

Heads of Planning Scotland

The Scottish Government's Programme for Reviewing & Extending Permitted Development Rights (PDR) in Scotland

Consultation on Phase 1 Proposals

The following are comments in response to the Phase 1 consultation on behalf of Heads of Planning Scotland and due to the short consultation period they are summarised in note form due to time constraints. Any further consultation would be welcomed with a longer time frame.

The response is divided into four parts and responses are set out below with a response for each part and each question:

4. Digital Telecommunications Infrastructure

New Ground Based Masts:

Q.1 Do you agree with an increase in permitted height for new ground based masts to 30 metres outside designated areas, subject to the existing prior approval regime on siting and appearance? If you disagree, please explain why.

A.1 Yes - this is a minor change to increase the height restriction and makes no changes to the current procedures for locations outside designated areas.

Existing Ground Based Masts:

Q.2 Do you agree that existing ground based masts should be able to be increased in height up to 30 metres (i.e. the same maximum height as for new masts proposed in Q.1 above) and that the increase should be limited to no more than 50% of the height of the original mast (whichever is the lower)? If you disagree, please explain why.

A.2 No – recommend that existing masts in designated areas should not be extended by more than 20% of the original height without prior approval being required (existing procedures for new masts) to protect sensitive locations. In non-designated areas up masts can be increased in height to 30m or 20% more than original height over 30m (whichever is the lower).

Q.3 Do you agree that we should allow existing masts which are above 30 metres in height to be increased to up to 50 metres in height? If you disagree, please explain why.

A.3 No – recommend that a 20% increase would be more reasonable to protect sensitive areas up to a maximum of 50m.

Q.4 Do you agree that we should allow existing masts which are greater than 50 metres in height to be increased by up to 20% of the height of the original mast? If you disagree, please explain why.

A.4 No – the proposed increase is significant and should be assessed through a formal application process.

Q.5 Do you agree that we should allow an increase in the width of existing masts by up to 2 metres or, if greater, one half of the width of the original mast (i.e. the increase is on the widest part of the mast and including any equipment)? If you disagree, please explain why

A.5 Yes - considered to be a reasonable increase having minimal impacts.

Q.6 Do you agree that any height or width increase within a designated area should be subject to prior notification/prior approval in order that visual impacts can be assessed? If you disagree, please explain why

A.6 Yes.

Replacement Masts:

Q.7 Do you agree that we should increase the maximum distance that replacement masts may be from their original location from 6m to 10m, outside designated areas? If you disagree, please explain why.

A.7 Yes – would have minimal visual impact outside designated areas unless it impinges on a public highway or visibility splay. This needs to be accounted for.

Q.8 Do you agree that in the case of replacement masts, in designated areas the current 6m distance from the original location should be retained? If you disagree, please explain why.

A.8 Yes - the retention of the existing 6m distance provides a reasonable level of control.

Mitigating Potential Impacts on Safeguarded Sites on PDR for Masts:

Q.9 We propose to retain the current approach. Do you agree? If you disagree, please explain why

A.9 Yes subject to the following – timescales are an issue for MOD responses but are critical. A requirement should be built in to prevent a mast being PDR until no objection responses have been received for the relevant body for a safeguarded area.

Antenna Systems (Not including 'small cell' systems):

Q.10 Do you agree that the PDR for antenna systems on buildings outside designated areas should be as set out in Table 3 below? If you disagree with an increase, please explain why.

A.10 Yes – the changes proposed are not significant outside designated areas.

Q.11 Do you agree with extending PDR for antenna systems on buildings to all or some of the designated areas to which restrictions on PDR for such infrastructure currently applies? Please indicate which designations should have extended PDR and why, or, if you disagree, please explain why.

A.11 Yes – many of the designations or for their landscape quality and not for historic reasons so these could be removed. Many of the buildings of importance in a Conservation Area would be listed (subject to additional control already). Could a requirement requiring their removal when they cease to be used be added in? World Heritage sites should remain as a designated area where prior approval would be required.

Q.12 What controls should apply in designated areas for antenna systems on buildings and should there be any differentiation between area type (e.g. size and number limits, prior notification/ prior approval or greater restrictions in designations such as conservation areas and world heritage sites, to avoid any detrimental impact on the built environment in terms of any potential visual clutter etc.)?

