

HOPS Response to Scottish Government Review of PDR – Phase 2 Consultation (3rd August 2022)

Information Note

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities, national park authorities and strategic development planning authorities.

The purpose of HOPS is to:

- Promote the profile of public sector land use planning
- Support and promote excellence in planning leadership
- Ensure the delivery of a culture of continuous improvement in planning authorities
- Provide advocacy and coordination to ensure that planning authorities are properly resourced to deliver quality outcomes.

HOPS would like to thank all planning authorities for their contribution to this consultation response.

Electric Vehicle Charging Infrastructure

Proposed Changes to Class 9E: Wall-Mounted EV Chargers (Off-street Parking Areas)

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)?

While the need to allow for wider provision is recognised, restrictions should remain in place in Conservation Areas and World Heritage Sites. The argument for removing this restriction is that they only apply in existing off-street parking areas and therefore to sites that are already subject to development. This argument has some merit in relation to areas such as National Scenic Areas or the National Parks where arguably the special qualities of the designated site are less likely to be in evidence in a car park. In a Conservation Area the argument that the site is already subject to development is less persuasive, as most of a Conservation Area is developed and is the character and appearance of this development that must be protected. An existing off-street parking area could be at the edge of a central square or an important street within a Conservation Area where insensitive development could have a disproportionate impact on the character and appearance of the Conservation Area. Whilst we do not explicitly oppose the installation of off-street charging infrastructure in such areas, the current restrictions allow the planning authority to make a detailed assessment of the potential impact of such development, and assess whether the wider planning merits of such development is ultimately acceptable on balance. The current restrictions also allow planning authorities to mitigate the possible visual impact of such developments, such as by requiring a certain colour scheme is used or materials utilised. The requirement for planning permission in restricted areas also affords interested parties such as members of the public and elected members the opportunity to provide their own input into the planning process.

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

This restriction is useful and likely to be more so if restrictions on development in sensitive areas such as Conservation Areas are removed.

Proposed Changes to Class 9F: EV Charging Upstands (Off-street Parking Areas)

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 see our response to Q1, which also applies here.

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

This restriction is useful, and likely to be more so if restrictions on development in sensitive areas such as Conservation Areas are removed.

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?

It would appear that this is necessary to reflect changes in technology, but could result in additional visual and noise impacts on Conservation Areas and other sensitive areas.

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?

No. This would allow potentially very substantial structures to be installed without proper assessment of the impacts, particularly in relation to residential amenity.

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?

No. HOPS have had differing feedback from our membership, and whilst in principle many were in favour of allowing PDR in this instance, others remained concerned that this would still lead to substantial structures and that there is uncertainty about the potential impacts (see response to Q6).

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?

Yes. However if this were to be brought in, there is an argument for PDR not to apply for such solar canopies and related battery storage and equipment housing within the curtilage of listed buildings.

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?

HOPS note that a height limit is required to help to mitigate any amenity impacts, however some concerns have been raised about the suggested 4-metre height, as this may create tall and potentially imposing development which may not be suitable in every location.

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?

Yes. This will significantly restrict development under this class, however the impacts particularly in relation to residential amenity could be felt well beyond 10 metres. A 10m distance from the curtilage of a property might not be sufficient in all circumstances (and in all localities) to ensure that the noise impact from a particular noise source (in this case battery storage units, etc.) would result in an acceptable noise impact. Whilst it is agreed that a minimum distance is required, there is a need to justify why 5 metres and 10 metres have been chosen as distances.

On-street/Kerbside Charging

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?

Yes. It may be useful however it is already clear enough.

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?

Yes. But difficult timing if these models are still emerging. It is also not clear how financing models would be incorporated effectively into PDR rights and this should be considered carefully.

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

No. This could lead to unsafe infrastructure within the public realm. What happens if the third party ceases to trade? Who is responsible for the removal of the infrastructure? Would be premature.

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

Yes. Depending on the arrangements proposed.

