planning Portal and enquirers have been widely advised that the only authoritative view that can be given by the LPA is a Certificate of Lawfulness. This has compounded the administrative tasks and workload for professionals, and has also, particularly as formal drawings are required, removed the low-cost and convenient informal facility for householders.

This expanded workload has been further compounded by a growth in complaints about unauthorised development, brought about by a lack of knowledge of the new permitted development rights and no means of informal resolution through a simple enquiry to the authority. In Scotland it is expected that the monitoring and enforcement workload will increase, at least in the short term, but the simpler and clearer the new regulations are to understand, the more likely it is that all of the above problems can be minimised.

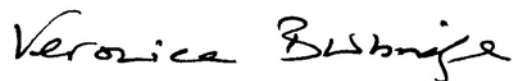
E-planning, including potent interactive planning records and self-enquiry via computer media, has a significant role to play, so reducing the bespoke input from planning professionals and administrators. Conceivably it could even extend to self-certification of a permitted development right, provided that accurate datasets reflective of local conditions are available. However, this would be difficult to model, implement and monitor unless the statutory householder permitted development rights are simply defined and readily modelled electronically. Whilst such certification may be some way off, this may be one opportunity to define householder permitted development rights in such a way as to accommodate such a system.

The fee regime could also respond to the new circumstances by increasing fees for Certificates of Lawful Development.

The current proposals seek to simplify the definition of permitted development rights by introducing criteria of two-dimensional measurement and the removal of cumulative volume calculations. They also introduce definitions to protect the public domain whilst at the same time allowing relaxation of control in areas behind the house. This approach may be welcomed but, as presently framed, introduces definitions open to broad interpretation. There also appears to be an over-provision of different criteria where fewer measures, or different measures, would be more effective. While the proposed system may be a step in the right direction, further refinement, clarity and simplification are required to avoid uncertainty, confusion and opaqueness.

The Institute trusts that these comments are of assistance and has no objection to them being made available to the public in the usual way. Should you wish any clarification or further assistance, please do not hesitate to contact me at our Edinburgh office: 57 Melville Street Edinburgh, EH3 7HL phone: 0131 226 1959, or email: scotland@rtpi.org.uk

Yours sincerely

A handwritten signature in black ink, appearing to read 'Veronica B. B. B. B. B.' with a stylized flourish at the end.

National Director

APPENDIX 1

Householder Permitted Development Rights Consultation: response by the Royal Town Planning Institute in Scotland

Q1. Do you agree with this change from floor area to development footprint/ ground area?

Yes, subject to the control that development of more than one storey, or to a height greater than or equal to 4m above any part of the site, must be subject to planning permission. There should also be a restriction to the 'permitted' length of elevation facing a neighbouring boundary.

If this is not the case it is felt that the potential for overlooking and neighbour dispute will, by default, bring the entire planning system into disrepute. The Institute wishes also to make the following suggestion for clarity:

In article 3(5) "development footprint" is not defined and could mean one of several things. The Institute would suggest restricting the use of this terminology to the "building footprint of the original building", exclusive of any other buildings within the property. This should be easier for the lay person to understand and would remove any doubt about including or excluding other buildings or the original dwelling house.

Q2. Do you agree with the new approach to principal, side and rear elevations?

No. The Institute agrees that to protect the public realm a greater level of control is necessary on public elevations, particularly those facing a road. However, the proposals for principal, side and rear elevations are already causing confusion in England, where it seems to be emerging that there can only be one principal elevation. In Scotland the Memorandum of Guidance on Listed Buildings and Conservation Areas subscribes to the idea that there can be one or more principal (or indeed prominent) elevations. Relevant elevations could include those forward of a wall (this will require more detailed definition) of the original house facing a road. This could be a side garden and/or part of the rear garden. "Facing a road" could expressly exclude areas of rear curtilage backing onto a road and with no direct vehicular access to it. The Institute wishes to see the public realm planned, managed and protected in the community interest.

Q3. Do you believe that issues regarding road safety are sufficiently addressed by the restrictions on PDR set out in Article 3 of the draft Householder Permitted Development Order and the height limit of 1 metre within 5 metres of a road?

No. 6m rather than 5m is preferred. This allows for the operation of an 'up-and-over' garage door in addition to the car space of 5m length.

Q4. Do you agree with the overall limit on development of the curtilage (excluding the original dwelling) of 40%?

No. There is concern over the term curtilage being used in a different way, for example, to its more usual legal interpretation and the meaning indicated in the Memorandum of Guidance. That being said, the use of percentages in combination with the “building’s footprint” would be more understandable if it referred only to **one limit**, i.e. the rear *curtilage*; where as useful a figure would be 50%. The total *curtilage* is protected by other criteria limiting development in parts of the *curtilage* forward of the house, facing a road.