A.12 World Heritage sites should be subject of control and not benefit from permitted development rights. In a Conservation Area antenna systems should be sited to minimise impact on Conservation Areas i.e. not on principal elevations or fronting a road.

Small Cell Systems:

Q.13 Do you agree that we should extend PDR to small cell systems on dwelling houses (rather than just for small antennas)? If you disagree, please explain why.

A.13 Yes – minimal impact on changes proposed subject to the size criteria proposed. Listed buildings still an additional control.

Q.14 What limitations and restrictions should apply to small cell systems on dwelling houses (e.g. smaller units, fewer in number than small antennas under PDR)? Please explain your answer.

A. 14 Limits should be one for each dwelling house and one for each building to control visual clutter.

Q.15 In conservation areas, what limits or requirements should apply to small cell systems on dwelling houses and other buildings (e.g. prior notification/ prior approval to assess the visual impacts or smaller/lower limits, different provisions for dwelling houses compared to other buildings)? Please explain your answer.

A.15 Restrictions should be imposed for non-residential buildings in conservation areas to include not fronting a road or principal elevation is amended to include the limitation that no such installations should front a road. Definition on volume/size restrictions need to be included to clarify current definition.

Article 57 of EU Directive 2018/1972

Q.16 Do you agree that extending PDR for small cell systems as proposed and the proposed changes to PDR for new ground based cabinets in designated areas would meet the requirements of Article 57 of EU Directive 2018/1972? If you disagree, please explain why.

A.16 Yes.

Q.17 Are there any other potential amendments, comments or observations you wish to make in relation to potential changes to PDR that you consider necessary to be compliant with the requirements of Article 57 of EU Directive 2018/1972?

A.17 No.

Equipment Housing Cabinets (Ground Based):

Q.18 Do you agree that we should extend existing PDR in designated areas to allow for new equipment housing up to 2.5 cubic metres volume? If you disagree, please explain why.

A.18 Yes subject to removal of any being replaced. In conservation areas black housing cabinets may more aligned to other street furniture.

Q.19 Should this be subject to prior notification/prior approval on the siting and appearance to mitigate visual impacts? If you disagree, please explain why.

A.19 Yes to allow consultation with transportation in terms of public highway impacts.

Q.20 If this were to be introduced do you agree that we should differentiate between types of designated areas by, for example, having smaller size limits in conservation areas than in National Parks? If you disagree, please explain why and give your view on what limits should apply in which areas.

A.20 No due to the cubic volume being proposed.

Equipment Housing Cabinets on Buildings:

Q.21 Do you agree that we should extend PDR for new equipment housing on buildings in designated areas, with a limit on size of up to 2.5 cubic metres volume? If you disagree, please explain why.

A.21 Yes.

Q.22 Should this be subject to prior notification/ prior approval requirements on the siting and appearance to mitigate visual impacts? If you disagree, please explain why.

A.22 No. Separate controls on listed buildings. In Conservations Areas restrictions should be on principal elevations and where fronting a road.

Other Apparatus on Buildings:

Q.23 Do you agree that PDR for other apparatus should be extended in designated areas, beyond the basic 'like for like' alteration or replacement that currently applies? If you disagree, please explain your answer.

A.23 No very difficult to set limitations as each case different.

Q.24 Should any new PDR for other apparatus in designated areas have specific limits and restrictions regarding size and visual intrusion? Please explain your answer, and, if you agree, please indicate what sorts of limits and restrictions should apply and why. If you disagree, please explain why.

A.24 No see Q.24,

Q.25 Do you agree that PDR for new development of other apparatus on buildings in designated areas should be subject to prior notification/prior approval to mitigate visual impacts? If you disagree, please explain why.

A.25 Yes.

Underground Equipment:

Q.26 In which designated areas do you consider that PDR for underground development could be extended? Please explain your answer, particularly with regard to those designated areas where PDR for underground development could not be extended.

A.26 World Heritage sites, Historic Battlefields, Settings of Category A Listed Buildings & Scheduled Monuments, European Sites (e.g. Special protection areas and special areas of conservation area). Need to consider archaeology and any impact on special protection areas.

