

SPF RESPONSE TO THE QUESTIONS RAISED IN THE SCOTTISH GOVERNMENT'S [PHASE 2 CONSULTATION ON PERMITTED DEVELOPMENT RIGHTS \(PDR\)](#)

Background

The Scottish Government is moving to phase two of its [permitted development rights \(PDR\)](#) review as part of its wider planning reform programme. The review is being taken forward in phases, with each phase focussing on specific development types. Through Phase 2 of the PDR review programme, the Government is seeking views on proposed changes relating to:

- Electric vehicle charging infrastructure.
- Changes of use in city, town and local centres; and
- Port development

Key Message

- The SPF generally supports changes to permitted development rights that will promote increased sustainability and removes controls on development that is considered ancillary and / or low impact thereby simplifying and improving the Scottish planning system.

Consultation Questions

The following contains the proposed responses to the consultation questions and will be transferred to the proforma contained in the consultation hub:

Electric Vehicle Charging Infrastructure

Q1. Do you agree with the removal of restrictions on Class 9E PDR, for wall-mounted EV charging outlets, in the specified areas currently listed in Class 9E(3)? Please explain your answer.

SPF Comments

Our members welcome the move to relax restrictions on wall mounted charging points in off street parking areas. This will encourage the uptake of electric vehicles without the need to engage with the land use planning process. The ability to use Article 4 Directions will continue to allow Councils to protect environmentally or historically sensitive areas but, as is the current case, must be justified and not used as a tool to impose area wide removal of permitted development rights.

Q2. Should the conditions regarding nameplates be withdrawn from Class 9E on wall-mounted EV charging outlets? Please explain your answer.

SPF Comments

Yes, we agree with the government that we do not see the continued justification for these restrictions.

Q3. Do you agree with the removal of current restrictions on Class 9F PDR for EV charging upstands in the specified areas currently listed in Class 9F(3)? Please explain your answer.

SPF Comments

Our members welcome the proposals to introduce permitted development rights for upstand EV charging points and to increase the maximum height to allow for high powered chargers out with non-residential curtilages. This will positively encourage commercial areas to introduce such charging points to the benefit of clients and employees alike and is a sustainable, environmentally friendly outcome for all.

Q4. Should the conditions regarding nameplates be withdrawn from Class 9F on EV charging upstands? Please explain your answer.

SPF Comments

Yes, no need for this requirement.

Q5. Do you agree with the proposed increase in height allowable for EV charging upstands under Class 9F PDR from 1.6 metres to 2.5 metres in all off-street parking locations, except within the curtilage of a dwelling? Please explain your answer

SPF Comments

As stated above our members welcome the proposals to introduce permitted development rights for upstand EV charging points and to increase the maximum height to allow for high powered chargers out with non-residential curtilages. This will positively encourage commercial areas to introduce such charging points to the benefit of clients and employees alike and is a sustainable, environmentally friendly outcome for all.

Q6. Do you agree with the proposal to introduce PDR for solar canopies and related battery storage and equipment housing for EV charging upstands in off-street parking areas? Please explain your answer.

SPF Comments

Our members support the identification of environmentally friendly canopied charging stations as benefitting from permitted development rights with the restrictions as proposed in the consultation paper. The sizes for cabinets proposed are consistent with that already in place for electrical sub-stations. However, the Scottish Government must reference the definition of “road” which can include verge and footway according to the Roads (Scotland) Act 1984. This might, for example, only refer to adopted roads or footpath.

Regarding the proposed battery storage facilities, we endorse the proposal (set out in para 2.22) to ensure that the battery storage units would be for the powering of the EV charging site only.

Q7. Do you agree with the proposal to introduce PDR for equipment housing for EV charging upstands in off-street areas where solar canopies are not provided? Please explain your answer.

SPF Comments

We agree and see this as a necessary provision to complement the easing of EV development restrictions. The restriction of up to 27 cubic metres is a safeguard against excessive use of this PDR.

Q8. Do you agree with the list of areas within which new PDR for such solar canopies and related battery storage and equipment housing should not apply? Please explain your answer.

