



Your ref.

Our ref. VH/POS

Date 22 October 2009

Tom Bristow
Department for Communities & Local Government
Zone 1/A1
Eland House
Bressenden Place
London
SW1E 5DU

Dear Tom,

Re: Improving Permitted Development - Consultation

The Society has actively engaged in the work undertaken by White Young Green on behalf of the CLG which has informed this consultation document. At the time of that exercise the society supported the general thrust to remove from the need to apply for planning permission those developments which did not have impacts. Whilst a number of the suggestions made in the earlier work by WYG have been dropped we maintain our objections to the proposals set out in this consultation for relaxations on air conditioning plant and ATM's, and the extension of the prior approval regime into these areas.

We welcome on this occasion the inclusion of the draft regulations in the consultation and have identified anomalies and drafting point's which can fortunately be addressed at this stage avoiding the potential arguments over interpretation, with associated delay and costs that brings to the system. We also stress the importance of issuing the final regulation and associated guidance well before the regulations coming into force, including the updating of Planning Portal web pages.

In response to the specific questions raised in the Consultation the society's comments are:

Permitted Development

Question 1 – What are your comments on the proposals for shops?

Whilst the focus of these comments has been based on the draft regulations there appears to be a difference between these and the consultation, namely Figure 1 refers to new buildings (freestanding) as well as extensions whereas the regulations only relate to extensions and alterations.

The Society question the wisdom of applying these permitted development rights to A3, A4 & A5 as these are often located adjacent to or in close proximity to residential properties.

Part 42, Class A

Whilst the society support some relaxation of planning controls over small additions to retail units there are inconsistencies and anomalies within the proposals, namely:

Whilst we note that any new addition will be single storey the height limit of 5 metres is inconsistent with the 4 metre limit placed on residential outbuildings and side extensions introduced last year. That a change which arose from the impact work undertaken by WYG when the householder permitted development rights were reviewed. It is our view that the proposed height limit could lead to unneighbourly additions to shops, particularly where they are located within residential areas. In the Society's view some consistency across the regulations would also minimise opportunities for confusion amongst those undertaking projects.

A further anomaly when compared with the amendments to Part 1 of the GPDO, which came into effect in October 2008 in respect of householder permitted development is the exclusion of extensions within the curtilage of a listed building or which would affect the setting of a listed building. This requirement was removed when the householder pd changes were made and additionally could lead to confusion where a property owner is unaware of the listing status of nearby buildings. Additionally the draft regulations fail to make any distinction in respect of visually sensitive locations covered by Article 1 (5) ie Conservation Areas, National Parks and AONB's.

The requirement that the development should not reduce space available for parking or manoeuvring of vehicles could give rise to issues of enforceability as assessment could prove difficult once developments has been completed and the previous site layout is unclear.

The regulations could at some point give an interpretation of the term 'principal elevation' first introduced in the householder permitted development changes last year but which has been the source of some confusion as no definition was provided at that time.

Please also note the interpretation relating to class B also relates to part A and it is suggested that this be moved into Part 42 to cover all of this part of the amending Order.

Part 42 Class B

This class fails to prevent potential proliferation of such structures other than they should be more than 20 metres from the site boundary. It is suggested that a condition be imposed linking the number of trolley stores to the number of parking spaces available for customer uses at a store. Again regard needs to be given as to whether it is appropriate to have a proliferation of such structures where situated in a Conservation Area, National Park, AONB or curtilage of a listed building.

Question 2 – What are your comments on the proposals for offices?

Again there appears to be an error in the diagrams as Figure 2 refers to new buildings (freestanding) as well as extensions whereas the regulations only relate to extensions and alterations.

Part 41 Class A

As with Part 42 the Society do not support the idea that extensions right up to a boundary can be 5 metres in height, however to ensure consistency with Part 8 of the General Development Order it is suggested the requisite changes required are that no addition shall take place with 5 metres of a boundary and that the height of any addition between 5 and 10 metres shall not exceed 5 metres. It is also suggested that no extension or addition shall be closer to the highway than any existing building as the proposed limitation that additions must not be visible from a highway will give rise to difficulties of enforcement and associated time and expense for both local planning authorities and businesses.

The potential that extensions to office buildings say on a campus site with numerous buildings could cumulatively lead to issues of intensification and off site impacts e.g. access and traffic or prove anomalous to restrictive planning policies e.g. Green Belt. It is the Societies view that consideration should be given to an upper limit for such cumulative additions. On the same point of cumulative impacts the draft regulations fail to make any distinction in respect of visually sensitive locations i.e. Conservation Areas, National Parks and AONB's and repeat the potential enforcement problems over impact on the setting of a listed building

Attention is also drawn to the ability for offices (Use Class B1) to warehousing (Use Class B8) albeit subject to a limit of 235 square metres, this could open up the possibility of a building using its permitted development rights under both part 8 and part 41.

