

## Response ID ANON-R3K1-FRY2-4

Submitted to **Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland**

Submitted on **2020-01-28 10:13:54**

### **The Scottish Government's Proposed Programme for Reviewing and Extending Permitted Development Rights (PDR) in Scotland**

#### **1 Do you have any comments on the proposed Work Programme, including the proposed phasing and groupings?**

**Please provide any comments. :**

We are content with the scope of the proposed Work Programme and the ambition to review options for the expansion of Permitted Development Rights (PDR). We do not object to the proposed phasing and groupings.

We wish to highlight aspects of the Sustainability Appraisal (SA) which relate to the potential impact on cultural heritage and archaeology. Following this initial stage, further consultation on specific proposed changes will be necessary to ensure that specific proposals for any extension to PDR are appropriate.

At this stage, we are open to options which consider expanding PDR, but are pleased to note that the Work Programme recognises the basis for PDR as being to remove unnecessary planning permission for 'minor or uncontroversial developments or changes associated with existing development', and that

'they [PDR] are designed to cover situations where it would be very unlikely for an application for planning permission to be refused' or where 'standardised conditions are likely to be used and, therefore, where consideration on the principle of the development by a planning authority, on a case by case basis, is unlikely to add value.'

We recognise that this review was prompted by recommendations in Empowering Planning to Deliver Great Places report, but also note that the report also recognised calls for the further restriction of PDR in sensitive heritage locations and wild land areas (paragraph 6.12).

We strongly support national policy aspirations on low carbon living and digital infrastructure, and recognise a need for an increased response to deliver in the face of a climate emergency, however, we do not agree that this need should enable PDR to apply where the principle of development may lead to unacceptable harm to the significance of historic assets. In such cases PDR need to be excluded.

Where PDR are excluded that does not mean that development cannot in every case take place. It simply means that development should only take place in any given case when environmental issues (including impact upon the historic environment) have been fully assessed and impacts have been deemed to be acceptable.

Scottish Ministers have a statutory duty to manage the development and use of land in the long term public interest. This includes by following strategic objectives to 'respect, enhance, and make responsible use of our natural and cultural assets' (National Planning Framework 3). The system of planning permission is the most important way by which archaeological advisors in local authorities are able to advise on development to deliver this goal, by enabling a precautionary approach to the identification of, and assessment of the significance of heritage assets, the assessment of the impact of development upon them, and the delivery of advice and conditions which ensure the avoidance, mitigation, and offsetting of harm.

Where PDR exist and have the potential to impact upon heritage assets (e.g. where groundworks are required) – a large majority of which are undesignated, particularly in the case of buried archaeological remains – it is important that local authorities have mechanisms to keep track of these developments, and where appropriate, have opportunities to enact standardised conditions to assess impacts and ensure the sustainable treatment of the historic environment.

#### **2 What are your views on the accuracy and scope of the information described in the Sustainability Appraisal report as regards:**

**a) environmental baseline?:**

The information in Appendix 2 on cultural heritage (p.289) is not wholly accurate. The role of local authorities in the protection of the historic environment should be highlighted alongside that of Historic Environment Scotland (HES). Local authorities are responsible for the protection of over 90% of the heritage assets in Scotland, both designated and undesignated. Local authority archaeologists play an especially critical role in protecting the historic environment through the planning system.

We also note that on p.289 non-designated assets are described as being important because 'they provide important contextual information which helps us better understand designated sites'. While this may be true, non-designated heritage assets are heritage assets in their own right with their own significance. This is supported by Scottish Planning Policy (para. 151) which notes that;

'151. There is also a range of non-designated historic assets and areas of historical interest, including historic landscapes, other gardens and designed landscapes, woodlands and routes such as drove roads which do not have statutory protection. These resources are, however, an important part of Scotland's heritage and planning authorities should protect and preserve significant resources as far as possible, in situ wherever feasible.'

Further support for the significance of non-designated heritage assets can be found in SPP (e.g. para 137), PAN 2/2011 (paras. 3, 14), and Scotland's Historic Environment Policy.

