



IMPROVING PERMITTED DEVELOPMENT

A response by the English National Park Authorities Association October 2009

General Comments

1. The English National Park Authorities Association (ENPAA) exists to provide a collective voice for the nine English National Park Authorities. It is governed by the Chairs of the nine Authorities, and our response, therefore, represents the collective view of the Authorities. It has been prepared by officers, working within the policies established by the National Park Authorities (NPAs), including through internal consultation amongst the Heads of Planning Professional Group. Individual NPAs may wish to submit separate comments, which will draw on the specific issues for their particular area.

2. The overall proposals, with their aim of reducing the number of relatively uncontroversial planning applications, are welcomed. The overriding justification for extending permitted development rights should still be based on the need to reduce the *“bureaucracy for minor applications which have little or no impact beyond the individual property”* (Section 2, paragraph 5) rather than simply seeking to reduce the regulatory burden for some perceived short term economic advantage (Section 1, paragraph 2).

3. For a number of areas, the proposed permitted development rights would not apply to Conservation Areas, World Heritage Sites or Listed Buildings. We believe that in these cases permitted development should not apply in National Parks as well.

4. The designation of a National Park is, in part, a recognition that the landscape character of the area (including of its built environment) is worthy of the highest protection. The proposals for extending permitted development to National Parks for these development types is, in our view, incompatible with this objective. This does not mean of course that such developments cannot proceed within National Parks – simply that applicants should be supported, and the high design standards maintained, through an appropriate process within a designated area of national importance.

5. It is noted that some local planning authorities have raised doubts as to whether the proposals will deliver the anticipated reduction in application numbers (c.25,000) given that permitted development rights only apply on single use sites; they are not available on mixed use sites. In a high

proportion of town and village centres, shops have residential accommodation above and the overall use of the planning unit is a mixed use. Consequently permitted development rights will not exist for these uses.

6. It would be simpler and clearer to issue a completely new General Permitted Development Order rather than making a further number of incremental changes.

7. The Consultation document specifically asks a number of questions and our responses to these are set out below.

Question 1

What are your comments on the proposals for shops?

8. With the caveat set out above, the proposals are considered to be reasonable. However, there is a concern that the proposals are likely to result in the loss of areas of landscaping within sites which are required to ensure high quality development.

9. There are the following specific points about the draft Statutory Instrument:

- Definition of “communal parking area” needs to be inserted into Class A, being the same as Class B (alternatively this could be added to the definitions set out article 1(2) of the Order).
- A.1(f): the expression “affect a listed building or its setting” is too vague and could be subject to subjective interpretation, when legislation should be as clear as possible. Given the nature of shops it might be better set out as being “within 20m of the curtilage of a listed building”.
- A.1(g): the term “principal elevation” has the same problem as has been expressed in relation to the changes to householder permitted development. The term needs to be properly defined and added to the definitions set out in article 1(2) of the Order. Shops with two frontages on a corner will have two principal elevations, which is etymologically incorrect.
- There is concern that there is no reference to National Parks, Conservation Areas, World Heritage Sites and similar protected areas. This should be added as an exception to the permitted development rights.
- “Catering” needs to be properly defined – it could include, for example, industrial premises under Classes B1 or B2 of the Use Classes Order where catering businesses operate from, but the public does not visit. A suggested definition (in article 1(2)) could be “uses falling within Classes A3, A4 or A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)”.

Question 2

What are your comments on the proposals for offices?

10. Overall the proposals are considered to be acceptable, subject to the same comments above about the loss of landscaping. This is even more relevant here, since this could result in areas of additional parking which could encourage car borne traffic contrary, to sustainability objectives.

11. There are the following specific points about the draft Statutory Instrument:

- A.1(e) the expression “affect a listed building or its setting” is too vague and could be subject to subjective interpretation, when legislation should be as clear as possible. Given the nature of offices it might be better set out as being “within 20m of the curtilage of a listed building”.
- The Definition of “office building” could lead to confusion over R&D and light industrial uses and the rights that apply to industrial uses within Part 8 of the Order. It is clear that the aim is that, as it is for offices, this should be limited to uses falling within sub-classes B1(a) and (b) of the Use Classes Order and should be defined as such.
- Providing a separate and different definition of “original building” is only likely to lead to confusion. This should be the same as already set out in article 1(2) of the Order.
- The requirement that hard surfacing in class B2(a) should be impervious in areas at “risk of groundwater contamination” is too vague. Local Planning Authorities often do not have this information and it is considered extremely unlikely that landowners will know this information. Given the issues of flooding from sites, it is considered that this should either be pervious or impervious, or if this is not practical then the proposal should be deleted.
- There is concern that there is no reference to National Parks, Conservation Areas, World Heritage Sites and similar protected areas. This should be added as an exception to the permitted development rights.