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

There should be consultation with the Roads Authority. Height and volume restrictions in line with classes 9E and F and other proposed changes would be required and there should also be locational restrictions in line with these classes, e.g. PDR should not apply in sensitive areas. A requirement to remove redundant infrastructure should also be put in place. If this is to become permitted development, a prior notification scheme should be considered.

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?

We envisage that there may be difficulties where there are competing interests for the available road space, both above and below the ground. There should be defined clearance between EV Chargers and other utilities infrastructure to enable safe access to the charging facility for members of the public and retain easy access to above ground utilities infrastructure. There should be a requirement for the organisation responsible for installation to consult directly with the relevant statutory undertakers (Scottish Power, Scottish Gas, BT) before undertaking the installation to ensure that existing infrastructure will not be affected.

Is there scope for existing operators to share or extend current infrastructure to minimise the impact and costs.

Priority for road space should always be given to the needs of utilities companies.

Rights to access the road network dealt with by other relevant bodies such as Roads Authorities.

Changes to Existing Petrol Stations

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

This would seem to be a logical approach to changing requirements. There may be concerns in rural areas where lifeline facilities could be lost. It would also need to consider any change in noise impact on the nearest noise sensitive receptors as a result of the new provision.

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

It is important that the development area is not increased. The replacement of existing pumps with new facilities of the same or similar scale would be reasonable. The replacement of buildings which often contain large retail elements should be carefully considered. The formation of new accesses should be prohibited. The wording 'unless otherwise agreed with the planning authority' creates a difficulty in controlling something that the PD right implies can happen without formal process. There are also possible issues with regards to solar glare impacting on flight paths and aviation safety in the event such EV charging stations incorporate solar panels. Additional acoustic barriers to mitigate effects may be needed in locations where sensitive receptors are located in close proximity, may be requirements for additional noise assessments.

Changes of Use in Centres

Potential changes to the UCO

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?

Yes. There are clear benefits to town centres in making movement between uses more flexible and removing the need for planning applications that raise no issues whatsoever. However certain uses raise key issues which are better addressed through the formal Planning Application system as noted in the response to Q20. In particular, noise, disturbance, odour and accessibility. The loss of local facilities is also of concern as noted, for example, in the closure of bank branches serving the communities.

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?

Regard should be had to our ability to deliver on placemaking and amenity principles, the vitality and viability of our centres, and on 20-minute neighbourhood and town centre living objectives in NPF4.

It is recognised that no schedule 3 development would be included but there are potential amenity impacts with a merged class. These would mainly be associated with class 3. Restaurants and cafés can cause problems with smell and noise associated with the ventilation and extraction systems even where no hot food for take away is proposed. Similarly some class 10 and 11 uses could have significant noise issues. Environmental Health would only be able to react to problems after the fact, while the planning system has a role in preventing the problem from arising. Policy requirements in relation to amenity are also likely to be broader than the statutory nuisance parameters that Environmental Health work to therefore this could lead to a loss of amenity. The merging of class uses appears to undermine the Agent of Change Principle that is now in place in the consideration of planning applications. The effect of these proposals is also likely to negatively impact on businesses that become the subject of enforcement action for Statutory Nuisance. The costs of retrofitting noise mitigation controls in an emerging Nuisance situation is likely to be far higher than designing into the development at an application stage. The juxtaposition of incompatible uses seems likely to occur and is at odds with the broad principles within Scottish Government Planning and Noise PAN 1/2011.

In addition to odour and noise impacts, the merging of use classes will create commercial premises that can generate significant levels of amplified music and vocals structurally attached to noise sensitive properties. Gyms (included in use class 11) are one such example where music, vocals and vibration impact can be a consideration when also structurally attached to noise sensitive properties.

The test of Statutory Nuisance occurring is noise and vibration at a level “beyond reasonably tolerable” and some margin above the protection of amenity. It therefore follows that these proposals don’t offer the protection of amenity currently in place within the Planning system.