Q.27 In those areas where PDR for underground development could be extended, what limitations, restrictions or requirements should apply (e.g. prior notification/ prior approval, a requirement for an archaeological assessment or specific limitations)? Please explain your answer.

A.27 Would be best to look at each case individual as limitations difficult to define. Prior approval one option of control.

General Comments

Q.28 Do you have any further comments to make which are specifically related to the potential changes to PDR for Digital Communications Infrastructure which have not been addressed in the questions above?

A.28 The fees associated with prior approval need to be given careful consideration to ensure where possible full cost recovery is aligned with the cost to planning authorities in providing time constrained determinations.

The process of prior notification is generally confusing to members of the public where it includes neighbour notification and has resulted in complaints being received by some Local Planning Authorities. Neighbour notification could be extended to include an advertisement in a local newspaper to raise awareness subject to the advert fee being paid upon applications being made valid.

Mast and cabinets often cause concern from the Roads Authority due to restricting width of footpaths that may already be substandard. Visibility issues at junctions need to be accounted for.

Part 5 Agricultural Developments

Larger Agricultural Buildings:

Q.29 Do you agree with our proposal to increase the maximum ground area of agricultural buildings that may be constructed under class 18 PDR from 465sqm to 1,000sqm? If you do not agree please explain why.

A.29 No – no evidence to support that the existing PD is inadequate and proposed change is significant and is of a scale that should be determined under a planning application.

Q.30 Do you agree with our proposal to retain other existing class 18 conditions and limitations? If you do not agree please explain why.

A.30 Yes.

Q.31 Do you think that the new 1,000sqm size limit should apply in designated areas (e.g. National Parks and National Scenic Areas)? Please explain your answer.

A.31 No – sensitive designations should have additional control to protect the landscape. Concern over future use of such large buildings being converted in future for storage and other uses in locations where industrial development would not be permitted.

Q.32 Do you agree with our proposal to increase the scale of extensions or alterations to agricultural (and forestry) buildings that may be carried out without requiring prior approval? If you do not explain why.

A.32 No – see answers to Q29 & 31.

Q.33 Do you agree with our proposal to discourage developers from erecting new buildings for the sole purpose of converting them by limiting class 18 and 2 PDR where a residential conversion has taken place under PDR on the same farm within the preceding 10 years. If you do not agree please explain why.

A.33 Yes – not just residential conversions but extended to conversions for other non-agricultural uses such as storage or manufacturing process. Detailed guidance will need to be prepared to cover this as the “same farm” in practice is often complex due to a lack of information and knowledge about the holding through data that LPA’s hold. Genuine redundancy needs to have specific test attached to it as it is currently difficult to determine irrespective of the proposed 10 year time period.

Conversion of Agricultural Buildings to Residential Use:

Q.34 Do you agree with the proposed new PDR for conversion of agricultural buildings to residential use, including reasonable building operations necessary to convert the building? If you do not agree please explain why.

A.34 No. Heads of Planning Scotland strongly objects to this part of the PDR proposals as it would significantly restrict Local Planning Authorities to deliver sustainable development within a local setting in line with an Adopted Local Development Plan. Scottish Planning Policy should set out what is acceptable in terms of rural housing provision and this would then be built into all Local Development Plans. Many LPA’s already have mechanisms in place to deal with rural housing including conversions of existing building irrespective of whether they have been used for agriculture or not. A planning application is the correct way of dealing with these development proposals which also allows LPA’s to apply approved developer obligations supplementary guidance to each application to cover infrastructure costs such as education and health. Any applications that are refused have the right of review to the Local Review Board but where in line with local development plan policy they are approved. The creation of a parallel process alongside a planning application appears to be unnecessary, overly complicated, time consuming with no quantifiable benefits. Similar to the confusion of prior approval for new masts in terms of neighbour notification would equally apply to this scenario and would not be in line with Scottish Government’s ambition to streamline the planning system. Only 5 limitations are highlighted i.e. Design and external appearance, natural lighting, transport and access, flood risk, contamination and noise with all other material considerations not being applied as and when deemed necessary.

Q.35 Do you agree that the proposed new PDR should be subject to a prior notification/prior approval process in respect of specified matters? If you do not agree please explain why.