Question 3

What are your comments on the proposals for institutions?

12. There is overall welcome for these proposals. However, there are concerns over the drafting of the Statutory Instrument.

- A.1(i) the expression “would be visible from a highway” is considered to likely to remove the effect of the permission. Given a highway has the same definition as in the Highways Act this includes footpaths, bridleways, byways open to all traffic and roads used as public paths. In addition, an extension which is not visible from a highway in the summer may well be visible in the winter. If there is concern over this, then the proposal should include a restriction in Article 1(5) areas.

- A.1(j) the expression “affect a listed building or its setting” is too vague and could be subject to subjective interpretation, when legislation should be as clear as possible. Given the nature of institutions it might be better set out as being “within 20m of the curtilage of a listed building”.
- Providing a separate and different definition of “original building” is only likely to lead to confusion. This should be the same as already set out in article 1(2) of the Order.
- The requirement that hard surfacing in class B2(a) should be impervious in areas at “risk of groundwater contamination” is too vague. Local Planning Authorities often do not have this information and it is considered extremely unlikely that landowners will know this information. Given the issues of flooding from sites, it is considered that this should either be pervious or impervious, or if this is not practical then the proposal should be deleted.
- There is concern that there is no reference to National Parks, Conservation Areas, World Heritage Sites and similar protected areas. This should be added as an exception to the permitted development rights.

Question 4

What are your comments on the proposals for schools?

13. It should be explicit that permitted development rights for schools are separate to those under Part 12 of the Order for Local Authorities, otherwise there can be confusion and incremental creep.

14. See detailed comments to Question 3 in response to issues relating to the drafting of the Statutory Instrument.

Question 5

What are your comments on the proposals for industry and warehousing?

- A.1(j) the expression “affect a listed building or its setting” is too vague and could be subject to subjective interpretation, when legislation should be as clear as possible. Given nature of industry and warehousing it might be better set out could be “within 20m of the curtilage of a listed building”.
- A.3(f) Providing a separate and different definition of “original building” is only likely to lead to confusion. This should be the same as already set out in article 1(2) of the Order.
- The requirement that hard surfacing in class C.1(a) should be impervious in areas at “risk of groundwater contamination” is too vague. Local Planning Authorities often do not have this information and it is considered extremely unlikely that landowners will know this information. Given the issues of flooding from sites, it is considered that this should either be pervious or impervious, or if this is not practical then the proposal should be deleted.

Questions 6 and 7

Should permitted development be expanded to include air conditioning units? And Given Government objectives on climate change mitigation and adaptation, what impact do you think expanding permitted development rights to include air conditioning units would have on:

- a. the take up of air conditioning units;
- b. the energy efficiency and carbon footprints of buildings;
- c. the ability of residents and businesses to meet future carbon budgets; and
- d. the impact upon alternative means of dealing with extreme temperatures, e.g. passive cooling.

15. We do not agree that permitted development should be expanded to include air conditioning units. Where necessary, air conditioning units should be incorporated within the existing and proposed permitted development rights rather than as a specific class of their own. Granting them specific permission is likely to add to their take up, an increase in the use of electricity and carbon emissions. Uncontrolled, they can be an unsightly addition to buildings.

Question 8

In the event that air conditioning units were to be made permitted development, do you agree with the limitations proposed above? If not, what would you suggest? Are there any other issues that should be considered?

- D.1(e) Classes B3 to B7 was first changed by SI 1992/610 to a reference to classes B4 to B7, then revoked altogether by SI 1995/297, from 9 March 1995. This lack of knowledge is concerning.
- Some conservation areas are designated in relation to waterways that they pass by or through. Consequently, in paragraph D1(f), we would recommend adding at the end “or waterway”.
- These proposed permitted development rights would not apply to Conservation Areas and World Heritage Sites where the units would be visible from a highway. The same condition should apply to National Parks.

Question 9

What are your views on the proposed prior approval regime described above?