Outwith town centres there is a risk that a merged use class could allow inappropriate uses in some locations. This is particularly true if class 10 and 11 were included. Uses such as large gyms cannot be easily accommodated in the town centre, so end up in other locations where alternative uses may not be suitable. The alternative use may also adversely impact on the town centre. The conversion of a large gym to a shop in an out of town location could adversely impact on a town centre. Also, class 10 includes schools and nurseries, and these are facilities which need to be carefully located within a catchment for active travel reasons, and which need appropriate play facilities and amenities, therefore a planning application process is necessary. A school or nursery may be well located within its catchment, but not well located for changing to a class 1,2,3 or 11 use. There is also a risk of development lacking suitable infrastructure particularly in relation to parking. Outwith the town centre the parking

requirements for a restaurant, café, gallery or gym would be quite different from a shop, for example.

A merged use class of Class 1 and 2 could include foodbanks, art galleries, museums and libraries as these uses can add vitality to town centres.

The suggested changes also remove the ability for local representations to be made with respect to town centre development and also removes the local decision-making accountability provided by the current Planning Application processes.

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

No

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

Yes. This tool would allow greater flexibility but with greater precision so that the impacts could be targeted to areas where they would be most effective and adverse impacts on other areas could be avoided. Implementing a MCA would have significant resource issues, and this would need to be addressed before becoming an effective tool.

PDR for provision of workspace

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?

Yes. This change would reflect the greater demand for more flexible office space. It would benefit town centres but could also benefit rural communities. There is a potential for this to impact on other town centre uses with limited draw for members of the public.

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

The suggested classes of 1,2 and 3 seem logical. The loss of shops under this PDR may be problematic in some areas. Whilst there are risks associated with all existing uses, there are perhaps greater concerns over Change of Use for Class 1.

Q25. Would 300 square metres be an appropriate maximum floorspace limit?

This would prevent larger shops or other facilities being lost and protect dedicated office areas where large floor spaces are provided. Larger scale developments could also result in disruption to the character of an area.

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

Consideration should be given to preventing the loss of shop frontages in order to protect the appearance of the street.

PDR for moveable outdoor furniture

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?

The placing of furniture on the road requires consent under the Roads Scotland Act 1984. Noise could be controlled by Environmental Health legislation. Could be drafted as follows “the placing of moveable furniture on the road outside of (Class 3) food and drink premises and outside of public house and their use is in association with the authorised use of those premises”. Restricted to solely the section of road outside that premises.

The definition of ‘moveable furniture’ may need clarification. Tables and chairs do not constitute development under the 1997 act and so are not always controlled by planning authorities. The erection of moveable tables and chairs on adopted pavements is regulated separately through tables and chairs permits.

Q28. Are there any conditions or limitations that you think such a PDR should be subject to? from use.

See above.

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

No

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?

Yes, through the Roads (Scotland) Act 1984. However, this would not involve an assessment of the wider impacts on amenity or character. Generally planning offers control to consider maybe more unforeseen issues through the planning process.

PDR for provision of residential accommodation

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

Yes. A plan led approach allows development to be located in the best areas in an overall plan to regenerate centres. It should also allow potential use conflicts to be addressed at an early

stage and help to control a mix of uses within centres that allow these areas to retain their vibrancy and multi-use purposes.

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

Explore the potential to allow temporary uses (up to 28 days) of buildings and their curtilage up to a limited floor area to allow more agility and support pop-up shops etc.

4. Port Development

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

In principle there is no objection to the idea, but there is a lack of detail currently in how it would work in practice. Any such expansion in PDR rights should be considered carefully before being implemented as widespread changes could have significant impacts.

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?

No comment

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

No comment

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

Yes, it could provide targeted opportunities for greater flexibility while also affording the opportunity for co-operation and constructive working between various parties before being implemented.

5. Assessment of Impacts

Sustainability Appraisal Update

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)

No comment

Other Assessments

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

No

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?

No