Q5. Do you agree with the additional limit on the development of rear curtilage of 40%?

Yes, but this can work on its own, in combination with other criteria on length and height. A suitable figure would be 50%. The “rear curtilage” should be re-defined as “any part of the curtilage behind an original front wall of the dwelling house facing a road”. A control on the percentage of the rear curtilage covered would be more effective if defined in combination with height and length limits for extensions. This would also better protect neighbour amenity, give more certainty and clarity, lead to less complaints from neighbours, and provide more permitted development and less applications for Certificates of Lawfulness. There should also be a clear restriction to a single storey of maximum height 4m (see above) to address any potential issues of loss of privacy and overlooking: It goes without saying that such a (flat) roof should not double as a balcony!

The absolute limit on development within 1 metre of the boundary (Class 1(2) (e)) appears unnecessary given other controls.

Q6. Do you agree with an absolute limit of 60 square metres?

Yes.

Q7. Do you agree with the additional conditions and restrictions on householder PDR in conservation areas contained in the draft Householder Permitted Development Order?

Yes, but the Institute would like to see these restrictions as an inbuilt component of the Conservation Area’s designation.

Q8. Do you agree with the additional conditions and restrictions on householder PDR within the curtilage of listed buildings as set out in the draft householder permitted development order?

Yes. It will be important to have clarity of meaning and use of the term curtilage here. Consideration must also be given to the setting as well as the curtilage of Listed Buildings Scheduled Monuments, World Heritage Sites, and Gardens and Designed Landscapes appearing in the Inventory as amended.

Q9. Should there simply be no permitted development in relation to conservation areas or the curtilage of listed buildings?

No, some minor developments such as modest greenhouses and garden sheds have no material bearing on character, amenity or setting. It is suggested, however, that such minor development should be clearly identified at the time of designation, when provision can be made for its exceptional classification as permitted development against an understanding of what specifically constitutes character and amenity in the Conservation Area in question: Conservation Area Character Appraisals and Conservation Area Management Plans should have a role in this assessment.

Q10. Should additional statutory restrictions be placed on householder PDR within World Heritage Sites?

Yes, where designated for built heritage or significant landscape management reasons.

Q11. If so, what level of control should be applied (e.g. similar to that for conservation areas or a total restriction)?

As in a conservation area or curtilage of a Listed Building. There may well be, too, issues of managed setting as well as buffer zones: in the Institute's view this underlines the hope that WHS Management Plans should be key elements of Local Development Plans, perhaps initially by their incorporation as Supplementary Planning Guidance.

Q12. Do you have any comments on the extent of designated areas where restrictions will apply?

See answer to Q8 above.

Q13. In your experience, do planning authorities treat the addition of ramps and handrails to the exterior of houses to assist the elderly or disabled people as requiring an application for planning permission?

Generally these are considered on merit. Most are *de minimis* so there is no application. Some more significant ones or those in Conservation Areas will attract applications. Listed Buildings are covered by Listed Building Consent, and the advice on their sensitive alteration, where appropriate, can often be applied to other good buildings.

Q14. Do respondents believe that replacement and alteration of existing windows in flats, without altering the overall size of the window opening should be permitted development?

This is a very difficult area. It is a matter of no small regret that in many parts of the country authorities have simply given up attempting to enforce the simple and well-mannered principles of good architectural design when it comes to window replacement in flats and other grouped dwellings. It may be impractical to insist upon planning applications for window replacements in such circumstances. However, where this is happening the Authority should have explicit policies in that regard. Any permitted development rights should undoubtedly not apply in Conservation Areas or in the other situations of special character and places mentioned above.

Q15. Do respondents believe there should be specific PDR to allow flagpoles to be erected within the curtilage of a dwelling house?

No, especially not in front of building lines. There can be noise as well as visual disturbance, and these should be within planning control.

Q16. If so, what controls should there be on the height of flagpoles and on their location, with particular regard to designated areas?

N/a.

Questions on Classes - Q17 (Classes 1-12)

- **Are the grant of permission and the restrictions and conditions clear?**

No – see above comments. Clear guidance is required from the centre. The standard conditions and schedule are too complex. If necessary the Plain English Campaign and the Crystal Mark should be involved: if Householder Permitted Development is too complex for householders to understand there will be effectively no savings in the time of professional planners' time to be allocated elsewhere in the planning process.