16. Prior approvals are considered to be an unsatisfactory system. They were not supported by the Killian Pretty Review and lead to confusion. Any legislation which requires a triple negative (paragraph A.2(2)(iii)(aa) of Class A to Part 6) cannot be clear. In addition they are not understood by the public. Either development should be permitted development or need an application for planning permission.

Question 10

What are your comments on the proposals for shopfronts?

17. Subject to the caveat set out in response to question 9, the following comments are made in relation to the draft Order.

- C.1(a) – Creating a bay window in a shop could be problematic, with questions as to whether it overhangs the highway or not, or creates an obstruction, particularly to the partially sighted. ENPAA suggests at the end, “and not extend beyond the forward plane of the existing shop front”
- C.1(d) - “affect a listed building or its setting” – too vague and could be subject to subjective interpretation. We believe it would be better if it read “within 20m of the curtilage of a listed building”.
- These proposed permitted development rights do not apply to Conservation Areas, World Heritage Sites or Listed Buildings and equally they should not apply to National Parks (where many shops are located in highly sensitive and attractive countryside locations).

Question 11

What are your comments on the proposals for ATMs?

18. Same response as to Questions 9 and 10.

Question 12

Do you agree that shops, offices, and institutions should be allowed to lay up to 50 square metres of permeable hard-surfacing as permitted development?

19. No. As stated in the response to Question 1 above, there is a concern that the proposals are likely to result in the loss of areas of landscaping within sites. Within rural areas and dispersed settlements, the increase in hard-surfacing is likely to have a harmful and sub-urbanising affect. This is certainly incompatible with landscape protection and enhancement in National Parks.

20. The requirement that hard-surfacing should be impervious in areas at “risk of groundwater contamination” is too vague. Local Planning Authorities often do not have this information and it is considered extremely unlikely that landowners will know this information. Given the issues of flooding from sites, it is considered that this should either be pervious or impervious, or if this is not practical then the proposal should be deleted.

Question 13

Do you agree that industry’s current permitted development right to lay an unlimited amount of hard-surfacing should be amended so that industry should be able to lay an unlimited amount of hard-surfacing provided provision is made for surface water to drain to a permeable

area (unless there is a risk of contamination, in which case hard-surfacing would have to be impermeable)?

21. The requirement that hard-surfacing should be impervious in areas at “risk of groundwater contamination” is too vague. Local Planning Authorities often do not have this information and it is considered extremely unlikely that landowners will know this information. Given the issues of flooding from sites, it is considered that this should either be pervious or impervious, or if this is not practical then the proposal should be deleted.

Question 14

Do you think that the proposed changes to Article 4 Directions represent a sensible balance between freeing up opportunities for low impact development and protecting areas which need special protection?

22. Yes – the current requirement that the Secretary of State is required to approve Article 4(1) directions can lead to delays and undesirable impacts. Providing, in effect, a 12 month introduction period allows for proper consideration of the relevant issues.

Question 15

Do you think that Section 189 of the Planning Act 2008 (which limits LPA liability to compensation to 12 months following local restriction of national permitted development rights) should apply to Article 4 Directions made in respect of non-domestic permitted development rights?

23. Yes – in this context there is no material difference between the two types of use, and in mixed use areas (particularly Conservation Areas) the difference between the two can lead to undesirable consequences, particularly with painting of façades and introductions of UPVC windows, which can bring the planning system into disrepute.

24. In addition, with the introduction/extension of permitted development rights to commercial premises, the two should be dealt with similarly.

Question 16

Do you agree that LPAs should be able to make Article 4 Directions without the approval of the Secretary of State?

25. Yes – the involvement of the Secretary of State only adds a further level of bureaucracy and delay. With the general presumption of delegation to the appropriate lowest level this is entirely appropriate.

Question 17

Do you agree that LPAs should be required to consult before making Article 4 Directions?

26. Normally – however, if a Local Planning Authority needs to issue an Article 4 Direction quickly to deal with some specific harm, as envisaged in

Article 6, then it would be appropriate to allow the Local Planning Authority to issue the Direction first, and consider any representations on it afterwards.

Question 18

Do you agree that the notification requirements are appropriate and allow owners/occupiers to be informed whilst allowing an LPA to act quickly if necessary?

27. Generally yes – however, in light of the proposals in the consultation paper “Publicity for planning applications” it is considered that Article 5(1)(a) is redundant, unless “by local advertisement” is redefined in line with what is proposed in that consultation paper.

ENPAA

October 2009