We see this as overly restrictive. The list of areas includes conservation areas which cover substantial parts of many towns and cities and have a habit of being extended. They are not always well defined or even known about. And there may be very good reasons to support EV developments in a number of the other areas specified for example within a National Park or World Heritage Site which may be in a rural location and only accessible by motor vehicle transport

The relevant planning authority will always be able to intervene in an EV development that raises concerns in such areas but we fear that much needed EV developments in for example a national park could be unduly delayed if is forced to go through the full planning application process.

Q9. Do you agree with the suggested height limit of 4 metres on PDR for solar canopies for EV charging upstands in off-street parking areas? Please explain your answer.

We agree that this appears to be a sensible height restriction for PDR purposes.

Q10. Do you agree with the proposal that any new PDR for solar canopies, battery storage and equipment housing for EV charging upstands in off-street parking areas should not apply within 5 metres of a road and 10 metres of the curtilage of a dwelling? Please explain your answer.

We agree broadly, although there may be some occasions where a reasonable request to waive this restriction could be discerned for canopies over EV points. For example, perhaps just off a road that has less than 5m available space and if not achievable might otherwise mean no EV cover is feasible for a location due to this restriction.

Q11. Would it be helpful to amend Class 30 PDR for local authorities to make clear they apply to EV charging points and any associated infrastructure? Please explain your answer.

Yes, it would help. More clarity will mean less uncertainty, delay and ultimately, it should increase the delivery of key EV infrastructures across the country.

Q12. Do local authority PDR need to be amended to take account of emerging models for financing, delivering and operating EV charging infrastructure, and the changing nature of private sector involvement? Please explain your answer.

Yes. The scale of need for EV points to support the ambition of renewable transport -public and private – requires that greater innovation is needed to deliver the increase from just over 2100 EV points to some 30,000.

Q13. Should PDR for EV charging infrastructure in roads apply to parties other than local authorities? Please explain your answer.

It will need to if we are to meet the infrastructure demand that is required not in the future but now.

Q14. If so, would such PDR for other parties need to be linked to some arrangement with local authorities or other form of authorisation? Please explain your answer.

Assurance for public authorities (and the wider public communities) can be sought through contractual arrangements. If a planning authority is not content with the delivery of EV point on a road (as defined in the consultation) then it should be able to intervene.

Q15. What conditions and limitations would need to be placed on any additional PDR for EV charging infrastructure in roads? Please explain your answer.

No comments

Q16. In relation to extending PDR for EV charging infrastructure in roads, what issues need to be considered regarding existing PDR, and rights to access the roads network, for infrastructure which are available to other sectors, such as electricity undertakers? Please explain your answer.

No comments.

Q17. Do you agree in principle with having PDR for changing existing petrol/diesel stations to EV charging only? Please explain your answer.

Yes, we support this proposal to support transition to net zero forms of energy and transport. Existing petrol stations have been established to support demand along existing infrastructure lines so this adaptation appears to be a sensible suggestion.

Whilst the proposals allow for replacement buildings and structures there is no mention of any potential changes of use of the existing buildings or the replacement structures. It is considered likely that existing petrol stations offering Class 1 Retail as an ancillary use may seek to offer more café/restaurant type facilities for patrons using the EV charging hubs as people wait for their motor vehicles to charge. We consider perhaps that a floorspace threshold (akin to the existing 235 sqm thresholds mentioned for Use Classes 4 and 5 for permitted changes of use) could be introduced to enable a Class 3 Food and Drink use (for consumption on the premises) so long as the use remained ancillary to the primary use of the premises.

Q18. If so, what, if any, further specification of the conditions and limitations identified, or additional ones, would be required for such? Please explain your answer.

Please see answer to Q17.

Changes Of Use in City, Town and Local Centres

Q19. Do you consider that a merged use class bringing together several existing classes would help to support the regeneration, resilience and recovery of Scotland's centres? Please explain your answer.

We support this proposal. The merged use class should support flexibility for landlords and developers to respond to the market to adapt eligible properties and ensure their continued viability and use. The vacancy level of commercial and retail premises is too high and this can seek to directly address this important issue. We comment more broadly on the decision to limit PDR for the merged UCO to Class 4 as we feel this is unnecessarily restrictive.