It is not clear to us that the methodological approach of using three separate baselines as a basis for scoping and cataloguing information is wholly appropriate. Cultural heritage, for instance, is listed in Appendix 2 as being part of the consideration of an environmental baseline, but much of the information on cultural heritage has relevance to social or economic baselines, as well as to environmental.

It is unclear how this methodology will be used to judge detailed proposals and weigh their benefits against potential harm.

We recommend that either (a) cultural heritage is explicitly recognised as a topic under each baseline, with its specific relevance to environmental, social, and economic areas explored, or (b) the approach to the triple baseline is clarified, such that overlapping relevance of topics to more than one baseline is recognised.

Commenting specifically on the environmental baseline we are pleased that cultural heritage has been included here, although we suggest that some areas of relevance have been omitted from Appendix 2. For example, the only category of development which has a section under the heading cultural heritage (SA; p.289-291) is snow sports, this is despite recognition of possible effects on cultural heritage appearing in almost all of the chapters exploring each development type.

We suggest that additional sections should have been included for almost all areas which could have explored the specific context and relationship between these development types and the historic environment. For example, it would have been relevant to explore;

- known information on the relationship between digital communications, electric vehicle charging infrastructure and the historic environment, examining, for instance, specific challenges to setting in historic areas and impact of current PDR restrictions in restricted areas,
- The special characteristics of the peatland historic environment, including its potential for high degrees of preservation of material remains and the distribution of known archaeological heritage assets in peatland landscapes (e.g. prehistoric monuments) and how this can be impacted by development activities, such as vehicular disturbance, cutting and moving peat, and fluctuations in water levels,
- the importance of heritage assets in agricultural landscapes, and town centres, where specific considerations for setting and opportunities for re-use may be particularly important.

These would have provided useful context for understanding possible effects and scoping possible mitigation. These seem like an oversight in Appendix 2, as generally the impacts on cultural heritage and archaeology are considered within chapters 5-20 of the SA report.

We are pleased that the SA report recognises a range of relevant plans, programmes and strategies for cultural heritage in Appendix 1, it should also include reference to the Historic Environment Policy for Scotland (HEPS), published by Historic Environment Scotland in 2019. Chapter 4 also identifies that objectives from National Planning Framework 3 and Scottish Planning Policy also cut across the SA topic areas – including cultural heritage. However, Appendix 1 only lists the National Performance Framework under the heading of population and health, whereas this has relevance in setting strategic goals across many areas including cultural heritage.

**b) social baseline?:**

As stated above, we are not clear how the methodology of using a triple baseline will be important in the development of proposals but note that cultural heritage is relevant to the social baseline but is not recognised as such within Appendix 2. We recommend that a section on cultural heritage should have been added and that clarification of the relevance of cultural heritage to this baseline should be recognised going forward, if this is likely to have an impact on how detailed proposals are considered.

**c) economic baseline?:**

As stated above, we are not clear how the methodology of using a triple baseline will be important in the development of proposals but we note that cultural heritage is relevant to the economic baseline but is not recognised as such within Appendix 2. We recommend that a section on cultural heritage should have been added and that clarification of the relevance of cultural heritage to this baseline should be recognised going forward, if this is likely to have an impact on how detailed proposals are considered.

**3 What are your views on the predicted effects set out in the Sustainability Appraisal report as regards:**

**a) environmental effects?:**

As stated above, it is unclear to us that predicted effects are clearly distinguished as being either environmental, social, or economic within the SA report. This answer reflects all three areas as they each relate to the predicted effects on cultural heritage.

We are pleased that the effects on cultural heritage are one of the major areas examined for impact. Broadly, we agree with the predicted effects as set out in the SA report.

Many of the considered options for extending PDR are predicated on relaxing exemptions or restrictions on development in sensitive areas. This in most cases will mean greater chance of impact upon the significance of heritage assets, and less likely that development will be 'uncontroversial'.

In many cases where PDR are exercised, there is no significant effect upon the historic environment. However, development carried out on, or in the vicinity of, historic assets (which are not confined to designated areas and the assets within them) can have a highly damaging impact upon the significance of those assets. This includes groundwork which, even when relatively minor in scale, can cause disproportionate damage to, or destruction of, archaeological remains.