A further area for potential dispute relates to the requirement that there should be no losses of parking or manoeuvring space, difficult too see how this can be assessed and consequently how the stipulations could be enforced.

Part 41 Class A

See comments on Part 42 Class E above

Question 3 – What are your comments on the proposals for institutions?

Question 4 – What are your comments on the proposals for schools?

These two questions are answered jointly.

Part 32 Class A

On a general point local education authorities often use the provisions of Part 12 for buildings not exceeding 4 metres in height or 200 cubic metres in capacity.

To be consistent with this and other Parts of the regulations it is the societies view that the height limit should 4 metres with 7 metres of the boundary, other than a boundary to a highway, in which case the provision that it should be no nearer to the highway than any excising building would apply.

As the proposed changes now introduce to Part 32 a difference between schools and colleges it will either be necessary to introduce a definitions for schools and colleges, however it would be more practical to extend A1 (i) to include colleges.

The Society also have concerns that the cumulative thresholds are set to high and the resultant intensification of activities on a site could give rise to issues around traffic generation and parking impacting on the amenities enjoyed by surrounding neighbours (often residential). Whilst in the case of schools A1 I seek to prevent any increased number of pupils at a school this will be difficult to enforce and could lead to potential for dispute with both schools and local residents. Therefore the society consider the cumulative thresholds could be set at 15% of the floor space of the original building to be extended and 25% cumulatively across a site, this would still represent a significant additional allowance than the current provisions under Part 32.

Given that many schools and other institutions are accommodated in sensitive locations it is surprising that a more restrictive provision has not been considered where situated in a Conservation Area, National Park or AONB, under the limitations set out permitted development cumulatively could have significant visual impacts, indeed there is nothing to prevent new buildings being erected on large sites in locations from remote existing buildings. It is suggested that in situations the regulations should revert to the current provision of Part 32, namely a 10% increase in the cumulative total floor space is allowed provided this does not exceed 250 square metres or the extension is not within 20 metres of the boundary of the site and additionally there could be a distance limit from the original building to which it relates.

Question 5 – What are your comments on the proposals for industry and warehousing?

Part 8 Class A

There is potential for confusion between A1(c) and (g), i.e. the first states addition within 10 metres of the boundary should not exceed 5 metres and the latter is no development should take place within 5 metres of a boundary. The society suggest that these two restrictions be rolled into one and that it is made clear that the position is no additions within 5 metres of the boundary, between 5 and 10 metres it is a 5 metre height limit and further than this it must not exceed the height of the original building. It is also suggested that no extension or addition shall be closer to the highway than any existing building as the proposed limitation that additions must not be visible from a highway will give rise to difficulties of enforcement and associated time and expense for both local planning authorities and businesses. The Society welcome the continued restriction on more sensitive Article 1(5) land, a limitation omitted from the proposed parts 32 and 42.

There is confusion under A1 (f), under the Order as currently in force Part 8 A (d) and (e) cover this limitation and it refers to the percentages being volume rather than floor space – this appears therefore to be a drafting error in the proposed amendment Order. A1 (f) (i)

The proposal that cumulative increases would be permitted subject to no more than 50% of the site being developed is challenged. The potential that extensions to industrial and warehouse additions on a site with numerous buildings could cumulatively lead to issues of intensification and off site impacts e.g. run off from roofs, access, parking and traffic or prove anomalous to planning policies. The Society considers a more impact based approach based on what built development is currently on a site is would be preferable, i.e. a percentage limit related to the cumulative floor space of existing buildings on a site.

Question 6 – Should permitted development rights be expanded to include air conditioning units?

Question 7 – Given Government objectives on climate change and adaption, 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 footprint of buildings;**
- c. the ability of residents to meet future carbon budgets; and**
- d. the impact upon alternative means of dealing with extreme temperatures; eg passive cooling.**

These two questions are answered jointly.

The societies view has been one of consistent opposition to the extension of permitted development rights to air conditioning units. Such installations can give rise to issues of disturbance to neighbouring properties and any prior assessment of that noise impact is unique to the particular site relating to configurations of buildings and uses). Furthermore given the thrust of Annexe A to PPS1 removal of such installations from the planning regime may well lead to greater use of such units and run counter to the wider climate

change agenda. Additionally the proposal could lead to unsightly proliferations of such installations on buildings.