Q20. What do you consider to be the key risks associated with such a merged use class, and do you think that non-planning controls are sufficient to address them? Please explain your answer.

The key will be a positive and constructive approach from local authorities, property owners and developers to the use of a merged UCO. The main planning issues arising are likely to be amenity issues with differing uses perhaps impacting on their locality

Q21. Are there any other changes to the UCO which you think would help to support Scotland's centres? Please explain your answer.

We comment on the relationship to Class 4 below.

Q22. Do you agree that MCA could be a useful tool to provide more extensive planning freedoms and flexibilities in Scotland's centres? Please explain your answer

MCA has the potential to be a supportive approach to complex multi-use development sites but the key is positive relationship between local authorities and investors in the site.

Q23. Do you think that a PDR providing for a change of use to Class 4 (business) would help to support the regeneration, resilience and recovery of centres – as well as the establishment of 20-minute neighbourhoods? Please explain your answer.

We struggle to see why Class 4 could not be part of a merged UCO within town and city centre locations. A large, unoccupied office and its reuse for a mix of uses might be a core part of reimagining a former building or part of a town centre area. This can in turn increase activity and flexibility in Town Centres and should be encouraged. We are content to accept a restriction on enabling an automatic change of use for Class 4 buildings located in out of centre locations which could potentially draw retail uses to out of centre locations, contrary to the town centre first principles in the Draft NPF4.

Q24. If a PDR of this nature were taken forward, what existing uses should it apply to? Please explain your answer.

We agree in principle that a PDR for a wide range of existing uses should be supported. The overriding aim should be to improve and innovate to ensure buildings remain vibrant and relevant to modern society needs and demands.

Q25. Would 300 square metres be an appropriate maximum floorspace limit? Please explain your answer.

We agree with this maximum floorspace proposal – however any proposals for a wider change of uses above this 300 sqm threshold should still be able to be considered through the standard planning application process

Q26. What (if any) additional conditions or limitations should such a PDR be subject to? Please explain your answer.

Proof of a need and use for the PDR in question. We will refer later to the proposed exclusion of changes to residential use.

Q27. Do you agree with the proposed introduction of a PDR for moveable furniture placed on the road outside of (Class 3) food and drink premises?

We support this approach in principle but it will be important that local authorities maintain a close watch on the overall impact of moveable furniture on the wider pedestrian and other areas associated with these PDR.

Q28. Are there any conditions or limitations that you think such a PDR should be subject to? Please explain your answer.

It may need to consider a cumulative impact and ensure that no business is able to unfairly take space from competitors who may wish to utilise outdoor space near their premises.

Q29. Are there any uses other than (Class 3) food and drink premises which you consider such a PDR should apply to? Please explain your answer.

It is possible that retail or charity premises might wish to utilise such a PDR.

Q30. Do you agree that important matters such as safety and inclusive access could continue be controlled through other regimes that would continue to apply? Please explain your answer.

Yes, these issues should not be compromised. This will constrain the ability of some premises to be fully adapted to a changed use, for example certain higher level empty premises above commercial units that may not be able to meet certain safety criteria.

Q31. Do you agree that new residential development in Scotland's centres should be plan-led rather than consented through new PDR? Please explain your answer.

The consultation rightly perceives that the issue commercial to residential development through PDR led to controversy in its early application in London (in particular). We do not wish to see such concerns replicated in Scotland. Nonetheless, lessons were learned with the experience of communities and businesses in London. We feel that the Scottish Government could take advantage of the lessons learned by authorities in London and elsewhere and have a less draconian approach to the issue of commercial to residential conversions. The key change being that minimum space standards and tighter building control regulations are now required south of the border. Therefore, we do not agree with this question and we feel that residential PDR can be regulated better, rather than just seen an outright ban on its possibilities; a more informed stance could be taken learning the lessons from what has occurred elsewhere.

Q32. Are there any other PDR changes which you think could support the regeneration, resilience and recovery of centres? Please explain your answer.

No further comments.

Port Development

Q33. Do you agree that, with respect to the PDR, there should be a level playing field between English and Scottish ports? Please explain your answer.