As the SA report does not suggest that negative effects on heritage would be appropriate, at this stage, we broadly support the approach taken to understanding potential effects of extending PDR.

We trust that the importance of cultural heritage (as set out in Scotland National Performance Framework, NPF3, Scotland's Historic Environment Strategy, etc.) will be respected by ensuring that appropriate protections against harm to the historic environment are maintained and that any harm that is judged to be generally acceptable (e.g. where it enables development which creates benefits such as meeting climate change goals) is appropriately mitigated.

**b) social effects?:**

Please see our answer 3a. It is unclear to us that predicted effects on cultural heritage are clearly distinguished as being either environmental, social, or economic within the SA report. We have provided our comments relating to all of the SA's predicted effects on cultural heritage and archaeology in the above answer.

**3c) economic effects:**

Please see our answer 3a. It is unclear to us that predicted effects on cultural heritage are clearly distinguished as being either environmental, social, or economic

within the SA report. We have provided our comments relating to all of the SA's predicted effects on cultural heritage and archaeology in the above answer.

#### **4 What are your views on the findings and the proposals for mitigation and monitoring of effects set out in the Sustainability Appraisal report with regard to:**

**Please provide any comments. :**

We believe that existing forms of exemption for cultural heritage (designated areas/assets and their setting) are generally appropriate for the purpose of respecting and making responsible use of our natural and cultural assets. Enabling consideration of the risk of harm to these assets is not an unnecessary regulatory burden. Across all planning applications in Scotland in 2017/18 (26,000) only 1% (300) were recommended for predetermination archaeological assessment. Of these, 31 (10%) were recommended for refusal in part because of preservation in situ needs. Most, however, required site-specific mitigation to avoid or mitigate harm to heritage assets.

We are pleased that the SA report highlights possible routes to mitigating impact upon cultural heritage and archaeology. In general, we think that suitable approaches to mitigation could be found for some of the proposals.

The stipulation of appropriate limitations / thresholds and conditions and the use of 'prior approval' mechanisms can reduce the risk to the historic environment, but where the principle of development is established unacceptable harm to the significance of historic assets cannot always be avoided and unsustainable development results. In such cases permitted development rights need to be excluded.

Where permitted development rights are excluded that does not mean that development cannot in every case take place. It simply means that development should only take place in any given case when environmental issues (including impact upon the historic environment) have been fully assessed and impacts have been deemed to be acceptable.

We note that Article 4 Directions are not considered within the document options for mitigation, despite being a statutory feature of the GDPO Act. We strongly advise that the use of Article 4 Directions should be allowed to continue as an option to mitigate effects of PDR in areas of known high archaeological potential, particularly where these areas are not designated for other reasons.

Some local authorities may also have information such as risk maps which could facilitate the restriction of PDR where there is a high potential for archaeological remains in areas not covered by other designations.

**a) environmental baseline?:**

Please see our answer under 4a. We have provided our comments relating to all of the SA's proposals for mitigation of harm to cultural heritage and archaeology in the above answer.

**b) social baseline?:**

Please see our answer under 4a. We have provided our comments relating to all of the SA's proposals for mitigation of harm to cultural heritage and archaeology in the above answer.

**c) economic baseline?:**

Please see our answer under 4a. We have provided our comments relating to all of the SA's proposals for mitigation of harm to cultural heritage and archaeology in the above answer.

#### **5 Do you have any other comments on the Sustainability Appraisal report?**

**Please provide any comments. :**

No further comments.

#### **About you**

**What is your name?**

**Name:**

Rob Lennox

**What is your email address?**

**Email:**

rob.lennox@archaeologists.net

**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

Chartered Institute for Archaeologists

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response with name

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

## **Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Slightly satisfied

**Please enter comments here.:**

At this stage, the consultation is focussed on whether the SA report was acceptable. We would have welcomed more opportunity to supply proposals or recommendations for what the next stage of preferred options will look like.

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Slightly satisfied

**Please enter comments here.:**