

Non-domestic elements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

July 2011

Introduction

The FSB is Scotland's largest direct-member business organisation, representing over 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

During our recent interaction with the Scottish Government Division of the Built Environment and the Finance and Sustainable Growth Minister, through which we have shared our members' experience of the planning system and their expectations, the Scottish Government announced its intention to consult on extending permitted development rights (PDR) for non-domestic properties in the future. We therefore welcome the opportunity to submit our response on the above consultation.

Context

The FSB member survey from February 2011 and other informal feedback from members has shown that 57% of those who had made an application in the past two years reported that the decision took longer than two months to process. Even for those who did receive a decision within the statutory period, most reported the decision was notified on, or a couple of days ahead of, the deadline. Such delays have a substantial impact on small businesses because of the time and financial pressures they face. Given their relatively small profit margins in comparison with larger businesses, small businesses arguably have a greater need to react and adapt quickly to changes in markets and economic fluctuations in order to survive.

Members also report that the system's rules and procedures which in their view appear to be overly complex cause frustration and higher costs. Many small businesses expect to be able to navigate the planning system with minimal use of consultants or other experts as their engagement would represent a disproportionately high cost to their planned development. Moreover, members tell us that notification at the last minute about requirements for additional consents can cause unexpected delays and higher costs to the project, which in some cases has led to shelving the project.

Members therefore welcome the review of permitted development rights as part of an exploration of ways to simplify the process for simple, straightforward developments. Any extension to the number and nature of developments that can be undertaken without planning permission is to be supported by the business community in principle. It particularly makes sense to review PDR in the context of emerging technologies, including those involved in micro-generation and adjustments to enable properties to be updated in line with societal norms, such as wheelchair access, with minimum complications.

Consultation questions

Below are our comments on the consultation questions covering the areas of interest to – and specific feedback we have received from – our members.

Question 1: Can you identify the likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?

The FSB's principal interest in the PDR review focuses on the potential benefits to business in improving the efficiency of the planning system and the wider regulatory environment. We would make the following two general points:

It is as yet, unclear from the consultation document at least, what volume of planning applications for commercial and retail property might be reduced by the introduction of extended PDR. We consider that it would be expedient to obtain and analyse this information before the lengthy process of introducing amendments to the 1992 Order begins. We assume that the Scottish Government is in the process of gathering this information via this consultation and other means.

The relationship between PDR, Building Regulations, other consents and licensing regimes needs to be clarified and better defined. There is always the danger that simplification of one part of the planning and building regulations system may only serve to complicate processes further as ambiguities and subsequently differing interpretations emerge elsewhere, which are not necessarily location dependent. For example, we recently received member feedback about an instance where the same type of development (currently already covered under PDR) requires a building warrant in some local authority areas, while in others, no such requirement is notified. Any benefit that businesses might accrue from an amendment to PDR may be negated by the amount of time they have to spend establishing whether they can proceed without further consent/compliance with regulation. It is therefore

important that, if amendment proceeds, the wider implications on other regulatory regimes are taken into account.

Question 11: Do you think that we should clarify that Class 23 (Industrial and Warehouse Development) of the GPDO includes research and development?

This would seem sensible if issues with lack of clarity have been raised. The FSB supports any removal of ambiguity in legislation and regulation.

Question 12: Do you think that we should grant PDR for the construction of new buildings in relation to industrial and warehouse development?

Given the proposed restrictions, the FSB would consider this to be reasonable. It is important to clarify the relationship between extended PDR in this area other regulations that require compliance – e.g. Building regulations.

Question 16: Do you think that we should have PDR for office extensions?

It would seem reasonable that office extensions should have the same PDR as retail and domestic properties. As the vast majority of offices are leased to businesses, the extent to which this change might benefit the leaseholders is unclear.

Question 17: What sort of activities under the heading of ‘pavement cafes’ should be considered for PDR (e.g. pubs, restaurants, mobile refreshment stalls)?

It is the FSB’s view that consideration of the sorts of activities permitted should not be the preserve of PDR or planning but, since they principally involve access, obstruction, noise, safety etc., should instead come within the remit of licensing under the Civic (Scotland) Act 1982.

The restriction of 28 days for temporary use of land in Class 15 seems rather arbitrary if it is to be used to permit pavement cafes and similar concerns. The FSB is unclear as to how this is currently enforced and how it might be, if applied to this additional activity. We would therefore recommend review of this clause in the current Order – particularly in view of the potential amendment to include pavement cafes.

Question 18: Do you agree that PDR should allow shops, banks, pubs, restaurants and other similar businesses to enlarge their premises?

Yes – the same extension and alteration rights should be afforded to all commercial property with the same conditions as domestic properties. Again, many businesses occupying these types of premises are leaseholders rather than owners, however.

Question 19: Do the controls on PDR for caravans strike the right balance between removing unnecessary planning applications and protecting amenity?

Our members who own caravan parks/sites report that by and large they have not been adversely affected by the current PDR for caravans. However, some members have highlighted the potential benefit from a better definition of what a ‘caravan’ is (chalet type buildings have been classed as caravans in some cases) and what alterations can be made to a caravan without the need for planning permission (verandas, extensions, raising the base etc). Static caravans are currently regarded as moveable objects but the advice site owners have received from Councils is that in any alteration of a caravan, the owner should consult the planning office to see if the proposed works require permission/building warrant etc.

We have received member feedback about issues with temporary structures on a building site being made increasingly permanent as the duration of a project drags on, with detrimental effects on the business in the adjoining property. We recognise that it is difficult to define moveable objects/temporary structures and the degree to which they need to be secured or established for health and safety reasons, but we think there might be benefit in exploring whether a better definition can be arrived at and a process to address the impact of such structures in the event of delay to completion. This is also relevant to the issues raised in Question 26.

Question 20: Should there be PDR for open air markets where an operator's licence has been obtained from the local authority?

Again, the FSB considers that the licensing regime for markets should include consideration of the space and its usage – and by and large does. We believe there should be an assumption for permitted development for open air markets if a licence is granted.

Question 25: What sort of issues would PDR have to address that would not be addressed by WML and the PPC regimes or by other legislation?

The points made in our response to questions 17 and 20 apply here.

For further information on any of the points raised in this submission, please contact Mary Goodman, Senior Policy Advisor, email: mary.goodman@fsb.org.uk t: 0141 221 0775.