A.35 No. The issues identified are just a selection of those that are material considerations in considering whether a proposal for rural housing is deemed to be acceptable and is in effect the same process as a determining a planning application. There are a number of reasons to highlight specific areas of concern:

1. Quality of supporting information – the quality of information needs to support a PDR notification will be the same as a planning application and will not reduce costs for the applicant.
2. Fees -the fee for dealing with such PDR would need to be the same as a planning application for dealing with a house conversion as the staff resources will be the same in terms of assessment and input from internal consultees.
3. Enforcement – a possible increase in enforcement enquiries due to the complexity of the proposed prior notification system.
4. Sustainability – not clear how the 5 dwellings per farm unit is quantified in terms of implementing a local development plan as some rural areas have significant number of farms
5. Floors pace limitation to 150sqm – would the curtilage be restricted as well to serve the dwelling?
6. Permitted development rights – would householder permitted development rights apply to these dwellings?
7. Private water and foul drainage - both important material considerations for rural housing (impact on existing supplies and human health).
8. Bat surveys – material consideration in rural housing conversions, to be assessed prior determination and determined by survey timescales.
9. Access, visibility and car parking – material consideration and need to be local roads standards.
10. Developer Obligations/Affordable housing assessment – this is a material consideration for many LPA's in the determination of rural housing.
11. Low and zero carbon operating technologies – this is a material consideration for many LPA's for rural housing.

Q.36 Do you agree with the proposed range of matters that would be the subject of a prior notification/prior approval process? If you do not agree please explain why.

A.36 No. See Q.35 above

Q.37 Do you agree with the proposed maximum number (5) and size (150 sqm) of units that may be developed under this PDR? If you do not agree explain why.

A.37 No, see A.35.

Q.38 Do you agree with the proposed protection for listed buildings and scheduled monuments? If you do not agree please explain why.

A.38 Yes – to avoid unauthorised demolition and protect damage to scheduled monuments.

Q.39 Do you agree with the proposed measures to discourage developers from erecting new buildings for the sole purpose of converting them? If you do not agree please explain why.

A.39 No – for the reasons set out in Q34 the principle of the suggestion is not accepted.

Conversion of Agricultural Buildings to Flexible Commercial Use:

Q.40 Do you agree with the proposed new PDR for conversion of agricultural buildings to flexible commercial use, including reasonable building operations necessary to convert the building? If you do not agree please explain why.

A.40 No. Same reasons as set out at Q34 as similar material considerations are raised with commercial use. The level of impact of the commercial development can vary considerably and often isn't directly related to floor space and could be size of vehicles for example.

Q.41 Do you agree with the proposed cumulative maximum floor space (500sqm) that may change use? If you do not agree please explain why.

A.41 No. This could be complex in being able to determine when uses actually changed and potentially increase the number of enforcement cases. Pressures on fragile infrastructure in rural areas needed to be assessed and mitigated.

Q.42 Do you agree that the proposed new PDR should be subject to a prior notification/prior approval process in respect of specified matters where the cumulative floor space changing use exceeds 150sqm? If you do not agree please explain why.

A.42 No. This should be subject of a planning assessment for the reasons outlined in Q.34. The land owner or farmer would not know at the time of the prior notification what the end use would be.

Q.43 Do you agree with the proposed range of matters that would be the subject of prior notification/prior approval? If you do not agree please explain why.

A.43 No see matters raised in A.34.

Q.44 Do you agree with the proposed protection for listed buildings and scheduled monuments? If you do not agree please explain why.

A.44 Yes for the reasons previously identified.

Q.45 Do you agree with the proposed measures to discourage developers from erecting new buildings for the sole purpose of converting them? If you do not agree please explain why.

A.45 Yes as detailed above.

Conversion of Forestry Buildings:

Q.46 Do you agree that we should take forward separate PDRs for the conversion of forestry buildings to residential and commercial uses? If you do not agree please explain why.

A.46 No – these could be used for agricultural purposes under PDR. The same issues raised for agricultural buildings could arise for forestry building but on a much reduced scale.

Q.47 Do you agree that the same conditions and limitations proposed in respect of the PDR for the conversion of agricultural buildings should apply to any separate PDR for the conversion of forestry buildings, insofar as relevant? If you do not agree please explain why.

A.47 No. Same comments apply raised in relation to agricultural buildings.