Question 8- In the event that air conditioning units were to be made permitted development, do you agree with the limitations proposed above good practice and could be promoted in best practice guidance./ If not, what would you suggest/ Are there any other issues to be considered?

Part 2, Class D

The provisions could lead to visually and unneighbourly installations and with the way the regulations are drafted such as to present enforcement problems. If the Government is convinced that such a relaxation is necessary then there need to be a number of changes to the draft Order. The units can free standing, the regulations imply they must be attached to a wall, is this intended? The proposed regulations surprisingly do not restrict units being installed on buildings located on article 1(5) land. Consideration also needs to be given to the position on roof mounted equipment, which is not permitted under the order as drafted.

Prior Approval

Question 9 – What are your views on the proposed regime described above?

The introduction of a notification system for shop fronts is not supported but if the decision is made to take shop fronts and ATM's into a new regime it should not termed 'prior approval'. It is in effect a 'notification' arrangement and the second stage of the procedure should in effect be a requirement by the LPA for planning permission to be sought . The regulations should set out the specific grounds upon which the LPA can require submission of a planning application and the relevant grounds must set out in the response of the LPA to the notification, this could then give the applicant opportunity to make modifications to a proposal before submitting a planning application.

The proposals also place an additional; 'requirement' on Local Planning Authorities to prepare and consult on SPD covering shop fronts and ATM's. Both this and the problems associated with the prior approval regime will place an added burden on the already stretched resources of planning departments.

Question 10 – What are your comments on the proposals for shopfronts?

Part 42 Class C

This provision as written only relates to the alteration of a shop front, not its replacement, this could lead to debate as to what constitutes alteration and when does it become a replacement.

The inclusion of World Heritage site is not considered appropriate as these can be widely drawn and include areas where shop front changes would have little visual impact e.g. parts of the outer suburbs of Bath.

The further extension of the 'prior approval' regime is not supported by the Society, the experience of the system to date by Local Planning authorities has not been favourable and it has become discredited in the public's eyes through its use in relation to telecommunications installations.

Question 11 – What are your comments on the proposals for ATMs?

Part 42, Class D

The comments regarding the proposed prior approval regime above are re-iterated in respect of their extension to ATM's as well. The location of ATM's can give rise to issues around parking and highway safety, crime and disturbance. The prior approval arrangements do not give adequate time for the Local Planning Authority to consult and consider such installations.

Should the provision be taken further then the regulations will need re-drafting as they are unclear as to the position regarding free standing kiosk type structures often located with car parks and forecourts. In the Society's view such freestanding structures should be excluded from this regime as they can be quite large and give rise to issues of visual amenity. Additional consideration must be given to extending the limitation to include sensitive article 1(5) land.

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?

Part 42 Class E

It is suggested that the extent of hard surfacing permitted under the Order has a link to both the area of the external curtilage and the amount of the site already hard surfaced. The provision should also relate to the replacement of existing Hardstandings which should also be subject to conditions E.2.

Question 13 – Do you agree that industry's current permitted development right to lay 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)?

Yes, in view of the Pitt Report and resultant changes to householder permitted development rights we consider that this change should be rolled out to all those who may construct new or alter existing hardstandings. Unfortunately there is no definition of permeable which is known to giving problems in dealing with householder PD. Also is there ambiguity over "risk of contamination", clarity needs to be given in the supporting advice as to what sort of investigations and checks/monitoring would be required?

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?

The Society support the proposed changes put forward and they represent a real simplification of process. We also are pleased to note that where the amenity of an area is under threat the LPA will have opportunity to make the Order and consult afterwards.

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?

The removal of this deterrent to use of Article 4 Directions is welcomed.

Question 16 – Do you agree that LPAs should be able to make Article 4 Directions without the approval of the Secretary of State?

Yes, provided the provisions of Circular 9/95 are followed then Local Planning authorities should be seen as responsible bodies without need for close supervision by the Secretary of State. Indeed it is an anomaly that a Planning Authority can designate a Conservation Area but not make an Article 4 direction.

Question 17 – Do you agree that LPAs should be required to consult before making Article 4 directions?

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?

These two questions are answered jointly.

Yes, however it is noted that the requirement to advertise the intention to make an Order in the local press runs contrary to the current consultation to remove this requirement in other areas.

Questions 19 and 20

The Society has no comment to make on questions 19 and 20 in respect of the impact assessment undertaken in connection with these proposed changes.

Yours sincerely

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