At least a level playing field as the consultation suggests and where appropriate, a positive differentiation in Scotland's favour. Our members are in favour of supporting flexibility in the planning system to support Ports Development but we are concerned about some of the detailed provisions specified in the proposals. It would also be important that any administrative requirements, for example on prior consultation with the planning authority, do not undermine the intention behind PDR by replaying the entirety of the planning system within Green FreePorts. Any such consultative requirements must be proportionate within its development context.

Q34. With respect to the amendments in England (see Box 5), what do you think the practical effect of making an equivalent change to Class 35 PDR would be – in terms of

developments/activities that would be permitted which are not currently? Please explain your answer.

Port developments need predictable and quick planning decisions and PDR has the potential to aid this process. Our members have expressed support for the enhanced definition of Class 35 utilising the equivalent English proposals (A to C) in the consultation. Our members have also expressed views on further amendments in order to expressly support economic activity associated with Sustainability related infrastructure, including the assembly of products support sustainable economic development.

Q35. Do you think there is potential to widen the scope of Class 35 PDR further? Please explain your answer.

We think there is a need to support Ports to rapidly respond to emerging international market demands on Port operators. As suggested in our reply to Q34 our members are therefore supportive of the proposed PDR amendments to support Ports development, but legal experts within our membership have raised a concern that there needs to be more explicit reference to certain activities that it appears there is clear policy intention to support. We have seen and therefore support the submission by Pinsent Masons on Q33 and Q34 whereby they highlight concerns that there could be a narrow interpretation of PDR related activities. Pinsent Masons also suggest a new Class Order 'D' to be added that would definitively support the assembly and manufacturing of renewable energy infrastructure. They propose specifying that development activities related to the assembly of renewable energy infrastructure should be referenced and we agree with this proposal.

Operation and Maintenance (O&M) facilities for the offshore renewable sector should also be specifically referenced in the PDR. Securing planning permission through a traditional application process can take weeks if not months and the opportunity to be able to provide these facilities in a competitive market should be made available through PDR to port operators and associated shipping companies.

Port areas still contain many old stone buildings along with historic wet and dry docks, reflecting their previous uses associated with ship building activities, fish curing and processing etc. Whilst many of these old buildings will have been demolished to make way for modern port warehousing and some sites redeveloped for contemporary storage sheds to meet the growing needs of the Port Authorities, a number of historic buildings and structures still remain within Port Authority areas and along adjacent quaysides. These buildings are mostly all listed – often now sandwiched between much larger modern warehousing structures and large operational machinery typically used on quaysides. Members consider that it is in the proper planning interests of port areas that the PDR should support the demolition and redevelopment of these older stone buildings and sites for port related uses; uses which require much larger scale, modern warehousing which is purposefully suited to meeting the port industries future requirements.

Q36. Do you agree that MCA could be a useful tool to provide more extensive planning freedoms and flexibilities in Scotland's ports? Please explain your answer

Yes, MCA has the potential to support flexibility and predictability for investors and stakeholders in a complex and long term planning and development project. However, the establishment of an MCA could require significant resource allocation by the local authority and we question whether this will be feasible given current resource pressures. The changes to the GDPO would therefore be a priority

as this enables controlled flexibility in the planning system designed to support a range of Ports Development activity and investment in sustainable economic growth. The establishment of MCAs can be founded on this additional flexibility and be potentially joined up with fiscal incentives to promote Green freeports.

Q37. What are your views on the findings of the Update to the 2019 Sustainability Appraisal Report at Annex A? (Respondents are asked to avoid restating their views on the November 2019 and Phase 1 consultations, as these views have already been taken into account.

The findings are broadly welcome, particularly in relation to enhancing EV provision.

Q38. Do you have any comments on the partial and draft impact assessments undertaken on these draft Phase 2 proposals?

Leaving PDR as it is would in our view undermine our ability to repurpose the use of existing buildings to support their use and occupation. This could act against projects intended to regenerate town and city centres.

Q39. Do you have any suggestions for additional sources of information on the potential impacts of the proposals that could help inform our final assessments?

We should continue to learn from the experience in reforming PDR in other parts of UK or further afield.

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