Polytunnels:

Q.48 Do you agree with our proposed approach to providing greater clarity to the planning status of polytunnels? If you do not agree please explain why.

A.48 Yes – to achieve more consistency and clarity.

Part 6 Peatland Restoration

The General Approach to PDR for Peatland Restoration:

Q.49 Do you agree with the general approach to PDR for peatland restoration, (i.e. wide ranging PDR given the likely oversight via Peatland Action and via the Peatland Code)? If you do not agree please explain why.

A.49 Yes agree with the principle and general approach set out and only apply to genuine peatland restoration activity. The check for this would be to have a process in place and a mechanism to exclude schemes that are deemed not genuine schemes.

Defining Permitted Development Rights for Peatland Restoration:

Q.50 Do you agree with the approach to PDR for peatland restoration that relies on a general understanding of what will constitute peatland? If you do not agree please explain why.

A.50 No – this remains unclear and vague. With no defined mapping or sampling proposed to define what peatland is engineering operations could be described as restoration. Peatland needs a written definition for PDR purposes (could be linked by to the formal check in A49).

Q.51 Do you agree with this approach to a blanket PDR for ‘peatland restoration’? If you do not agree please explain why.

A.51 Support the principle but needs to be a plan for the long term to realise the peatland benefits.

There is a need for appropriate oversight possibly in the form of a Peatland Code, applicable in all cases to which the PDR applies. Oversight arrangements would require additional status in order to be relied upon in this way with involvement from SEPA and NatureScot. Shouldn't apply on areas where extant permission exists. Need to consider possible conflict with control of woodland removal policies and assessed against Scottish Government policy on the Control of Woodland Removal in consultation with Scottish Forestry and the Local Authority. This provides for consideration of any wider public benefit that is assessed would be delivered by a peatland restoration scheme.

Written and map based guidance/criteria should be available to help define areas suitable for peatland restoration. This could help 'score' the suitability of land for peatland restoration. This in turn could help determine whether PDR apply (for good sites) or not (for marginal sites).

Conditions and Restrictions on PDR for Peatland Restoration:

Designated Areas

Q.52 Do you agree that as peatland restoration projects will likely be subject to oversight from Peatland Action, or validation under the Peatland Code, there is no need for additional controls on related PDR in designated areas? If you do not agree please explain why.

A.52 Yes, there is no need for additional controls on peatland restoration PDR in designated areas; however that view is subject to the PDR only applying where the oversight is present and subject to review of the oversight provisions to ensure that they cover all of the relevant matters and interests.

Access Tracks (Private Ways)

Q.53 Do you think there should be PDR for new temporary access tracks (private ways) which may be necessary to carry out peatland restoration projects? Please explain your answer.

A.53 No – further controls are considered necessary to mitigate any harm and to ensure only used for peat restoration projects in specific designated areas.

Q.54 What sort of time limits and restoration requirements do you consider should apply to any PDR for temporary access tracks (private ways) for peatland restoration projects? Please explain your answer.

A.54 A timescale should relate to the scale of the project and restoration of track once project complete.

Q.55 If possible, should any PDR for temporary access tracks (private ways) for peatland restoration only apply to projects which have been approved for funds provided by the Scottish Government, through Peatland Action or other bodies? Please explain your answer.

A.55 Yes – this will add an extra layer of checks. It is important that the PDR only applies for proposals clearly for purposes of peatland restoration and where temporary. There is a risk of new accesses being formed with alternative usage (such as for deer stalking or grouse shooting).

Other Conditions and Restrictions

Q.56 Do you agree that the peatland restoration PDR should allow for the transfer of peat within the restoration site and for peat to be brought into the restoration site? If you do not agree please explain why.

A.56 Agree that a peatland restoration PDR should include transfer of peat within the restoration site, noting that such transfer would be covered by the provisions of a restoration management plan. This shouldn't be extended to importation due to impact on local infrastructure and may consist of other materials (Excess soil).

Q.57 Do you agree that the peatland restoration PDR should not grant permission for the extraction of peat outside the restoration site or for removal of peat from the restoration site? If you do not agree please explain why.

A.57 Yes.

Q.58 Are there any other forms of development which could be granted planning permission by the PDR for peatland restoration as proposed, which should be restricted or controlled? Please explain your answer, setting out what sorts of development you consider should be restricted and why.