- **Will these controls release a significant number of proposals (see paragraph 1.3) from the planning application process?**

Yes, but the number released (the view of Institute Members working in this area currently anticipates a figure nearer the 10% mark) could be increased with the clarifications mentioned above. This should also reduce the number both of informal queries to planning officials and of applications for Certificates of Lawfulness.

- **Will these PDR provide adequate controls on amenity?**

No. Controls over length and height, overlooking and windows, and materials, are all still required, and without them there will be the considerable loss of amenity and continued involvement of Development Management staff in matters of a detailed nature, (much of which they would be powerless to address, thus bringing the planning system effectively into disrepute).

- **Are there any changes to the controls which might mean significant further reduction in planning applications without undermining amenity?**

Yes, see above. Other changes which would be beneficial in this regard include decreasing

- the 1m distance from boundary limit;
- the opportunities for overlooking; and
- the potential for uglification through architecturally-damaging dormers and roof extensions.

Q18. Do respondents agree with the addition of requirements on drainage to PDR for new and replacement hard surfaces over an area of 5 square metres between the principal elevation and the road?

No, there is currently an ambivalence about whether this is to achieve the reduction of surface water run off and flooding, or to protect the amenity of the street scene. Any changes here, of course, should be about attaining both objectives.

If the objective is to minimise potential for flooding, the controls need to be extended to all parts of the curtilage. Porous surfaces will be required, but for enforcement purposes these should be limited to gravel on sand or porous concrete blockwork. Some concrete paving and tarmac suppliers and specifiers make claims for porosity but these would be difficult to put to the test: this would make any enforcement action difficult.

If the objective is about amenity, permitted development rights could be given for hardstanding for one car, say a 3m by 6m area, corresponding with a small driveway, but no more, and not, presumably, off trunk or classified roads unless that is the traditional character of the place in question.

Q19. Do respondents think the changes to permitted development rights as drafted will achieve the Scottish Government's aim of removing a significant amount of householder development from the planning application process?

See above. The Institute judges on the basis of current information that only around a 10% reduction is likely: greater clarity, certainty and transparency would be needed to increase numbers further.

Q20. If not, what particular alterations to the draft Householder Permitted Development Order might significantly reduce the number of householder planning applications?

See comments above. The Institute concludes that further reductions in numbers can only be delivered by significant losses of architectural quality, privacy, and public amenity, and in some particularly unfortunate circumstances potentially all three.

Class 5 (fuel containers) could include a freestanding boiler unit – some wood pellet burners are free standing.

Class 10 (raised decks) should be limited to 30cm above the surrounding ground level (as measured at the lowest point within the curtilage), and not within 2 metres of the boundary, if neighbours are to be adequately protected.

Q21. What effects might any suggested changes have on amenity issues?

There would be potentially adverse effects on architectural quality, especially of flatted blocks, problems of overlooking, and loss of public amenity. A considerable deleterious impact would be the uncontrolled introduction of ill-considered, intrusive and unsympathetic replacement materials, (especially modern short-life roofing materials), within areas of established character.

Q22. Do respondents believe that the provisions of the draft Householder Permitted Development Order pay sufficient regard to the impact on local amenity?

No. Significant impacts on public amenity are likely (see above). Questions of 'principal elevation' and replacement materials and details are only two of the most likely impacts. It is hoped that some of these matters can also be more effectively addressed in policy terms in 'Designing Streets' currently out for consultation.

Q23. If not, what particular alterations to the draft Householder Permitted Development Order might address some or all of these issues?

Clearer definitions as suggested above. Along with the particular points made above, generally amenity of neighbours would be better assured with clearer criteria on height and length of extensions as well as dealing effectively with potential overlooking.

Q24. What particular issues would you like to see addressed in the guidance accompanying the changes to householder permitted development rights?

Advice on interpretation. A diagrammatic approach to informing the public. The Planning Portal in England has a sketch-up facility. Simplicity of concept and clarity of language are necessary.

Q25. Are there any costs or benefits not identified in the draft RIA?

In the light of recent English experience, there should be discussion of the expected increase in applications for Certificates of Lawfulness. This should include the associated costs for householders and Planning Authorities, and enquiries/complaints from neighbours, again with costs for Planning Authorities (Planning Officer/Enforcement Officer and administration time). It is widely accepted that the initially-trailed 38% reduction will not be achieved (see above) so the associated 'resultant' £1.4m figure cannot be credible.

Q26. If so, do you have any information or can you suggest sources of relevant information on these costs and/ or benefits?

Most English authorities are abandoning informal enquiry systems that have persisted for many years and now require formal applications for Certificates of Lawfulness for Proposed Development. Statistics on this should be available and should be taken into account.

Q27. Are there any potential impacts on particular societal groups that we should be aware of in finalising the order?

No

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