A.58 No.

Q.59 Do you have any other views or points to make about the proposed PDR for peatland restoration?

A.59 Land with potential to contribute to other national, regional and local policy outcomes could be converted to peatland under the PDR, but this may be to the detriment of achievement of those other outcomes – particularly if, individually or cumulatively, on a large scale. Need to consider targeting sites leaving marginal ones that may be suitable for woodland planting and also where adjacent to wind farm, expansion sites to prevent abortive work or prevent future development.

Part 7 Development Related to Active Travel

Houses:

Q.60 Do you agree with the proposal to allow the erection of a cycle store in the front or side garden of a house up to a maximum size of 1.2 m height, 2 m width and 1.5 m depth? If you disagree please explain why.

A.60 Yes.

Q.61 Do you agree with the proposal to permit cycle stores up to 1.2 metres in height, 2 metres in width and 1 metre in depth in the front or side garden of a house in a conservation area? If you disagree please explain why.

A.61 Maybe but should be subject to a minimum garden size being retained to ensure the whole garden areas isn't utilised. Should exclude curtilage of listed buildings.

Q.62 Should such an extension to PDR should be subject to a restriction on materials? Please explain your answer.

A.62 No. It would not be appropriate to impose a restriction on materials outwith conservation areas. Very difficult to set out an acceptable set of material but guidance could be issued setting out acceptable examples to minimise any impact on character of conservation areas.

Q.63 Do you agree with the proposal to increase the floorspace of storage sheds allowed in the rear garden of houses in conservation areas to eight square metres? If you do not agree please explain why.

A.63 Yes.

Flats:

Q.64 Do you agree with the introduction of PDR for the erection of a cycle store in the private garden area of a flat, including in a conservation area? If you disagree please explain why.

A.64 Yes – subject to limitations to protect ground floor windows of flats from being blocked.

Q.65 Do you agree with the proposal to allow cycle stores sufficient to accommodate up to two bikes per flat to the rear of larger blocks of flats, including in conservation areas? If you disagree please explain why.

A.65 Yes.

Offices, Commercial and Industrial Buildings (Classes 4, 5 and 6 of the Use Classes Order):

Q.66 Do you agree with the introduction of PDR to allow the erection of cycle stores for buildings of class 4, 5 and 6 uses? If you disagree please explain why.

A.66 Yes.

Other Locations:

Q.67 Do you agree with the introduction of PDR to allow the erection of cycle stores on-streets? If you disagree please explain why.

A.67 No. This should be a matter for the Roads Authority and can be provided under other classes of permitted development that already exist.

Q.68 If such PDR is introduced, do you agree with the proposed maximum size for the cycle stores, and the proposed restriction on the number allowed in a particular street or block? If you disagree please explain why.

A.68 Yes.

Q.69 If such PDR is introduced, do you think it should be allowed in conservation areas and, if so, should it be subject to any other limitations on size, materials etc? If you disagree please explain why.

A.69 No – impact on streets in conservation areas should be subject of a formal assessment to control cumulative impact.

Q.70 Is there any other amendment to the General Permitted Development Order that you think we should consider in order to encourage active travel further?

A.70 No.

Part 8 Strategic Environmental Assessment Post-adoption Statement Summary

Q.71 What are your views on the findings of the Update to the 2019 Sustainability Appraisal Report that accompanies this consultation document? (N.B. Consultees are asked to avoid restating their views on the November 2019 consultation as these views are already being taken into account.)

A.71 The conversion of rural buildings have cumulative impacts potentially on infrastructure provision.

Part 9 Assessment of Impacts

Q.72 Do you have any comments on the partial and draft impact assessments undertaken on these draft Phase 1 proposals?

A.72 Comments below:

Annex B - Business and Regulatory Impact Assessment

Many of the relaxations are limited to prior notification which in practice would still require significant resources from LPA's and may in turn impact on performance of other applications due to the shorter time limits imposed. Fees would need to be sufficient to cover staff resources.

Annex E – Fairer Scotland Duty Assessment

Q.73 Do you have any suggestions for additional sources of information on the potential impacts of the proposals that could help inform our final assessments?

A.73 It would be worthwhile gathering data on what impact the PDR being introduced (rural housing) would have on developer obligations/affordable housing to each LPA.